STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: September 3, 2014]

ALLIED ELECTRICAL GROUP, INC. and ANDREW GIULIANO ***Appellants*****,**	**:**	
v.	**:**	**C.A. No. PC-2013-3514**
STATE OF RHODE ISLAND, DEPARTMENT OF LABOR AND TRAINING ***Appellee*****.**	**:**	

DECISION

MCGUIRL, J. Allied Electrical Group, Inc. (Allied) and its president, Andrew Giuliano (Giuliano), (collectively, Plaintiffs) bring this appeal from an administrative decision of the Department of Labor and Training (DLT) finding Plaintiffs liable for several violations of the Rhode Island prevailing wage laws, G.L. 1956 §§ 37-13-1 through 37-13-17. For the reasons set forth in this Decision, the Court affirms DLT's decision, in part, and remands it, in part. Jurisdiction is pursuant to § 37-13-15(c) and G.L. 1956 § 42-35-15.

I

Facts and Travel

In 2010, the general contractor chosen by the State to perform a renovation project at Rhode Island College hired Allied as a subcontractor to install electrical and teledata equipment. The parties do not dispute that the renovation project was a public works project in excess of $1000, meaning that Allied's installation services were subject to the prevailing wage laws set forth in §§ 37-13-3.1 through 37-13-17. See § 37-13-3. During a routine investigation of Allied's worksite, however, DLT employees developed reason to believe that Allied had not properly complied with the prevailing wage laws.

DLT then issued a letter initiating charges against both Allied and Giuliano. After further investigation and a hearing on February 19, 2013, a DLT hearing officer concluded that Plaintiffs had committed the following violations: 1) Plaintiffs underpaid apprentices' fringe benefits, in violation of § 37-13-7 and R.I. Admin. Code 16-060-011; 2) Plaintiffs paid electrical apprentices at the lower telecommunications apprentice rate for some of the work performed, in violation of § 37-13-7 and R.I. Admin. Code 16-060-011; 3) Plaintiffs failed to increase wages for their employees on July 1, 2010, as required under § 37-13-8; and 4) Plaintiffs impermissibly withheld wages from employee Shawn Ventura, in violation of § 37-13-7(a). As a result, DLT ordered Plaintiffs to pay the aggrieved employees back wages plus interest. Moreover, the hearing officer determined that Plaintiffs' violations were willful; therefore, pursuant to § 37-13-14.1, DLT also assessed a civil penalty of three times the total amount of wages due and debarred Plaintiffs from bidding for or accepting any public works contracts for sixty months.

Plaintiffs timely appealed to the Labor and Payment of Debts by Contractors Appeals Board (Appeals Board), which affirmed the DLT hearing officer's findings and assessment of penalties. Having thereby exhausted their administrative remedies, Plaintiffs timely filed a complaint with this Court seeking review of the agency's decision.

II

Standard of Review

Pursuant to § 37-13-15(c), once an aggrieved party has exhausted DLT's administrative appeals process, an appeal may be taken in Superior Court pursuant to the Administrative Procedures Act, § 42-35-15. When reviewing the Hearing Officer's decision:

> "[t]he court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if

> substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> "(1) In violation of constitutional or statutory provisions;
>
> "(2) In excess of statutory authority of the agency;
>
> "(3) Made upon unlawful procedure;
>
> "(4) Affected by other error of law;
>
> "(5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
>
> "(6) Arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion." Section 42-35-15(g).

Accordingly, the court reviews questions of fact only to determine whether the record contains substantial evidence to support the agency's decision, and when such evidence exists, the court must accept an agency's factual findings. Barrington Sch. Comm. v. Rhode Island State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992).

In contrast, agency determinations on questions of law "are not binding upon the [reviewing] court, [which may] determine what the law is and its applicability to the facts." Narragansett Wire Co. v. Norberg, 118 R.I. 596, 607, 376 A.2d 1, 6 (1977); see also Hometown Props. v. Rhode Island Dep't of Envtl. Mgmt., 592 A.2d 841, 843 (R.I. 1991) (noting that the trial court "may properly review" agencies' determinations of law); accord Vitterito v. Sportsman's Lodge & Restaurant, 102 R.I. 72, 79, 228 A.2d 119, 124 (1967). Nonetheless, when, through an adjudicative proceeding, "an administrative agency interprets a regulatory statute that the General Assembly empowered the agency to enforce," the Court must accord that interpretation "'weight and deference as long as that construction is not clearly erroneous or unauthorized.'" Labor Ready Northeast, Inc. v. McConaghy, 849 A.2d 340, 344 (R.I. 2004)

(quoting In re Lallo, 768 A.2d 921, 926 (R.I. 2001)). Accordingly, "'when the statute is silent or ambiguous [the court] must defer to a reasonable construction by the agency charged with its implementation.'" Labor Ready Northeast, 849 A.2d at 346 (quoting Barnhart v. Thomas, 540 U.S. 20, 26 (2003)).

III

Analysis

A

Findings of Violations

1

Payment of Fringe Benefits

Plaintiffs and DLT dispute whether the prevailing wage statutes clearly and unambiguously mandate how employers must calculate fringe benefits for apprentices. DLT maintains that the statutory provisions of the prevailing wage laws are silent or ambiguous as to the calculation of fringe benefits, and, accordingly, this Court must afford deference to DLT's reasonable interpretation. See Labor Ready Northeast, 849 A.2d at 346. Plaintiffs, on the other hand, maintain that DLT's policy for calculating apprentices' fringe benefits is in clear violation of the plain language of the prevailing wage laws. Instead, Plaintiffs argue, the statutory language clearly and unambiguously supports their own method of calculating fringe benefits.

Certain aspects of the prevailing wage laws are clearly spelled out in the statutes and are not in dispute in the instant appeal. Section 37-13-7(a), for example, clearly requires that contractors working on public works projects of more than $1000 must pay their employees the prevailing wage. In addition, G.L. 1956 §§ 28-45-9 and 28-45-13 require that DLT-approved and registered apprenticeship programs pay apprentices according to a "graduated scale of

wages." Pursuant to § 37-13-7(b), the term "prevailing wages" is synonymous with "scale of wages" and comprises both the basic hourly rate of pay and fringe benefits. Finally, § 37-13-7 directs DLT to set the "prevailing wages" for employees subject to the prevailing wage laws.

DLT has interpreted these statutes to give the agency latitude to require that employers pay apprentices the same amount of fringe benefits that is paid to journeypersons. R.I. Admin. Code 16-060-011(19). This calculation for fringe benefits differs from DLT's requirements for the calculation of apprentices' basic hourly rate of pay, which directs employers to pay apprentices only a portion of the journeyperson's basic hourly rate. R.I. Admin. Code 16-060-011(5); § 37-13-7(a).

In contrast, Plaintiffs insist that the statute clearly requires employers to calculate apprentices' fringe benefits in the same way that their basic hourly rate is calculated, i.e., according to a graduated, proportionate share of the journeyperson's fringe benefits, rather than the full amount paid to journeypersons. As support for this argument, Plaintiffs point to § 37-13-7(b), which defines "scale of wages" and "prevailing wages" as being composed of both the basic hourly rate and fringe benefits, and § 28-45-13, which requires apprentices' "scale of wages" to be "graduated."

Thus, Plaintiffs understand the statutes to require fringe benefits, as well as basic hourly rates, to be graduated. Accordingly, Plaintiffs argue that DLT's policy of requiring employers to pay apprentices a flat fringe benefit amount is in violation of the prevailing wage laws. Because Plaintiffs believed that DLT's fringe benefit policy is contrary to the prevailing wage laws, they implemented their own understanding of the law in calculating the fringe benefit payments for their apprentices, even though they had full knowledge that DLT was actively enforcing a conflicting policy. (Hr'g Tr. 26-29, Dec. 17, 2012.)

Although Plaintiffs' interpretation of the prevailing wage laws is reasonable in light of the statutory language, DLT's interpretation is also reasonable. See Labor Ready Northeast, 849 A.2d at 346. The statute explicitly requires that apprentices be paid a "graduated scale of wages." Secs. 28-45-9, 28-45-13; see also § 37-13-7(a). The statute does not, however, require that the graduated scale be applied to each component of the "scaled wage." Thus, even though the fringe benefit component of DLT's prevailing wage calculation is flat, rather than gradually scaled, the total wage calculation is nonetheless "scaled" as required by § 28-45-9 and G.L. 1956 § 25-45-13 because the basic rate of pay is scaled. Thus, under DLT's interpretation, an apprentice's total wage package will progressively increase as the apprentice proceeds toward completion of the training program, in accordance with the statutes.

When, as here, the legislature has left the plain language of a statutory provision susceptible to more than one reasonable interpretation, the provision is ambiguous, and the Court must give deference to an agency interpretation that is "neither clearly erroneous nor unauthorized." Arnold v. R.I. Dep't of Labor and Training Bd. of Review, 822 A.2d 164, 169 (R.I. 2003); see also Labor Ready Northeast, 849 A.2d at 345-46. "[E]ven when the agency's interpretation is not the only permissible interpretation that could be applied," the court should nonetheless defer to the agency's reasonable interpretation. Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993) (deferring to the Public Utility Commission's decision that a particular business did not fit into the definition of a "public utility" under Rhode Island law); see also Labor Ready Northeast, 849 A.2d at 346 (finding that, "because the General Assembly did not define the term 'instrument' in the check-cashing statute and because it was subject to more than one reasonable interpretation, . . . [the] term was ambiguous," and the trial court should have deferred to the Department of Business Regulation's

interpretation of the term). Thus, despite the reasonableness of Plaintiffs' suggested interpretation, this Court must defer to DLT's interpretation because it, too, is reasonable and not "clearly erroneous" in light of the plain language of the statutory provisions. Arnold, 822 A.2d at 169. As a result, DLT's finding that Plaintiffs violated § 37-13-7 and R.I. Admin. Code 16-060-011 by underpaying apprentices' fringe benefits is not a violation of the applicable statutory provisions, nor did DLT exceed its statutory authority. See § 42-35-15(g).[1]

2

Payment of Telecommunications Rates to Electrical Apprentices

Next, Plaintiffs challenge DLT's finding that they violated the prevailing wage laws and DLT's policies by paying their apprentices lower rates for time they spent installing teledata equipment than for time they spent performing traditional electrician tasks. Specifically, DLT found that Plaintiffs paid their apprentices the proportionate share of a teledata journeyperson's basic hourly rate—which is lower than an electrician's rate—for their work to install teledata equipment. DLT maintains that Plaintiffs' payment of this lower wage rate constituted a violation of § 37-13-7 and R.I. Admin. Code 16-060-011 because Plaintiffs should have instead paid their apprentices the appropriate proportionate share of the higher electrician journeyperson's hourly rate for all of the work they performed, including the teledata

[1] The Court takes judicial notice of DLT's recent policy change—announced publically on the Prevailing Wage section of its website—to temporarily refrain from enforcing its regulatory requirement that all apprentices on prevailing wage jobs be paid one hundred percent of the applicable fringe benefits. See Colonial Plumbing & Heating Supply Co. v. Contemporary Const. Co., Inc., 464 A.2d 741, 742 (R.I. 1983) (holding that "a court may take judicial notice of . . . facts generally known with certainty by all reasonably intelligent people in the community and . . . facts capable of accurate and ready determination by resort to sources of indisputable accuracy"). However, this policy change has no bearing on the instant appeal. DLT has made clear that this new policy, which legitimizes the payment scheme for which it has penalized Allied, is not retroactively applicable to enforcement actions for which DLT has already made a final determination. Since DLT has reached a final decision on the instant matter, DLT's revision of its policy has no bearing on Allied's rights or obligations at issue in the instant appeal.

installation. Noting, however, that DLT has established different rates of pay for electrician journeypersons versus teledata journeypersons, Plaintiffs argue that the apprentice rate of pay should also be different when the apprentices perform electrician work versus teledata work.

Section 37-13-7 empowers DLT to set the prevailing wages, and, in accordance with this statutory mandate, DLT has promulgated regulations requiring employers to pay apprentices "in accordance with the scale listed in the apprentice's apprenticeship agreement." R.I. Admin. Code 16-060-011. The apprenticeship agreements for each of Plaintiffs' aggrieved apprentices specify that the apprentices were training as electricians. These agreements also defined a scale of wages for the apprentices based on the basic hourly rate of electricians. (Def.'s Exs. 23, 25, 28, 29.) In addition, the Rhode Island Standards of Apprenticeship formulated by Allied for its apprenticeship program was incorporated by reference into these apprenticeship agreements, and it specifies that "[a]pprentices shall be paid not less than" the scale of wages based on the electrician journeyperson's basic hourly rate. Id.; Def's Ex. 26 at 6. Consequently, Plaintiffs clearly violated § 37-13-7 and R.I. Admin. Code 16-060-011 by failing to pay their apprentices the basic hourly rate outlined in Allied's agreements with its apprentices. Thus, DLT's conclusions of law are supported by the prevailing wage statutes and the agency's own regulations, and DLT's factual findings are supported by the evidence in the adjudicative record. See Barrington Sch. Comm., 608 A.2d at 1138 (holding that a reviewing court must accept an agency's factual findings if the record contains substantial evidence in support thereof).

Plaintiffs further claim that, even if they did err in paying the lower teledata rate to electrical apprentices, they did so in reliance on advice from DLT employees and that, accordingly, DLT should now be equitably estopped from penalizing Plaintiffs. In particular, Giuliano testified that he "had discussions with" two DLT employees, whom he referred to at the

hearing as only "Mark and Lisa," and that they "were in agreement" that Allied could pay the lower teledata rate to electrical apprentices. (Hr'g Tr. 43, Dec. 17, 2012.) DLT, however, denies that any such exchange ever took place and notes that there is no evidence or corroborating testimony from any DLT employees to support Giuliano's claims.

However, this argument must fail for two reasons. Primarily, our Supreme Court has made abundantly clear that "the doctrine of equitable estoppel should not be applied against a governmental entity . . . when, as here, the alleged representations or conduct relied upon were ultra vires or in conflict with applicable law." Romano v. Ret. Bd. of the Emps.' Ret. Sys. of R.I., 767 A.2d 35, 38 (R.I. 2001) (holding that a retired state employee's detrimental reliance on advice that was given to him by agents of the State Retirement Board and that was contrary to state law, did not equitably estop the Board from suspending the retiree's pension when it discovered he was also working full-time for a municipality). As explained above, the applicable law in this case mandated that Plaintiffs pay their apprentices in accordance with the scale of wages outlined in their apprenticeship agreements, which specified that Plaintiffs' apprentices would be paid a proportion of the electrician journeyperson's rate. Consequently, any representations to the contrary that may have been made to Plaintiffs by DLT personnel were "in conflict with applicable law." Id. at 38. Therefore, because "neither a government entity nor any of its representatives has any implied or actual authority to modify, waive, or ignore applicable state law," this Court will not apply equitable estoppel against DLT in this case. Id.

Additionally, the DLT hearing officer determined that the evidence Plaintiffs submitted in support of their estoppel argument was not credible. See § 42-35-15(g); Barrington Sch. Comm., 608 A.2d at 1138. When Plaintiffs raised the estoppel issue in the DLT adjudicative proceedings, the only evidence they submitted in support was Giuliano's testimony as to the

purported conversations he had with "Mark and Lisa" from DLT, who allegedly advised him that Allied could pay its electrical apprentices the lower teledata hourly rate for teledata installation. (Hr'g Tr. 43, Dec. 17, 2012.) After considering this argument, however, the hearing officer did not credit Giuliano's testimony, and he therefore declined to grant Plaintiffs' requested relief. See DLT Decision and Order at 2, 5, Feb. 19, 2013. Because this Court "shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact," this Court must accept the hearing officer's factual findings that no DLT employees told Plaintiffs that they could lawfully pay teledata rates to electrician apprentices. Section 42-35-15(g); see also Barrington Sch. Comm., 608 A.2d at 1138. DLT's finding that Plaintiffs violated § 37-13-7 and R.I. Admin. Code 16-060-011 by paying their apprentices at the lower telecommunications apprentice rate is, thus, not erroneous under the standards of § 42-35-15(g).

3

Failure to Increase Wages after July 1

Seemingly, Plaintiffs also challenge DLT's finding that they violated § 37-13-8 by failing to increase wages for their employees on July 1, 2010 in accordance with the agency's annually-updated prevailing wage amounts. Plaintiffs neither briefed this issue nor mentioned it specifically in their complaint. Rather, Plaintiffs' complaint alleges broadly, without any specific supporting allegations of fact, that the entire decision of the Appeals Board—including its finding that Plaintiffs illegally failed to increase wages for their employees on July 1, 2010—violated § 42-35-15(g). Thus, Plaintiffs have "not developed this argument in any meaningful way," such as by outlining in their memorandum some reason why DLT's decision should be reversed or modified pursuant to § 42-35-15(g). DeAngelis v. DeAngelis, 923 A.2d 1274, 1282 n.11 (R.I. 2007). Because "[s]imply stating an issue for appellate review, without a meaningful

discussion thereof or legal briefing of the issues, does not assist the Court in focusing on the legal questions raised," Plaintiffs' mere request that this Court review and reverse DLT's entire order "is insufficient to merit appellate review" of this matter and, consequently, Plaintiffs' failure to explain their claim of agency error on this ground "constitutes a waiver of [the] issue." Wilkinson v. State Crime Lab. Comm'n, 788 A.2d 1129, 1131 n.1 (R.I. 2002); DeAngelis, 923 A.2d at 1282 n.11; see also Ferreira v. Culhane, 736 A.2d 96, 97 (R.I. 1999) (noting that "[i]ssues that are neither briefed nor argued are considered waived").

Even if Plaintiffs had not effectively waived the issue, this Court would affirm DLT's ruling because its factual findings were supported by substantial, competent evidence from the record, and the ruling was in accordance with established law. See Barrington Sch. Comm., 608 A.2d at 1138; § 42-35-15(g); § 37-13-8. Section 37-13-8 clearly provides that

> "each contractor awarded a public works contract after July 1, 2007 shall contact the department of labor and training on or before July first of each year, for the duration of such contract to ascertain the prevailing wage rate of wages on a [sic] hourly basis and the amount of payment or contributions paid or payable on behalf of each mechanic, laborer or worker employed upon the work contracted to be done each year and shall make any necessary adjustments to such prevailing rate of wages and such payment or contributions paid or payable on behalf of each such employee every July first."

Thus, the law is clear that public works employers, including Plaintiffs, are required to check with DLT each year to find out if the prevailing wage rates will be changed on the first of July and to adjust their employees' wages accordingly. Id. Plaintiffs do not argue, and this Court does not find, that DLT has erroneously interpreted this statutory provision. Moreover, the hearing officer's factual determination that Plaintiffs failed to either contact DLT to "ascertain the [new] prevailing wage rate" or to adjust their employees' pay is supported by competent evidence in the record, namely, Allied's certified payroll records, payroll journals and cancelled

paychecks, all of which show that Plaintiffs did not change their employees' wages after July 1, 2010, even though the prevailing wage rates had changed. (Def.'s Exs. 13, 14.)

4

Wage Withholding

Lastly, in support of their challenge to DLT's finding that they violated § 37-13-7(a) by withholding wages from employee Shawn Ventura, Plaintiffs submit only that this employee had been previously overpaid. Presumably, Plaintiffs suggest that the withholding of wages was justified because of the prior erroneous overpayment.

Section 37-13-7(a) plainly provides that "the contractor or . . . subcontractor shall pay all the employees . . . unconditionally . . . and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment." Plaintiffs do not offer, and this Court does not find, any reason to impugn the validity or legality of DLT's understanding that this statutory provision prohibits employers from withholding future wages in order to recoup past overpayments. See Labor Ready Northeast, 849 A.2d at 344; In re Lallo, 768 A.2d at 926.

Additionally, Plaintiffs seemingly do not challenge the accuracy of DLT's factual findings on this matter, which this Court finds to be supported by substantial, competent evidence from the record. See Barrington Sch. Comm., 608 A.2d at 1138. Specifically, the hearing officer's determination that Plaintiffs "deducted wages from Mr. Ventura based on the alleged overpayment" is supported by the following exchange at the hearing:

> DLT's Counsel: "[Y]ou said that you overpaid Mr. Ventura by $5,000—is that correct?"
>
> Giuliano: "Correct."
>
> DLT's Counsel: "And as a result, you underpaid him in subsequent weeks—is that right?

Giuliano: "Correct."

DLT's Counsel: "So, in your mind, it was all balancing out—is that right?"

Giuliano: "Well, in my mind it was, I paid him." (Hr'g Tr. 44, Dec. 17, 2012.)

Furthermore, the Appeals Board's affirmation of the hearing officer's finding of violation on this issue was supported by the following exchange at the hearing before the Appeals Board:

> Plaintiffs' Counsel: "[Mr. Ventura] was overpaid based on some prior calculations. The Department's position is you can't go back and remedy that."
>
> Board: "And your position is you can?"
>
> Plaintiffs' Counsel: "And, our position is you should be able to." (Appeals Board Hr'g Tr. 28, Mar. 25, 2013.)

Accordingly, the "reliable, probative and substantial evidence" on the record supports DLT's decision on this point. Section 42-35-15(g).

B

Assessment of Penalties

1

Debarment

In addition to the instant violations, DLT and Plaintiffs previously entered into three consent agreements to resolve other prevailing wage law violations committed by Plaintiffs during three different public works projects. (Def.'s Exs. 18, 19, 20.) As a result of these consent agreements, in which Plaintiffs acknowledged that they had violated the prevailing wage laws, the DLT hearing officer reasoned that each time Plaintiffs subsequently committed the same violation, Plaintiffs were acting knowingly and willfully. (DLT Decision and Order at 6.) Consequently, after finding Plaintiffs to have once again committed the same violations of the prevailing wage laws in the instant action, DLT debarred Plaintiffs pursuant to § 37-13-14.1(e),

which requires the agency to prohibit a contractor from bidding for public works contracts for sixty months when a hearing officer finds that the contractor "committed two (2) or more willful violations in any period of eighteen (18) months."[2] Id.

Plaintiffs now argue that DLT erred in imposing this penalty, although the precise ground on which they base this challenge is unclear. Plaintiffs appear to argue that the violations they committed at the Rhode Island College project cannot serve as the basis for their debarment because those violations occurred before the violations that were the subject of the three consent agreements with DLT. However, DLT counters that the hearing officer accurately applied the parameters of § 37-13-14.1(e) to Plaintiffs' case because there is no requirement under the statute that the violation resulting in debarment take place after the predicate "two or more willful violations."[3] Indeed, the statute only requires that the contractor commit two or more willful violations at any time within an eighteen month time frame. Section 37-13-14.1(e).

To that end, the record is clear that Plaintiffs committed more than two prevailing wage law violations within eighteen months. Between 2010 and 2011, Allied entered into three consent agreements with DLT in which Plaintiffs conceded that they had violated the prevailing wage laws by failing to pay the prevailing wage rate to certain employees on three public works projects. (Def.'s Exs. 18, 19, 20.) These projects were Rhode Island College Building #3, on

[2] The hearing officer's Decision and Order incorrectly cites § 37-13-14.1(d) as the statutory provision providing for debarment of sixty months.

[3] Additionally, DLT suggests that Plaintiffs cannot bring this argument before the Court now because they failed to first raise it before the agency. However, there is no requirement in the Administrative Procedures Act that all issues for appellate review be first raised before the agency, and the Rhode Island Supreme Court "has not explicitly held that the raise-or-waive doctrine applies to administrative proceedings." E. Bay City. Dev. Corp. v. Zoning Bd. of Review, 901 A.2d 1136, 1153 (R.I. 2006) (declining to "consider . . . the extent to which the raise-or-waive doctrine applies, if at all, to . . . issues raised during the course of an [administrative] appeal"); see also Randall v. Norberg, 121 R.I. 714, 721, 403 A.2d 240, 244 (1979) (noting that "the failure to raise a constitutional issue at the administrative level does not preclude its litigation in Superior Court").

which Plaintiffs worked in 2009 and 2010; Salty Brine Beach, on which Plaintiffs worked in 2010; and the Johnston Fire Department, on which Plaintiffs worked in 2011. Id.; Hr'g Tr. 19-21, Dec. 17, 2012. According to DLT's factual findings, Plaintiffs also committed ongoing violations of the prevailing wage laws between May 2010 and January 2011, when they were completing the Rhode Island College project. See Hr'g Tr. 5, Sept. 27, 2012. Given the timing of each of these projects, at least two of the violations for which Plaintiffs entered consent agreements must have occurred within eighteen months of the violations for which Plaintiffs were debarred. Thus, in debarring Plaintiffs for sixty months, DLT acted within the statutory authority afforded to it by § 37-13-14.1(e). See § 42-35-15(g).

2

Personal Liability of Andrew Giuliano

Finally, Plaintiffs argue that DLT erroneously assigned personal liability to Giuliano for Plaintiffs' prevailing wage violations. The hearing officer's Decision and Order assigns monetary liability and debarment to "Respondent," which is defined as encompassing both Allied and Giuliano. (DLT Decision and Order at 1, 6.) Giuliano is the president of Allied, which is a Rhode Island corporation. (Def.'s Ex. 21.)

a

Monetary Penalties

In support of their claim that Giuliano should not be liable for the findings of violation in the instant case, Plaintiffs maintain that, because § 37-13-3 requires only "contractors" and "their subcontractors" to comply with the prevailing wage laws, Giuliano cannot be liable for violating the prevailing wage laws because Allied, not Giuliano in his individual capacity, was the subcontractor for the Rhode Island College project. Indeed, Allied, not Giuliano, is listed as the

subcontractor in the contract with the general contractor for Plaintiffs' work at Rhode Island College. (Def.'s Ex. 4.) Thus, to hold Giuliano liable for back wages, interest, and civil penalties would be to pierce the corporate veil, i.e., to disregard the corporate entity and to instead impose liability on one of the members of the corporation. See 1 William Meade Fletcher, Fletcher Cyclopedia of the Law of Corporations § 41 at 111 (2006 rev. ed.).

When an individual so controls a corporation as to make it "a mere conduit or instrumentality" of the individual, the corporate veil may be pierced to permit creditors to reach the assets of that individual. Nat'l Hotel Assocs. v. O. Ahlborg & Sons, Inc., 827 A.2d 646, 652 (R.I. 2003). In the instant case, however, DLT made no findings, and there is no evidence in the record to suggest that the requirements for piercing the corporate veil have been satisfied. As a result, DLT cannot hold Giuliano liable for the infractions of his corporation. Thus, to the extent that the hearing officer's Decision and Order found Giuliano personally liable for back wages, interest, and civil penalties, such finding was affected by an error of law. See § 42-35-15(g). As a result, DLT's Decision and Order is hereby remanded to the agency so that it may modify its Order to hold only Allied liable for such payments. See id.

b

Debarment

The corporate veil doctrine, however, does not insulate Giuliano from debarment because the prevailing wage statutes and DLT's attendant regulations permit DLT to debar corporate officers after an adjudicatory proceeding in which the officer is deemed "responsible for the violation of the prevailing wage requirements." R.I. Admin. Code 16-060-011; see also § 37-13-14.1(e) (permitting DLT to debar "any person, firm, or corporation found to have committed two (2) or more willful violations in any period of eighteen (18) months") (emphasis added). DLT

clearly found Giuliano, who testified that he is the president of Allied, to be responsible for the prevailing wage violations, and such finding is supported by the evidence on the record. (Hr'g Tr. 3, Dec. 17, 2012.) For example, Giuliano testified that, even though he had firsthand knowledge of DLT's prevailing wage rules, he nonetheless implemented his own contradictory understanding of the law when paying Allied's employees. Id. at 26-29. Consequently, DLT's debarment of Giuliano, as well as Allied, was not an abuse of discretion or a violation of statutory provisions. See § 42-35-15(g).

IV

Conclusion

After a review of the entire record, this Court rules that DLT's findings of violations and DLT's imposition of debarment on both Allied and Giuliano are supported by reliable, probative, and substantial evidence in the record, are not in excess of the authority granted to it by statute or ordinance, and are not affected by any error of law. DLT's Decision and Order, however, must be modified on remand because DLT's attempt to pierce the corporate veil and impose personal liability on Andrew Giuliano for back wages, interest, and civil penalties was not supported by substantial evidence on the record. Accordingly, the decision of the Board is affirmed, in part, and remanded, in part. The Court orders that all amounts must be paid within thirty days of notification of this Decision. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Allied Electrical Group, Inc. and Andrew Giuliano v. State of Rhode Island, Department of Labor and Training
CASE NO:	PC 2013-3514
COURT:	Providence County Superior Court
DATE DECISION FILED:	September 3, 2014
JUSTICE/MAGISTRATE:	McGuirl, J.
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