**STATE OF RHODE ISLAND**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**(FILED: December 3, 2024)**

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| **HELEN Z. RICCI,** | : | |
| | : | |
| ***Plaintiff*,** | : | |
| | : | |
| **v.** | : | **C.A. No. PC-2023-05723** |
| | : | **(Consolidated with C.A.** |
| **RHODE ISLAND AIRPORT** | : | **No. PC-2023-05720)** |
| **CORPORATION and RHODE** | : | |
| **ISLAND AIRPORT CORPORATION** | : | |
| **POLICE DEPARTMENT,** | : | |
| | : | |
| ***Defendants*.** | : | |

**DECISION**

**STERN, J.** Before the Court are cross-appeals from the decision of a hearing committee (Committee) convened under the Law Enforcement Officers Bill of Rights (LEOBOR), G.L. 1956 chapter 28.6 of title 42, sustaining a Charge of Insubordination against Plaintiff, Helen Z. Ricci (Plaintiff), initially complained of by Defendants, Rhode Island Airport Corporation and Rhode Island Airport Corporation Police Department (collectively, Defendants). *See* LEOBOR Decision (Decision) dated October 4, 2023. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

**I**

**Facts and Travel**

Plaintiff was hired by the Rhode Island Airport Corporation (RIAC) as the Deputy Chief of the Rhode Island Airport Corporation Police Department (RIAPD) on December 16, 2019. (Decision 4.) Plaintiff was officially sworn in on March 2, 2020. *Id.* The Chief of the RIAPD, Leo Messier, retired on July 7, 2020. *Id.* Plaintiff then presided over the "day-to-day operations of the police department without any change to her rank, title, or salary." *Id.* at 8. On the same

day Leo Messier retired, Plaintiff met with Dennis Greco (Greco), Vice President of Public Safety for the RIAC and Plaintiff's direct supervisor, and asked about when she would be promoted to either Chief or Acting Chief.[1] *Id.* Greco "advised [Plaintiff] that the determination to name a Chief/Acting Chief would be made by RIAC and no decision had yet been made." *Id.* After meeting with Greco, Plaintiff met with Brittany Morgan (Morgan), née Pagliarini, who operated as the RIAC's Human Resources Director. *Id.* at 7, 9. Plaintiff once again inquired into her potential promotion to Chief/Acting Chief, with Morgan advising her that the RIAC would make the decision regarding new leadership for the police department. *Id.* at 9. Plaintiff thereafter met with Iftikhar Ahmad (Ahmad), the President and Chief Executive Officer of the RIAC, presenting the same question about her potential promotion to Chief/Acting Chief. *Id.* at 7, 10. Ahmad advised Plaintiff that the RIAC would determine who was going to serve as the next Chief of the RIAPD. *Id.* at 10. After being made aware of these events, Greco "believed [Plaintiff] was circumventing the chain of command by meeting with Morgan and Ahmad after [Greco] answered her question[.]" *Id.*

On July 8, 2020, Greco, Morgan, and Elissa O'Brien (O'Brien), RIAC's Assistant Director of Human Resources, met with Plaintiff to discuss "the inappropriateness of her impromptu meeting with Ahmad regarding her promotional prospects." *Id.* During this meeting, Plaintiff was reminded that she answered directly to Greco and that Greco was her direct supervisor. *Id.* On July 16, 2020, Plaintiff attempted to make alterations to the RIAC website, specifically attempting to change her title from Deputy Chief to Acting Chief. *Id.* at 11. On July 17, 2020, Greco, Morgan, and O'Brien met with Plaintiff, where she was once again reminded

[1] The Committee found that, as the Vice President of Public Safety for the RIAC, "Greco ha[d] supervisory authority over the Deputy Chief of the Airport Police Department[;] [t]estimony regarding Greco's authority was undisputed during [the LEOBOR hearing] proceedings." (Decision 6.) As such, Greco was Plaintiff's "immediate supervisor[.]" *Id.* at 8.

that she was not the Acting Chief.[2] *Id.* at 12. At that meeting, Greco requested that Plaintiff prepare a memorandum explaining that she understood her role, the chain of command, and the fact that she reported to Greco. *Id.*

On July 21, 2020, Plaintiff requested to meet with Greco, Morgan, and O'Brien.[3] *Id.* During the meeting, Plaintiff once again made inquiries into the Chief position, to which she was reminded that she was not the Acting Chief. *Id.* Plaintiff was asked to follow up with Greco's request that she prepare a memorandum outlining and confirming her understating of her role as Deputy Chief. *Id.* Upon being reminded, Plaintiff requested that Greco write *her* a memorandum rather than her "'regurgitate' the information." *Id.* Plaintiff subsequently drafted and sent a memorandum to Greco, making several assertions. *Id.* at 13-15. The memorandum averred that Plaintiff accepted the job offer of Deputy Chief "with the understanding that upon . . . Chief Messier's retirement, [Plaintiff would] be his successor and promoted to RIAPD Chief of Police." *Id.* at 13. The memorandum also voiced concerns of "ethnic and sexual bias by senior management whom [Plaintiff] report[s] to and work[s] with." *Id.* at 14.

On September 28, 2020, during a routine meeting and while in the presence of several subordinates of Greco, Plaintiff accused Greco of investigating an alleged rape that occurred against her by a "'dirty Boston Police Officer.'" *Id.* at 17. "Greco was offended by the accusation and directed [Plaintiff] and then-Inspector [Joseph] Ottaviano to accompany him to the Human Resources office." *Id.* Once reaching the Human Resources office, Greco directed everyone out

[2] The Decision incorrectly states that the July 17 meeting occurred in 2023. *Id.* at 12. This meeting did not occur in 2023, instead occurring in 2020—the Decision cites to "Exhibit 13 Note to File 7/17/*2020* Discussions with Helen Ricci, by Brittany Pagliarini, Director of Human Resources[,]" to support that factual finding. *Id.* (emphasis added).

[3] The Decision once again incorrectly states that the July 21 meeting occurred in 2023. *Id.* Once again, that meeting occurred in 2020. *Id.* (citing to "Exhibit 13 Note to File 7/21/*2020* Follow up Discussions with Helen Ricci, by Brittany Pagliarini, Director of Human Resources[.]") (emphasis added).

of the hallway and into a conference room. *Id.* at 18. Plaintiff responded: "'You can't tell me what to do.'" *Id.* Subsequently, Greco cancelled a large-scale training exercise that had been scheduled for that evening by e-mailing Inspector Ottaviano—with Plaintiff copied—the following: "'Due to exigent circumstances tonight's in-service training is cancelled. Please make the proper notifications. We will reschedule the training at a later date.'" *Id.* Plaintiff sent a reply e-mail including both Greco and Inspector Ottaviano that read: "'I've taken into account that you (i.e., Mr. Greco) may still be in an emotionally unbalanced state, therefore, prioritizing the training needs of this police department, I have reinstated the training for tonight.'" *Id.* at 18-19. On September 30, 2020, Plaintiff e-mailed Morgan regarding the September 28, 2020 incident, stating:

> "I definitely know enough to state with a reasonable degree of certainty that a professional psychological/psychiatric assessment of Dennis Greco is warranted now, after his most apparent continually diminishing capacity towards exhibiting rational behavior, his emotionally disturbed and threatening manner on Monday, using 'exigent circumstances' as he had (in a way akin to yelling 'fire' in a theater or adjacent to yelling 'bomb' in an airport, particularly within the context of law enforcement training). . . . To be very clear, making any claim that Dennis Greco has command over the bodies or body movement of police officers is an already considerably dangerous theory, and that's before considering his mental health and his most apparently diminishing capacity, part of which you witnessed." (RIAC's Hearing Exhibit (RIAC's Hr'g Ex.) 39.)

The RIAC left the role of Chief of the RIAPD vacant until mid-November 2020. Decision at 4. On November 10, 2020, Plaintiff was terminated as a member of the RIAPD and as an employee of the RIAC. *Id.* On or about November 13, 2020, Plaintiff filed a written request for a hearing in accordance with the provisions of the LEOBOR statute. *Id.* A dispute then arose as to whether Plaintiff as a Deputy Chief was entitled to LEOBOR statute protections, with our

Supreme Court ultimately holding that Plaintiff was indeed entitled to a LEOBOR hearing. *Id.* at 4-5.

On November 14, 2022, Plaintiff was advised of her suspension pursuant to § 42-28.6-13(e). *Id.* at 5. On November 28, 2022, Plaintiff was advised in writing that the RIAPD intended to terminate her. *Id.* The Notice to Terminate was signed by Inspector Ottaviano, who by this time had been promoted to Chief of the RIAPD, and listed six charges: 1. Gross Insubordination, 2. Disregard for the Chain of Command, 3. Questionable/Unreasonable Judgment, 4. Rhode Island Police Officers Commission of Standards and Training (POST) Certification, 5. Misrepresentation, and 6. Merit Board Case/Boston Police Department Records. (RIAC's Hr'g Ex. 1.) Plaintiff subsequently exercised her right to a LEOBOR hearing. (Decision 6.)

The LEOBOR hearing took place over the course of twenty separate days, spanning from February 13, 2023 to September 5, 2023. Decision at 2. The Committee deliberated on September 8 and 12, 2023. *Id.* On October 4, 2023, the Committee issued its Decision. *Id.* The Decision consolidated Charges 2 and 3 with Charge 1, and Charge 1 was retermed as "Insubordination." *Id.* at 26. By a unanimous vote of 3-0, the Committee sustained the consolidated Charge 1 for Insubordination, and did not sustain Charges 4, 5, and 6. *Id.* at 45. As well, by a unanimous vote of 3-0, the Committee "modified the Airport Corporation's recommended sanction of termination" to a demotion of Plaintiff from Deputy Chief to Patrolperson and a suspension without pay for thirty working days. *Id.* The Committee's Decision also decreed that the RIAC was "required to [. . . c]omplete and submit to the Rhode Island POST all paperwork required for Waiver Candidacy/Police Officer Certification on behalf of Ms. Ricci. If the RI POST does not grant the required certification, the Committee defers to it (RI POST) to take appropriate action." *Id.*

Plaintiff filed a Petition to Review the Decision of Hearing Committee Under the Law Enforcement Officers' Bill of Rights on November 2, 2023. (Docket.) On June 24, 2024, Defendants filed their request for an appeal of the Committee's Decision and filed a Memorandum of Law in Support. *See* Docket. On May 3, 2024, the Court consolidated the two requests for appeal under the case number PC-2023-05723. (Docket.)

## II

## Standard of Review

Section 42-28.6-12(a) provides that "[a]ppeals from all decisions rendered by the hearing committee shall be to the superior court in accordance with §§ 42-35-15 and 42-35-15.1. For purposes of this section, the hearing committee shall be deemed an administrative agency and its final decision shall be deemed a final order in a contested case within the meaning of §§ 42-35-15 and 42-35-15.1." Section 42-28.6-12(a).

Our Supreme Court has made clear that "'[w]hen this Court reviews an administrative appeal brought under the Administrative Procedures Act, G.L. 1956 chapter 35 of title 42, our review is limited to questions of law.'" *Banki v. Fine*, 224 A.3d 88, 93 (R.I. 2020) (quoting *Blais v. Rhode Island Airport Corporation*, 212 A.3d 604, 611 (R.I. 2019)). "'This Court does not substitute its judgment for that of the agency concerning the credibility of witnesses or the weight of the evidence concerning questions of fact.'" *Id.* (quoting *Blais*, 212 A.3d at 611). "'Although we afford great deference to the factual findings of the administrative agency, questions of law—including statutory interpretation—are reviewed *de novo*.'" *Id.* (quoting *Blais*, 212 A.3d at 611).

Our Supreme Court has provided that when reviewing an administrative appeal pursuant to § 42-35-15(g), 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 the 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 abuse of discretion or clearly unwarranted exercise of discretion.'" *Id.* (quoting *Blais*, 212 A.3d at 611).

## III

## Analysis

### A

### Plaintiff's Petition for Appeal

#### 1

#### Notice of What Constitutes an Act of Insubordination

Plaintiff argues for reversal of the Decision given that her "rights to due process were violated because she had no notice of what would constitute an act of insubordination because [Defendants] had not enacted any rules, regulations or general orders for the conduct of police department [*sic*], as found by the Hearing Committee at page 26 of its decision[.]" (Pet. to Review Decision of Hr'g. Committee under the [LEOBOR statute] (Pl.'s Mem.) 6-7.) Plaintiff points to the Decision's finding that the RIAPD "did not have policies or general orders governing the conduct of its officers." (Pet'r Helen Z. Ricci's Brief in PC-2023-05723 (Pl.'s Br.) 5) (quoting Decision 26). Plaintiff also notes the Committee's statement that it "was left to its own devices to define the titles of these charges and determine how they apply to the accusations brought against [Plaintiff]." *Id.* (quoting Decision 26). Focusing on the September 28, 2020,

incident—the incident the Committee primarily relied upon in sustaining Charge 1 for Insubordination—Plaintiff argues,

> "as the Deputy Chief of the RIAC Police Department, Helen Ricci was concerned about the last-minute cancellation of an in-service training session that she had worked hard to implement. While it is apparent that Dennis Greco, then-Vice President of Public Safety for RIAC, made the decision to cancel the training, he did not make that decision in consultation with Ms. Ricci, who, at that time, in the absence of the Chief of Police, who had retired in July of 2020, served as the Deputy Chief and was, for all intents and purposes, directing the day-to-day operations of the RIAC Police Department." (Pl.'s Brief 7-8.)

Plaintiff then relies upon the United States Supreme Court's holding in *Grayned v. City of Rockford*, 408 U.S. 104 (1972) for the proposition that "'[i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.'" *Id.* (quoting *Grayned*, 408 U.S. at 108).

Defendants argue that given the Committee was fully comprised of experienced police officers, the Committee would not have sustained Charge 1 for Insubordination against Plaintiff if they believed that Plaintiff could not have known that engaging in such conduct would lead to punishment. (RIAC and RIAPD's Obj. to Pl.'s Brief in PC-2023-05723 (Defs.' Obj. to Pl.'s Br.) 4-5.) Defendants also argue that Plaintiff has failed to cite any legal authority indicating that the LEOBOR statute requires law enforcement agencies to maintain written policies or that charges be based on written policies. *Id.* at 3-4.

Here, Plaintiff did not lack notice of what an act of insubordination would be, as defined by Defendants. The record in this matter is clear that on numerous occasions prior to the September 28, 2020 incident, Plaintiff was told by her supervisors and Human Resources employees that she reported to Greco. (Decision 10, 12.) The record also reflects that Plaintiff was informed that she reported to Greco closely following incidents in which Plaintiff engaged

in conduct that circumvented Greco, such as meeting with Morgan and Ahmad after Greco answered her question regarding the vacant Chief's position, and attempting to change her title on the RIAC's website. *Id.* As such, Plaintiff was put on notice that actions circumventing Greco were inappropriate and that she needed to follow the chain of command. *Id.* It is axiomatic that if Defendants made Plaintiff aware that she directly reported and was subordinate to Greco, the Committee would find it insubordinate for Plaintiff to directly oppose a clear order by Greco. That is the case at bar—the record indicates that Plaintiff went against orders from Greco on September 28, 2020:

> "The meeting with Human Resources included the aforementioned individuals as well as Morgan and O'Brien. Upon reaching the Human Resources Office, [Greco] directed everyone out of the hallway and into a conference room. In response to [Greco's] directive, [Plaintiff] responded, 'You can't tell me what to do[.]' Testimony and documentation from this meeting was undisputed during these proceedings." (Decision 18.)

The record also indicates that Greco—Plaintiff's direct supervisor—cancelled the September 28, 2020 training session. (RIAC's Hr'g Ex. 38.) The record then indicates that Plaintiff went against her supervisor's directive and declared that she had "reinstated the training for tonight." *Id.* Whether Greco made the decision to cancel the training without consulting Plaintiff or not, the record is clear that prior to September 28, 2020, Plaintiff had been told that she reported to Greco, and that acts circumventing Greco were unacceptable to Defendants. It cannot be said that Plaintiff's due process rights were violated for an apparent lack of notice of what would constitute "insubordination," given that the record shows that prior to the September 28, 2020 incident, Plaintiff was explicitly told that she reported to Greco.

The fact that Defendants lacked a written policy defining acts of insubordination does not permit the Court to condemn the Committee's choice "to use its collective understanding drawn

from nearly 92 years of combined experience working for multiple law enforcement agencies to define these terms and adjudicate these charges." (Decision 26.) Our Supreme Court in *State, Department of Corrections v. R.I. Brotherhood of Correctional Officers*, 867 A.2d 823 (R.I. 2005) has previously held that punishment levied against a corrections officer for stealing towels and linens was appropriate despite a written policy against it because "[t]he fact that the [Department of Corrections] lacked a specific policy prohibiting the use of MHRH linens does not equate with permission to remove the property from departmental premises[.]" *State, Department of Corrections*, 867 A.2d at 830. Although Defendants may not have had a written policy defining acts of insubordination, the record reflects that Plaintiff had been told that circumventing Greco and the chain of command was not permitted.

Further, Plaintiff's argument that the Committee lacked the ability to create its own standard of conduct to be applied to Plaintiff's actions does not hold weight considering the clear language of the LEOBOR statute. (Pl.'s Br. 12.) Section 42-28.6-10 of the LEOBOR statute provides that "[t]he hearing committee conducting the hearing may take notice of judicially cognizable facts and, in addition, *may take notice of general, technical, or scientific facts within its specialized knowledge*." Section 42-28.6-10 (emphasis added). Here, the Committee noted that it used its "collective understanding drawn from nearly 92 years of combined experience working for multiple law enforcement agencies to define these terms and adjudicate these charges." (Decision 26.) As such, the Committee was acting within its statutory authority when it relied on the general and technical facts within its specialized knowledge to conclude that "displays of disrespect for the authority of a superior [are considered] to be . . . major factor[s] in insubordination." *Id.* at 29. The Committee's decision to rely on its own experience in

determining what qualifies as an act of insubordination within the law enforcement context was not "[a]ffected by other error[s] of law" pursuant to § 42-35-15(g)(4).

**2**

**The Complaint's Compliance with § 42-28.6-2(4)**

Plaintiff next argues that the Committee had no jurisdiction over the charges brought against Plaintiff because the complaint was not sworn to before a person authorized to administer oaths. (Pl.'s Br. 15.) In support, Plaintiff cites to the section of the LEOBOR statute which reads:

> "Whenever a law enforcement officer is under investigation or subjected to interrogation by a law enforcement agency, for a non-criminal matter which could lead to disciplinary action, demotion, or dismissal, the investigation or interrogation shall be conducted under the following conditions: . . . (4) [n]o complaint against a law enforcement officer shall be brought before a hearing committee unless the complaint be duly sworn to before an official authorized to administer oaths." Section 42-28.6-2(4).

Plaintiff argues that the complaint brought before the Committee—the November 28, 2022, Notice of Intent to Terminate Employment letter from Inspector Ottaviano to Plaintiff—was not signed before a notary, therefore in violation of § 42-28.6-2(4). (Pl.'s Br. 17.)

Defendants argue that § 42-28.6-2(4) is inapplicable because it only applies "[w]henever a law enforcement officer is under investigation or subjected to interrogation by a law enforcement agency, for a non-criminal matter which could lead to disciplinary action, demotion, or dismissal[.]" (Defs.' Obj. to Pl.'s Br. 14) (quoting § 42-28.6-2). Specifically, Defendants argue that Plaintiff was never interrogated or under investigation by a law enforcement agency, and thus, any alleged jurisdictional requirement laid out in § 42-28.6-2 was not required in the instant matter.

The record makes clear that RIAC's Hearing Exhibit 1—the Notice of Intent to Terminate Employment sent from Inspector Ottaviano to Plaintiff—is indeed the complaint that

was brought before the Committee against Plaintiff, falling within § 42-28.6-2(4). (Hr'g Tr. 1281:24-1282:4, June 15, 2023.) The record is also clear that said complaint was not duly sworn to before an official authorized to administer oaths. *Id.* at 1282:5-10. However, the record is equally clear that Plaintiff was not under an investigation or subjected to interrogation *by a law enforcement agency*, as required to invoke the protections of § 42-28.6-2:

> "MS. RICCI: I'm trying to clarify who did what so I know where the information's coming from.
> "HEARING OFFICER ZARRELLA: So unless the Panel objects, the Committee objects, we are not going to entertain any further questions in reference to who did the investigation. *The Committee is satisfied that the investigation was conducted by Human Resources*.
> "MS. RICCI: Okay.
> "HEARING OFFICER ZARRELLA: And that, at some point, the chief may have been consulted so that he could familiarize himself with documents and sign them. That is not considered part of an investigation. *The Committee is satisfied with respect to this hearing that HR conducted the investigation*.
> "MS. RICCI: Thank you.
> "HEARING OFFICER ZARELLA: So there's no need for further questioning regarding the investigation. [The Committee is] not going to entertain it." *Id.* at 1281:3-22 (emphasis added).

Ultimately, the record in this matter is clear that any investigation done into Plaintiff was conducted by the RIAC's Human Resources department—not the RIAPD. As such, the prerequisite to invoke the protections of § 42-28.6-2 did not occur. Therefore, Plaintiff's argument that the Committee lacked jurisdiction because the relied-upon complaint was not sworn to before a person authorized to administer oaths does not hold weight. Given that § 42-28.6-2's prerequisites did not occur, the Court need not analyze Plaintiff's argument that § 42-28.6-2(4) is "jurisdictional[.]"

**B**

**Defendants' Petition for Appeal**

**1**

**Compelling Defendants to Apply for RIPOST Waiver Certification on Plaintiff's Behalf**

Defendants argue for reversal of the aspect of the Committee's Decision that compels Defendants to apply for the R.I. Police Officers Commission on Standards and Training (RIPOST) waiver application on behalf of Plaintiff. (RIAC and RIAPD's Mem. of Law in Supp. of LEOBOR Appeal (Defs.' Mem.) 1.) Defendants argue that such constitutes reversible error. *Id.* Specifically, Defendants argue that the RIPOST waiver application must be signed by the chief of police or the so-called appointing authority (i.e., their employer) beneath a certification that reads in pertinent part: "I further certify that I have reviewed the above information, find that the information is correct and acceptable and the applicant has prospects of an appointment to the _____ Police Department within the reasonable future[.]" (Defs.' Mem. 22.) The "above information" that the chief of police or appointing authority would be attesting to is the applicant's personal information, education, military service, work experience, criminal history, and a "miscellaneous" category encapsulating the applicant's health information. *Id.*

Defendants argue that they cannot, in good faith, certify that Plaintiff "has [the] prospects of an appointment to" the RIAPD, based on what Defendants argue they have learned about Plaintiff and her poor work performance: "The waiver application requires the applicant's employer to certify that the applicant's information is 'acceptable' *and that the applicant has the prospect of continued employment with the employer. Neither is true*[.]" (Defs.' Mem. 21, 22.) (emphasis added). Defendants cite to the hearing testimony of Ms. Morgan in support of their

argument that Defendants would be acting untruthfully if they certified that Plaintiff has the prospect of continued employment with Defendants:

> " A. The written documentation here shows that Ms. Ricci had repeatedly failed to appropriately interpret the meaning of actions, situations and rules, statements and laws.
>
> "This was deeply concerning because I had mentioned in my previous testimony that the position of Deputy Chief is critical to the life and safety of those who utilize the airport.
>
> "Thus, someone that is unable to properly interpret the meaning of actions, situations, rules, and laws, absolutely should not be in any capacity in law enforcement, never mind the Deputy Chief of Police." *Id.* at 25 (quoting Hr'g Tr. 422:8-20, Mar. 7, 2023).
>
> " . . .
>
> "Q. Did you ever consider that giving [Ms. Ricci] some form of discipline such as a written warning or a one- or two-day suspension, that that would have sunk in and made her get it?
>
> "A. No, because it was clear from the totality of the circumstances here that she was not fit to be in law enforcement." *Id.* (quoting Hr'g Tr. 602:14-20, Mar. 7, 2023).
>
> " . . .
>
> "A. The example I've given before, and I think it sums it up best, is that RIAC like any other airport has had bomb threats before. One of the key roles of law enforcement, especially leadership in law enforcement, is to make judgment calls based on the facts at hand. Therefore, it is paramount to any leadership position, especially in policing, that judgment is a very key component of that.
>
> "For example, if the judgment is off and you don't evacuate a terminal when you should, you're risking life, and it would be grossly negligent of our organization to allow Ms. Ricci to continue in any capacity in law enforcement, especially as Deputy Chief." *Id.* at 25-26 (quoting Hr'g Tr. 661:19-662:9, Mar. 21, 2023).

Defendants also argue that the Committee committed reversible error by ordering mandatory injunctive relief against Defendants (i.e., by ordering Defendants to submit the RIPOST waiver application on Plaintiff's behalf) that neither party requested. (Defs.' Mem. 18.) Defendants cite to our Supreme Court in support of the proposition that "'a party should not be granted relief that it did not request.'" *Town of North Kingstown v. International Association of Firefighters, Local 1651, AFL-CIO*, 65 A.3d 480, 482 n.4 (R.I. 2013) (quoting *Nye v. Brousseau*, 992 A.2d 1002, 1011 (R.I. 2010)). Defendants also argue that the Committee committed reversible error in ordering Defendants to complete, sign, and submit Plaintiff's RIPOST waiver application because such an order "is tantamount to a writ of mandamus."[4] (Defs.' Mem. 19.)

Plaintiff argues that the Committee was operating within its statutory authority in ordering Defendants to submit a RIPOST waiver on Plaintiff's behalf because "[d]ecisions of the Rhode Island Supreme Court have supported the wide discretion provided to LEOBOR hearing committees under [§] 42-28.6-11(a)." (Pl.'s Resp. to Defs.' Br. 11.) Specifically, Plaintiff cites to *In re Denisewich*, 643 A.2d 1194 (R.I. 1994) where our Supreme Court held that a LEOBOR hearing committee "'is granted broad powers to investigate allegations of police misconduct, hold hearings, and issue decisions that affect the individual rights of permanently appointed law enforcement officers.'" *Id.* (quoting *In re Denisewich*, 643 A.2d at 1197). Additionally, Plaintiff cites to *Lynch v. King*, 120 R.I. 868, 391 A.2d 117 (1978) where our Supreme Court held that

> "'the Legislature endowed the hearing committee [convened under the LEOBOR statute] with broad powers to investigate allegations of police misconduct and did not intend that the committee be bound in any way by the recommendation of the charging authority. We conclude, therefore, that the committee acted within

[4] Whether the part of the Decision ordering Defendants to submit a RIPOST Waiver Application on Plaintiff's behalf is "tantamount to a writ of mandamus" or not is immaterial; as discussed *infra*, the Court holds that such relief was impermissibly awarded given that neither party requested Defendants to submit a RIPOST Waiver Application on Plaintiff's behalf.

> the scope of its authority in determining that a 15-day suspension was an appropriate disciplinary measure.'" *Id.* (quoting *Lynch*, 120 R.I. at 877, 391 A.2d at 123).

The Committee's Decision is affected by an error of law, specifically in that it ordered Defendants to "[c]omplete and submit to the Rhode Island POST all paperwork required for Waiver Candidacy/Police Officer Certification on behalf of Ms. Ricci." (Decision 45.) The record is clear that neither Plaintiff nor Defendants requested the Committee to order Defendants to submit a RIPOST waiver application on Plaintiff's behalf. Our Supreme Court in *Town of North Kingstown* provided that "[t]his Court has consistently stated that 'a party should not be granted relief that it did not request.'" *Town of North Kingstown*, 65 A.3d at 482 n.4 (quoting *Nye*, 992 A.2d at 1011). When the Committee's Decision ordered Defendants to submit a RIPOST waiver application on Plaintiff's behalf—relief requested by neither party—the Decision became affected by an error of law. Although our Supreme Court has been clear that hearing committees convened under the LEOBOR statute are endowed with broad powers to investigate, hold hearings, and issue decisions, our Supreme Court has been equally clear in holding that a party cannot be awarded relief it did not seek.

**2**

**The Decision Keeping Plaintiff on the RIAPD**

Defendants also argue for reversal of the aspect of the Committee's Decision that keeps Plaintiff on the RIAPD as a patrolperson "because settled Rhode Island law holds that, absent certification by the RIPOST, she is ineligible to work as a police officer in Rhode Island, and federal law requires that all [RIAPD] police officers be certified by the RIPOST." (Defs.' Mem. 1-2.) According to Defendants, "[b]y ordering that Ms. Ricci remain with [RIAPD], the Hearing Committee acted in violation of statutory provisions and in excess of its statutory authority, and

its Decision was affected by error of law, was arbitrary and capricious, and an abuse of its discretion." *Id.* at 31.

Plaintiff argues that the decision to demote her was not a mandatory injunction, but instead was a "reasoned determination by an experienced panel of law enforcement professionals." (Pl.'s Mem. in Resp. to Defs.' Reply Mem. 4.) Plaintiff also argues that the LEOBOR statute grants final authority on police discipline cases with the Committee, and that the Rhode Island Administrative Procedures Act does not support reversal of a decision if an appellant merely disagrees with the outcome. *Id.* at 4-5.

Here, the Committee's Decision is affected by an error of law by demoting Plaintiff from Deputy Chief to Patrolperson because the Decision kept Plaintiff on as a police officer despite her not being RIPOST certified. Our Supreme Court's decision in *Community College of R.I. v. CCRI Educational Support Professional Association/NEARI,* 184 A.3d 220 (R.I. 2018) spoke to a similar situation, where a CCRI police officer was terminated by CCRI when the RIPOST rejected the officer's Waiver Application. *Community College of R.I.,* 184 A.3d at 223-24. A grievance arbitrator then held that the officer was entitled to be reinstated to his position despite lacking RIPOST certification. *Id.* at 229. On appeal, our Supreme Court held:

> "We are thus drawn to the inescapable conclusion that the arbitrator arbitrated a dispute that was not arbitrable *ab initio.* . . . In other words, the arbitrator lacked the authority to reinstate Crenshaw to the position of Campus Police Officer because Crenshaw could not legally hold the position. . . . Indeed, statutory obligations 'certainly cannot be negated by an arbitrator who purports to do so through the medium of 'contract interpretation.' . . . '[I]f a statute contains or provides for nondelegable and/or nonmodifiable . . . obligations'—such as the academy requirement—'then neither contractual provisions . . . nor arbitration awards that would alter those mandates are enforceable.'" *Id.* at 229-30 (quoting *State v. Rhode Island Alliance of Social Services Employees, Local 580, SEIU*, 747 A.2d 465, 469 (R.I. 2000)).

Ultimately, our Supreme Court in *Community College of R.I.* clarified that to be a Rhode Island police officer, one must be RIPOST certified. *Id.* at 229 ("we concluded that 'when viewed in its entirety, chapter 28.2 of title 42 evinces a clear legislative intent that, except for Providence, all persons who seek careers as police officers in the state attend, and graduate from, the municipal academy to ensure that they meet minimum proficiency standards'") (quoting *State v. Partington*, 847 A.2d 272, 278 (R.I. 2004)).

The record in this matter also supports the proposition that one must be RIPOST certified to be eligible to serve as a police officer in Rhode Island. (Hr'g Tr. 2192:21-2193:2, Aug. 8, 2023.) Colonel Michael Winquist, Chair of the RIPOST, testified at the hearing that for Plaintiff to become a certified police officer in Rhode Island, Plaintiff would have to obtain a RIPOST waiver:

> "Q. And that would be if I – would it be . . . if I wanted to become a certified police officer in Rhode Island or if the Rhode Island Airport Corporation, Rhode Island Airport Police Department wanted me to become a certified police officer in Rhode Island?
> "A. You would have to be sponsored by the Rhode Island Airport Corporation for that process.
> "Q. So if the Rhode Island Airport Corporation wanted me to be a certified police officer in the State of Rhode Island, I would be required to achieve a Rhode Island POST waiver?
> "A. Yes.
> "Q. If only I, myself, wanted to be a Rhode Island POST – a Rhode Island certified police officer or certified police officer in Rhode Island, could I, myself, without the sponsorship of my employer or my employing agency be able to achieve a Rhode Island POST waiver?
> "A. No." (Hr'g Tr. 2114:3-22, July 27, 2023.)

Ultimately, this matter's record is clear that for Plaintiff to remain a police officer with Defendants, she must obtain a RIPOST waiver. Plaintiff has not received such waiver from Defendants. (Pl.'s Resp. to Defs.' Br. 20.) Absent that, it would be a violation of clear Rhode

Island Supreme Court precedent to keep her on the force without her being RIPOST certified. The Committee's Decision is therefore affected by an error of law by keeping Plaintiff on the RIAPD without her being RIPOST certified.

**3**

**Defendants' Request for Declaratory Judgment**

Finally, Defendants request the Court to award declaratory judgment declaring that "RIAC is not required to sign, sponsor, and submit [Plaintiff's] RIPOST waiver application, and that she is ineligible to continue as a police officer with the RIACPD." (Defs.' Mem. 2.) In support, Defendants argue that the Rhode Island Administrative Procedures Act "'does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law.'" (Defs.' Reply in Supp. of LEOBOR Appeal 5) (quoting § 42-35-15(a)).

Plaintiff argues that Defendants' request for Declaratory Judgment is inappropriate because the Rhode Island Uniform Declaratory Judgments Act requires that "'all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.'" (Pl.'s Resp. to Defs.' Br. 22) (quoting G.L. 1956 § 9-30-11). "[A]t a minimum, RIAC would need to add both the hearing committee and the RI POST commission to a lawsuit if the agency sought declaratory relief[,]" Plaintiff argues. *Id.* Plaintiff also avers that our Supreme Court has held that the LEOBOR statute "is the 'exclusive remedy for permanently appointed law enforcement officers who are under investigation and subject to disciplinary action.'" *Id.* at 21 (quoting *In re Denisewich*, 643 A.2d at 1196). Plaintiff argues that the Defendants sought to terminate her due to her lacking RIPOST certification—a charge which was not upheld by the Commission. Thus,

Plaintiff argues that Defendants "cannot seek to re-litigate the fact that Ms. Ricci lacks the RI POST certification in the context of this agency appeal" through a request for declaratory relief. *Id.* at 23.

The Rhode Island Declaratory Judgments Act provides that "[t]he court may refuse to render or enter a declaratory judgment or decree where the judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." Section 9-30-6. Defendants would like the Court to enter a declaratory judgment declaring that "RIAC is not required to sign, sponsor, and submit [Plaintiff's] RIPOST waiver application, and that she is ineligible to continue as a police officer with the [RIAPD]." (Defs.' Mem. 2.) The Court's Decision accomplishes both by finding that the Committee's Decision is affected by errors of law: it awards relief neither party requested in mandating Defendants to submit a RIPOST Waiver Application on Plaintiff's behalf, and it keeps Plaintiff on the RIAPD despite her lacking RIPOST certification. Relying on the discretion provided by the Legislature in § 9-30-6, the Court will not enter Defendants' requested declaratory judgment.

## IV

## Conclusion

Based on the foregoing, Plaintiff's Petition to Review Decision of Hearing Committee Under the Law Enforcement Officers' Bill of Rights is **DENIED**. Defendants' appeal of the Decision of a hearing committee convened under the LEOBOR statute is **GRANTED** in part and **DENIED** in part:

1. Defendants' request to reverse that aspect of the Committee's Decision requiring Defendants to submit a RIPOST Waiver Application on Plaintiff's behalf is **GRANTED**;

2. Defendants' request to reverse that aspect of the Committee's Decision requiring Defendants to continue to employ Plaintiff as an RIAPD police officer is **GRANTED**;
3. Defendants' request for an entry of declaratory judgment declaring that Defendants cannot be compelled by the LEOBOR Decision to sign, sponsor, and submit Plaintiff's RIPOST waiver application is **DENIED**; and
4. Defendants' request for an entry of declaratory judgment declaring that Plaintiff is not eligible to remain employed as a police officer with the RIAPD because she has not been certified by the RIPOST is **DENIED**.

Counsel shall submit the appropriate order for entry.

**RHODE ISLAND SUPERIOR COURT**

***Decision Addendum Sheet***

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| **TITLE OF CASE:** | **Helen Z. Ricci v. Rhode Island Airport Corporation, et al.** |
| **CASE NO:** | **PC-2023-05723**<br>***Consolidated with***<br>**PC-2023-05720** |
| **COURT:** | **Providence County Superior Court** |
| **DATE DECISION FILED:** | **December 3, 2024** |
| **JUSTICE/MAGISTRATE:** | **Stern, J.** |
| **ATTORNEYS:** | |
| **For Plaintiff:** | **Edward C. Roy, Jr., Esq.** |
| **For Defendant:** | **Christopher N. Dawson, Esq.** |