STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: July 17, 2025)

RIDE LEGAL COUNSEL/HEARING OFFICER PROFESSIONAL UNION *Appellant,*	:	
v.	:	**C.A. No. PC-2023-05072**
RHODE ISLAND STATE LABOR RELATIONS BOARD, by and through its Chairperson, WALTER J. LANNI, and its Members, KENNETH B. CHIAVARINI, SCOTT G. DUHAMEL, STAN ISRAEL, ARONDA R. KIRBY, LAWRENCE E. PURTILL and HARRY F. WINTHROP; and RHODE ISLAND DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION/ RHODE ISLAND COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION *Appellees.*	:	

DECISION

CRUISE, J. This matter comes before the Court for decision on appeal of the Rhode Island State Labor Relations Board's (the Board) September 5, 2023 Decision dismissing an unfair labor practice (ULP) charge against the Rhode Island Council on Elementary and Secondary Education/Rhode Island Department of Elementary and Secondary Education (RIDE or Appellees). RIDE Legal Counsel/Hearing Officer Professional Union (Union or Appellant) asks this Court to reverse the decision of the Board. Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

This appeal arises from the termination of Paul Pontarelli (Pontarelli), the president of the Union, and the redistribution of work assignments from Kathleen Murray (Murray), the Union's vice president. Specifically, the initial charge filed by the Union alleges that:

> "On November 16, 2020, [RIDE]'s Chief Legal Counsel, Anthony F. Cottone, Esq. [(Cottone)] sent separate emails to RIDE legal counsel/hearing officers Paul Pontarelli and Kathleen Murray demanding that they take and/or refrain from certain actions adversely affecting the terms and conditions of employment because of their protected, concerted activity under the Act." Certified R. (R.) 4 at 1 (Decision).[1]

Thereafter, the charge was amended to the following:

> "On December 15, 2020, Respondent terminated the employment of Paul Pontarelli 'effective immediately' because of his concerted activity protected under [G.L. 1956 §] 28-7-12. On or about December 23, 2020, Respondent withheld the payment of Paul Pontarelli's accrued sick leave because of his concerted activity protected under [§] 28-7-12 and/or conditioned payment of his accrued sick leave upon his agreement to an unlawful proposed settlement agreement initiated by Respondent which required Pontarelli to arrange for the dismissal of his and Murray's unfair labor practice allegations contained in the original charge in this matter." *Id.*

A

Background

Murray served as a legal counsel/hearing officer at RIDE for over thirty years. (Tr. Vol. XII 15:9-16, Aug. 18, 2022.) Pontarelli worked at RIDE for thirty-one years. (Tr. Vol. XIII 16:17-18, Aug. 30, 2022.) In 2012, Pontarelli and Murray formed the Union and filed a petition with the Board seeking a representation election for RIDE legal counsel/hearing officers. *Id.* at 18:6-17.

[1] The Certified Record has been scanned into Odyssey as separate documents and will be cited to as on Odyssey.

The Board issued a Decision and Direction of Election in 2014, concluding that RIDE's three legal counsel/hearing officers were eligible to form a union. (Decision 3.) Following an election later that year, the Union became the exclusive representative of the employees in the bargaining unit. C.A. No. PC-2014-2730 (Compl. ¶ 31). The other legal counsel/hearing officer, Anthony Cottone (Cottone), was not eligible to vote in the election because he had only recently been hired. *Id.* ¶ 30. RIDE appealed the Board's Decision and Direction of Election to the Superior Court, and the court entered a Consent Order staying the decision. C.A. No. PC-2014-2730, Consent Order, Sept. 4, 2014 (Procaccini, J.). Cottone moved to intervene in the appeal, and, in 2015, this court remanded the matter for further proceedings before the Board. C.A. No. PC-2014-2730, Order, June 12, 2015 (Van Couyghen, J.). The Board again approved the petition in a supplemental decision. (Decision 3-4 (citing Suppl. Dec. EE-3729.)) RIDE again appealed and moved for remand on the ground that it sought to submit new evidence. *Id.* at 4.

The docket in C.A. No. PC-2015-5683 does not reflect any substantive filings or court orders in the Superior Court case from May 2016 to August 2020, when the court requested supplemental briefing. C.A. No. PC-2015-5683, Order, Aug. 20, 2020 (McGuirl, J.). By this time, Cottone had become Chief Legal Counsel at RIDE and was Pontarelli and Murray's direct supervisor. (RIDE's Br. 9.) On November 1, 2020, Pontarelli, on behalf of the Union, signed and submitted to the court a five-page memorandum of law. C.A. No. PC-2015-5683, Appellees' Suppl. Mem. (Nov. 1, 2020). It is this memorandum of law that forms the basis of the protected, concerted activity in this matter.[2]

[2] As set forth below, the Board concluded that the filing of the memorandum of law constituted concerted, protected activity, and Appellees have not appealed this finding. (Decision 12-15.)

1

Claims Related to Pontarelli

On November 16, 2020, Pontarelli received an e-mail from Cottone indicating numerous areas of performance deficiencies by Pontarelli. (Decision 6; Joint Ex. 5.) In this e-mail, Cottone stated that he had been "informed of several untimely work assignments and others routinely completed at the very last minute, as well as communication from [Pontarelli] that has come across as hostile." (Joint Ex. 5, at 1.) Further, Cottone requested that Pontarelli provide "a detailed reply, with appropriate legal citation, to all points made in my emails to you beginning July 15, 2020 re your decision in [a particular matter] . . ." as well as "an updated pending matters list containing descriptions of: (a) the last activity in the matter; and (b) what remains to be done and the estimated time to complete[.]" *Id.* at 3. In response, Pontarelli secured an attorney who responded with a letter rebutting the allegations regarding his workplace performance. *See* Joint Ex. 6. Within this letter, through his attorney, Pontarelli agreed to abide by Cottone's requests and stated that he was willing to address any concerns. *Id.* Cottone did not respond to Pontarelli's attorney's letter. (Tr. Vol. XIII, 38:6-8, Aug. 30, 2022.)

On November 30, 2020, Commissioner of Education Angelica Infante-Green (Commissioner) sent a letter to Pontarelli reiterating the performance issue allegations in Cottone's original e-mail. *See* Joint Ex. 7. In this letter, the Commissioner sets forth the grounds for potential job termination which have "led to a resulting lack of trust." *Id.* at 1. She provides that these charges include

> "(1) a disturbing lack of sound legal judgment and inability and/or unwillingness to conduct basic legal research; (2) a refusal and/or inability to recognize any need for improvement in your performance and a resulting refusal to take direction from your immediate supervisor; and (3) an inability to effectively organize your work and perform it in a timely fashion." *Id.* at 1-2.

In a detailed account, the Commissioner offered evidence and stated that the charges were a result of Pontarelli's refusal to follow his supervisor's instructions and his demand that the agency retain a criminal attorney to represent him in a matter. *Id.* at 2-3. Further, the Commissioner referenced Pontarelli's insistence, without legal support, that a parent's request to excuse his child from a school face-mask requirement on the basis of asthma did not fall under the purview of Section 504 of the Rehabilitation Act of 1973. *Id.* at 2. She went on to note that directors within the agency have complained that Pontarelli's work is "completed at the very last minute" and that his "disorganization and inability to keep track of [his] work frequently create[d] additional, unnecessary stress." *Id.* Lastly, the Commissioner referenced Pontarelli's "unsatisfactory reply to specific requests made, in writing, by [his] immediate supervisor which he deemed necessary to turn things around, a reply which consisted of a letter from [Pontarelli's] lawyer that not only made clear [his] refusal and/or inability to recognize" needs for improvement within the workforce and regarding his job performance. *Id.*

A meeting was later held on December 9, 2020 regarding the allegations in the Commissioner's above letter. (Tr. Vol. XIII 38:14-18, Aug. 30, 2022.) Present at the meeting were "Commissioner Angelica Infante-Green, Deputy Commissioner Riley, Chief of Staff Tom McCarthy, Personnel Director Margaret Santiago and Chief Legal Counsel Anthony Cottone." *Id.* at 39:2-7. In Pontarelli's view, he was being singled out for special or disparate treatment. *Id.* at 40:1-5. He claims that he told the Commissioner that he would be singled out because he "was engaged in Union activity and had filed two memos in support of my Union in Providence Superior Court in the past six weeks." *Id.* at 40:6-11. According to Pontarelli, the Commissioner responded, "I don't know anything about your Union or your Union activity." *Id.* at 40:12-14. Six days later, on December 15, 2020, the Commissioner terminated Pontarelli's employment in a letter. *See*

generally Joint Ex. 8. She asserted that, at the previous meeting, Pontarelli dismissed all her concerns without denying most of the facts alleged in her November 30, 2020 letter. *Id.* As such, she indicated that the correspondence between Cottone and Pontarelli, as well as Pontarelli's failure to timely complete his work, led to RIDE's decision to terminate him. *Id.*

Following this, on December 16, 2020, Pontarelli learned that he would not be receiving payment for his accrued and unused sick time. (Tr. Vol. XIII 45:2-8, Aug. 30, 2022.) On the same day, the Union filed its initial ULP charge with the Board which was later amended on December 28, 2020.

2

Claim Related to Murray

The Union also claims that RIDE refused to provide Murray with more assignments due to her concerted union activities. *See generally* Union's Br. According to Murray, trouble first arose in her employment in late summer of 2020 when she was preparing a decision involving the dismissal of a teacher (teacher decision). (Tr. Vol. II 40:18-41:1, Apr. 20, 2021.) She submitted a draft of the teacher decision to Cottone for his review. In response, Cottone expressed some substantive and editorial concerns with the teacher decision, though Murray took issue with Cottone's substantive concerns. *Id.* at 41:7-15. Cottone "wanted a legal memorandum on the issue of whether or not a teacher's de novo hearing before the Commissioner or any de novo hearing remedied due process violations[.]" *Id.* at 43:6-12. Cottone also requested another legal memorandum from Murray regarding the State's procurement policies. (Tr. Vol. XI 74:1-77:12, June 23, 2022.) Again, Murray refused to provide Cottone with the memorandum. *Id.* Murray and Cottone engaged in multiple discussions in which, according to Murray, Cottone became upset, raised his voice to her, and insulted her. (Tr. Vol. II 45-46, Apr. 20, 2021.) Cottone alleges

it was these disagreements and Murray's refusal to comply with his directives that ultimately led him to no longer assign new cases to her. (Tr. Vol. XI 31:24–32:14, June 23, 2022.) Cottone informed Murray of this in an e-mail on November 16, 2020 in which he stated that Murray's belief that the "references to the [matter] decision are sufficient legal authority for your novel contention in [teacher decision] combined with your insubordinate refusal to provide actual legal support for legal claims made in your decisions, has regrettably left me with no choice but to refrain from assigning any new matters to you[.]" (Joint. Ex. 4.) New assignments would not be given to Murray until she "evidenced that [she] underst[ood] the limit of [her] authority and accept[ed] [Cottone's] role as [her] supervisor." *Id.*

B

Proceedings Before the Board

Sixteen formal hearings were held before the Board over the course of nearly two years. (Decision 2.) The hearings "commenced on April 1, 2021 and the final hearing was held on February 23, 2023 with an additional number of hearings scheduled and postponed during that period." *Id.* The Board heard extensive testimony from Pontarelli and Murray themselves, as well as from employees at RIDE who attested to their respective work ethics and quality of work. *See generally* Hr'g Trs. The Board also heard testimony from Cottone and the Commissioner regarding the ultimate termination of Pontarelli and Murray. *Id.*

At these hearings, the Union asserted that "both Pontarelli and Murray performed at a high level for [RIDE] regarding their duties and responsibilities and that there was no question concerning the performance of their duties until the hiring of Anthony Cottone as Chief Legal Counsel in March 2020." Board's Mem. in Opp'n 4-5. The Union presented evidence that Pontarelli was never disciplined prior to these issues that resulted in his termination. (Union's Br.

26, 48; Tr. Vol. III 22:12-18, Apr. 22, 2021.) In support of this, the Union argued that there were procedural defects in RIDE's determination that just cause existed to terminate Pontarelli, despite RIDE's identification of a number of job performance issues. (Joint Exs. 5, 7, 8.) The Union asserted that these "alleged procedural defects demonstrate anti-union bias by [RIDE]" though the Board found that bias was not present when investigating Pontarelli's performance issues. (Decision at 17.) The Union further pointed to past writings by Cottone that it contended showed anti-union animus. (Union's Br. 11.) The Union contended that Cottone, motivated by his anti-union beliefs, took action to terminate Pontarelli in retaliation for his concerted activity. *Id.*

Before the Board, the Union also disputed RIDE's Sick Leave Policy which provides when an employee is terminated through retirement or death, the employee is entitled to their accrued sick leave. (Pet'r's Ex. 5.) The Union claimed that RIDE had "shifting or changing reasons for denying Pontarelli his sick leave payment or that the language of the Policy does not support [RIDE]'s reason for denying the payments." (Decision at 27.)

At issue before the Board also was whether RIDE withdrew work from Murray due to her union activity. (Union's Post-Hr'g Mem. 35.) The Union alleged that Cottone "took retaliatory action against Murray" as evidenced by his withholding of new assignments. *Id.* RIDE disputed this claim and specified that while Murray did stop receiving new assignments, these actions were not disciplinary nor was it a result of her union activity. (RIDE's Br. 4.)

C

Board's Decision

The Board issued its decision on September 5, 2023. *See generally* Decision. In its Decision, the Board found that "Pontarelli's conduct clearly falls within the definition of protected and/or concerted activity as that term has been used by the NLRB and this Board." *Id.* at 14 (citing

NLRB v. Caval Tool Division, Chromalloy Gas Turbine Corp., 262 F.3d 184 (2nd Cir. 2001)). The Board found that there were "a series of innocuous acts that neither show anti-union feelings nor a bias in [RIDE]'s investigation of Pontarelli's performance problems." *Id.* at 17. These innocuous acts were evidenced by the "several issues contained in Cottone's November 16 email to Pontarelli and the Commissioner's November 30 letter to Pontarelli . . . that had been raised by Cottone to Pontarelli well before even the August 2020 date of the Court's direction to the parties to submit briefs." *Id.* (citing Joint Exs. 5, 7). Further, the Board did not find any evidence "prohibiting a supervisor, in this case Cottone, from following up on information he received regarding performance complaints as well as acting on issues with which he was personally involved." *Id.* at 17-18. Moreover, in considering the arguments before it, the Board concluded that the Union "did not present any compelling or convincing evidence to demonstrate that Cottone's failure or refusal to speak to all employees who Pontarelli believed would support his positive work habits shows any anti-union bias on Cottone's part." *Id.* at 18-19. Accordingly, the Board was unable to find that Cottone's actions were "based on or due to Pontarelli's alleged union activity" and was thus not anti-union bias. *Id.* at 18.

In considering the issue of Cottone's prior writings, the Board found that while they can "be read as being anti-union, they do not . . . support the Union's contention that Pontarelli's termination for just cause was due to his concerted activity." *Id.* at 21. Rather, there was little evidence linking "Cottone's feelings as expressed in [his past writings] . . . and his actions concerning Pontarelli's job performance." *Id.*

The Board further found that "Cottone had several discussions with Pontarelli regarding several different work-related items prior to the November 1 filing date and even *prior* to the August 20 Court order requiring the filings." *Id.* at 23 (emphasis added). In looking at this, the

Board was unable to find "sufficient evidence to support a link between [RIDE]'s action against Pontarelli and his union activity." *Id.* The Board concluded that the "Union has not proven by a preponderance of the evidence that [RIDE] committed a violation of . . . § 28-7-13 when it discharged Paul Pontarelli." *Id.* at 35.

The Board, in looking at the issue of Pontarelli's accrued sick leave, disagreed with the "Union's claims that [RIDE] had shifting or changing reasons for denying Pontarelli his sick leave payment or that the language of the Policy does not support [RIDE]'s reason for denying the payment." *Id.* at 27. This denial of sick time also was not due to his engagement in union activity. *Id.* The Board concluded that, by withholding his accrued sick leave, it was "apparent that [RIDE] maintained its position that Pontarelli's termination for cause was not a 'retirement' as that term was defined in the Policy." *Id.* The Board found that the Union was consistent in applying the Policy to Pontarelli's termination and was unable to find a basis "to support the Union's contention that [RIDE] violated the Act when it denied Pontarelli payment for his accrued sick time." *Id.* at 28. Accordingly, the Board found that "[t]he Union has not proven by a preponderance of the evidence that [RIDE] committed a violation of . . . § 28-7-13 when, after discharging Paul Pontarelli, [RIDE] refused to provide Pontarelli with his accrued and unused sick leave time." *Id.* at 35.

Finally, the Board considered whether the decision to withdraw Murray's work assignments stemmed from her protected or concerted union activity. *Id.* at 28. The Board noted that "Murray directly refused to follow her supervisor's directive when she refused to draft two legal memoranda as he requested and . . . there was no evidence submitted by the Union that the decision made by Cottone regarding Murray's work assignments was based on or due to any alleged" concerted activity. *Id.* at 30. It held that "there is simply no evidence before this Board

that shows that Cottone's actions toward Murray were in retaliation for or because of her protected concerted activity." *Id.* at 31. As such, the Board found that the Union "has not proven by a preponderance of the evidence that [RIDE] committed a violation of . . . § 28-7-13 when it stop[p]ed giving Kathleen Murray new work assignments." *Id.* at 35.

On October 5, 2023, the Union appealed the Board's findings in the above Decision. *See* Docket. The matter is now before this Court.

II

Standard of Review

When reviewing the decision of an administrative agency, the court "sits as an appellate court with a limited scope of review." *Mine Safety Appliances Co. v. Berry*, 620 A.2d 1255, 1259 (R.I. 1993). The court's review is governed by the Rhode Island Administrative Procedures Act (APA), § 42-35-15. Section 42-35-15(g) of the APA provides:

> "The 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 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." Section 42-35-15(g).

The findings of the agency should be upheld even if reasonable minds could have reached a contrary result. *See D'Ambra v. Board of Review, Department of Employment Security*, 517 A.2d 1039, 1041 (R.I. 1986). Rather, the court only may reverse factual conclusions of administrative agencies when they are totally devoid of evidentiary support in the record. *Milardo v. Coastal*

Resources Management Council of Rhode Island, 434 A.2d 266, 272 (R.I. 1981). In reviewing the Board's record, the court is limited to determining whether legally competent evidence exists to support the Board's decision. *Rhode Island Public Telecommunications Authority v. Rhode Island State Labor Relations Board*, 650 A.2d 479, 484-85 (R.I. 1994). If the court finds that competent evidence exists within the record, then the court is required to uphold the conclusions of the Board. *Barrington School Committee v. Rhode Island State Labor Relations Board*, 608 A.2d 1126, 1138 (R.I. 1992).

III

Analysis

The State Labor Relations Act (Act), G.L. 1956 chapter 7 of title 28, prohibits an employer from "[e]ncourag[ing] membership in any company union or discourag[ing] membership in any labor organization, by discrimination in regard to hire or tenure or in any term or condition of employment[.]" Section 28-7-13(5). Furthermore, the Act states that it is an unfair labor practice for employers to "[d]ischarge or otherwise discriminate against an employee because he or she has signed or filed any affidavit, petition, or complaint or given any information or testimony under this chapter[.]" Section 28-7-13(8). The Act further prohibits employers from "[d]o[ing] any acts, other than those already enumerated in this section, that interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by § 28-7-12[.]" Section 28-7-13(10).

Rhode Island has "consistently looked to federal law for guidance in the field of labor law." *DiGuilio v. Rhode Island Brotherhood of Correctional Officers*, 819 A.2d 1271, 1273 (R.I. 2003); *MacQuattie v. Malafronte*, 779 A.2d 633, 636 n.3 (R.I. 2001); *Board of Trustees, Robert H. Champlin Memorial Library v. Rhode Island State Labor Relations Board*, 694 A.2d 1185, 1189 (R.I. 1997). As such, this Court will look to the federal counterpart, the National Labor Relations

Act, federal case law decided under it, and decisions of the National Labor Relations Board (NLRB) for guidance as necessary.

A

Claims Related to Pontarelli

1

***Wright Line* Standard**

In *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), the NLRB outlined a two-step causation test for all cases alleging violations of Section 8(a)(3) that turn on an employer's motivation. *Wright Line*, 251 NLRB at 1089. The NLRB determined that the initial burden is on the party alleging discrimination to

> "make a [prima facie] showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct." *Id.*

The NLRB recently reaffirmed that the above test established in *Wright Line* is the longstanding framework relied upon when considering employer motivation in a termination. *Intertape Polymer Corporation* and *Local 1149 International Union, United Automobile, Aerospace and Agricultural Workers of America*, AFL-CIO, 372 NLRB No. 133 (2023). In *Intertape Polymer*, the NLRB noted that there are three elements required to sustain the initial burden found in *Wright Line*: "(1) union or other protected activity by the employee, (2) employer knowledge of that activity, and (3) animus against union or other protected activity on the part of the employer." *Id.* In so doing, the NLRB clarified its prior ruling in *Tschiggfrie Properties, Ltd.*, and *Teamsters Local 120, a/w International Brotherhood of Teamsters*, 368 NLRB No. 120 (2019)—declaring that no additional showing of a "particularized motivating animus towards the employee's own protected activity" is required. *Id.* at 11.

The NLRB noted that "[m]otivation is a question of fact that may be inferred from both direct and circumstantial evidence on the record as a whole." *Id.* at 6. As such, the NLRB often finds that circumstantial evidence of discriminatory motive "may include, among other factors, the timing of the action in relation to the union or other protected conduct; contemporaneous unfair labor practices; shifting, false, or exaggerated reasons offered for the action; failure to conduct a meaningful investigation; departures from past practices; and disparate treatment of the employee." *Id.* at 7. Further, the "employer cannot meet its burden merely by showing that it had a legitimate reason for the action; rather it must demonstrate that it would have taken the same action even in the absence of the protected conduct." *Id.*

Here, the Union argues that the Board incorrectly applied *Wright Line,* both as it relates to Pontarelli's termination and its allegations related to Cottone's November 16, 2020 e-mail to Pontarelli. (Union's Br. 6.) Citing *Intertape Polymer*, the Union states that the Board erroneously "relied on the *Tschiggfrie Properties* standard to find no discriminatory motive in the . . . allegations due to lack of specific proof of a 'link,' 'connection,' or 'causal relationship' between protected activity and employer discipline." *Id.* As such, the Union argues that the Board "not only failed to apply federal case law correctly, it also failed to apply the law to the reliable evidence on the record as a whole." *Id.* at 7. The Union further alleges that *Intertape Polymer* controls this matter. *Id.*

However, what the Union fails to note is that *Intertape Polymer* reaffirms the above *Wright Line* test. *Intertape Polymer*, 372 NLRB No. 133. The NLRB's clarification of its ruling in *Intertape Polymer* did not remove the step-one requirement of showing a connection between the protected activity and the employment action. *Id.* at 10-11. It merely emphasized that no showing of particularized animus against the employee's protected activity is required, nor is an

"*additional*, undefined 'nexus' between the employee's protected activity and the adverse action" required. *Id.* at 11.

In conducting its review, this Court cannot "'substitute its judgment for that of the agency concerning the credibility of witnesses or the weight of the evidence concerning questions of fact.'" *Blais v. Rhode Island Airport Corporation*, 212 A.3d 604, 611 (R.I. 2019) (quoting *Beagan v. Rhode Island Department of Labor and Training*, 162 A.3d 619, 626 (R.I. 2017)); *see also* § 42-35-15. As the Board had the opportunity to hear testimony and judge the witness's credibility, this Court awards deference as the Board was in a better position to resolve the conflict. *Mendonsa v. Corey*, 495 A.2d 257, 262 (R.I. 1985). Accordingly, this Court rejects the Union's arguments to the extent that they are based on witness credibility. *See, e.g.*, Union's Br. 7, 16, 32, 35, 45, 46, 48, 60.

The Board has made findings, supported in the record, that this Court declines to disturb. With respect to the Union's allegations regarding Cottone's e-mail, the Board has determined that the e-mail raised "several issues . . . that had been raised by Cottone to Pontarelli well before even the August 2020 date of the Court's direction to the parties to submit briefs." (Decision 17.) Based on the evidence before it, the Board concluded that "Cottone and [RIDE] have shown that they had a reasonable belief that the performance issues raised with Pontarelli . . . were legitimate and needed to be corrected." *Id.* at 25. There is evidence within the record to support such a conclusion.

As to the termination, the Board reviewed the record in detail and found "no sufficient evidence to support a link between [RIDE]'s action against Pontarelli and his union activity." *Id.* at 23. The Board explicitly rejected the Union's assertion that the Commissioner's statements and court affidavit and the prior writings by Cottone provided evidence that he was terminated due to anti-union bias. *Id.* at 20-22. Instead, the Board concluded that Pontarelli "simply refused to

comply with Cottone's requests," and this response "was not a one off but was a consistent reaction to requests from Cottone." *Id.* at 25. The Board reasonably relied on this evidence when it concluded that RIDE did not violate the Act in terminating Pontarelli's employment.

Accordingly, the Board did not err when it determined that the Union had failed to show that Pontarelli's union activity was a motivating factor in its decision to terminate him or to make the requests outlined in Cottone's November 16, 2020 e-mail. Without the Union establishing this, the burden never shifted to RIDE to demonstrate that Pontarelli would have been terminated regardless of any involvement in protected activity. *Id.* In considering the evidence within the record, this Court notes that there was sufficient evidence to indicate that RIDE's actions resulted from Pontarelli's job performance issues.

Upon further reviewing the Board's Decision, it is clear to this Court that the Board acknowledged insufficient "links" between Pontarelli's termination and his union activity. *Id.* at 21, 23. While the Board clearly uses language indicating that a "link" or "causal relationship" is missing in this present matter, this Court interprets the Board's Decision to abide by the three relevant factors reiterated in *Intertape Polymer*. As such, the Board rather considered whether the animus was the motivating factor. *Id.* at 21, 23. Though the language insinuates that the Board looked at whether there was a "link" between Pontarelli's actions and RIDE's reaction, this Court does not interpret this to be more than a mere extension of whether the animus was a motivating factor in the termination. *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120.

As such, the NLRB often finds that circumstantial evidence of discriminatory motive "may include, among other factors, the timing of the action in relation to the union or other protected conduct; contemporaneous unfair labor practices; shifting, false, or exaggerated reasons offered for the action; failure to conduct a meaningful investigation; departures from past practices; and

disparate treatment of the employee." *Intertape Polymer*, 372 NLRB No. 133 at 7. Further, the "employer cannot meet its burden merely by showing that it had a legitimate reason for the action; rather, it must demonstrate that it would have taken the same action even in the absence of the protected conduct." *Id.*

The Board correctly considered whether the evidence could determine if an inference of union animus or an adverse action taken by RIDE due to Pontarelli's protected activity could be supported. *See generally* Decision. In considering the facts and evidence before it, this Court finds that there is legally competent evidence to support the Board's Decision. In finding this, the Court upholds the conclusions of the Board and finds that RIDE did not violate the Act when it discharged Pontarelli and when Cottone sent him the November 16, 2020 e-mail.

2

Denial of Accrued Sick Leave

In this appeal, the Union argues that RIDE withheld payment of Pontarelli's accrued sick leave in retaliation for his concerted and protected union activity. (Union's Br. 5.) The Union contends RIDE initially told Pontarelli that it was "withholding payment because it did not have any retirement paperwork from him." *Id.* at 55. It claims that the reason for non-payment of the sick time shifted once Pontarelli started the retirement application process. *Id.*

In reaching its decision, the Board found that "Pontarelli was terminated for cause and did not come within the conditions set forth to allow someone to receive payment for sick leave." (Decision 26.) Here, RIDE's Personnel Policy Manual includes a section titled "Sick Leave." (Pet'r's Ex. 5.) Accordingly, the relevant portion of the Policy provides that

> "[w]hen the service of a non-union employee shall be terminated by retirement (mandatory, involuntary or voluntary) or death, such employee or his/her estate shall be entitled to receive full pay for each hour of accrued sick leave to his/her credit, in accordance with

> the following formula. As of the date of the termination, an employee shall be entitled to receive full pay for 50% of all accrued sick leave over 390 hours up to and including 630 hours, and 75% pay for all accrued sick leave over 630 hours up to and including 875 hours." *Id.*

Again, the Board has made findings that this Court declines to disturb. In considering the Union's allegations that RIDE "had shifting or changing reasons for denying Pontarelli his sick leave payment or that the language of the Policy does not support [RIDE]'s reason for denying the payment," the Board found that RIDE "did not deviate from the language of the Policy in its application toward Pontarelli." (Decision 27.) The Board found that RIDE always was "consistent in its application toward Pontarelli" by "maintain[ing] its position that Pontarelli's termination for cause was not a 'retirement' as that term was defined in the Policy." *Id.* Pontarelli's subsequent application for retirement benefits, in addition to his sick leave, also "did not change the fact that he had initially been terminated for cause." *Id.* (citing Joint Ex. 8). Based on the evidence before it, the Board concluded that the "Union produced no evidence that the Board could find linking in any manner the decision to deny Pontarelli his sick leave payment with his union activity." *Id.* at 28. There is evidentiary support in the record to support such a conclusion.

Accordingly, the Board did not err in determining that RIDE did not violate the Act when it denied Pontarelli his accrued sick time.

B

Disciplinary Actions Taken Against Kathleen Murray

This Court concludes that there was sufficient evidence for the Board to find that RIDE's actions did not violate the Act by withdrawing assignments from Murray. The Board justifiably relied on evidence that RIDE took this action because of Murray's refusal to respond to requests from Cottone as her supervisor. *Id.* at 28-31. Further, this Court determines that the Board relied on sufficient evidence in reaching its finding that, "[w]hile Murray excoriates Cottone for his

'interference' and 'level of control' and alleged 'bullying and retaliation' in attempting to convince Murray to comply with his directives, nowhere in this correspondence does Murray mention the Union, her actions or activities on behalf of the Union or that [of] any protected concerted activity" that was the basis for how she was later mistreated and disciplined. *Id.* at 30-31. In considering the evidence, this Court cannot conclude that the Board misinterpreted the evidence before it.

C

Evidentiary Matters

The Union argues that material evidence was excluded from the Board's consideration throughout the hearings held over the course of nearly two years. *See* Union's Br. Specifically, the Union argues that the Board should not have allowed Cottone to testify "about the substance of [a particular disputed matter's] decision on direct examination" when the Union "was not allowed to ask Cottone about his legal interpretation on cross-examination." *Id.* at 29-30. The Union argues that, while the Board indicated that this disputed matter was not before the Board, it "accepted RIDE/Council's position on this matter after preventing the Union from inquiring about it on cross-examination." *Id.* at 30.

The Board, however, found that Pontarelli's termination did not result from this disputed matter. Decision at 25. Instead, the Board cited to the evidence before it that it construed as proof that Pontarelli was terminated because of his behavior and failure to complete work in a timely manner. *Id.* In considering this particular evidence, the Board noted that "[w]hether Pontarelli was right or wrong in his belief that his [disputed matter] decision was correct, his failure and refusal to follow a directive from his supervisor and his apparently dismissive attitude toward his

supervisor could be seen, as it obviously was in the instant case by Cottone, as grounds for discipline." *Id.* at 25 n.16 (citing Tr. Vol. XI 38-40, June 23, 2022).

In considering the evidence within the record, this Court holds that the Board did not err in excluding evidence pertaining to the legal interpretation within Pontarelli's assignment as the issue was not properly before the Board. In concluding this, the Court upholds the conclusions of the Board that this evidence was not material to the Board's decision and, as such, was rightly excluded.

The Union further argues that Cottone's e-mail to Pontarelli alleging that three RIDE offices had complaints about him should not have been considered by the Board. (Union's Br. at 33.) Specifically, the Union indicates that Pontarelli and his attorney requested specifics about these complaints several times to no avail. *Id.* It argues that instead, "the Commissioner admitted to the general nature of the complaints and RIDE/Council's refusal to provide Pontarelli with specific information about them." *Id.* Despite providing RIDE/Council with "over 200 emails from 2020 documenting Pontarelli's timely, high-quality, appreciated work for these offices," Pontarelli received no response. *Id.* As such, the Union argues that "[b]ecause RIDE/Council never provided Pontarelli with any specific information or details about these complaints prior to his termination, the Board erred in considering them in its decision." *Id.*

The Board, however, considered the Commissioner's correspondence and noted that the Commissioner relied on seven grounds when warning Pontarelli of potential termination. (Decision 8-9.) The Board did not only consider what the Union argues is vague or general complaints. *Id.* Instead, the Board also considered other issues, such as Pontarelli's refusal to follow instructions from his supervisor, his demand that the agency retain a criminal attorney to represent him, his insistence that his decision was correct despite a lack of legal support, his

misguided concept of independence as a Hearing Officer, and an unsatisfactory response to specific requests from supervisors at RIDE. *Id.* (citing Joint Ex. 7). While allegations of these complaints were within the letter considered by the Board, the Board did not rely upon them in reaching its decision. *Id.* The Board considered the other remaining issues and found that evidence was presented to "support [RIDE]'s claims of complaints regarding Pontarelli's performance problems." *Id.* at 17. In considering the evidence within the record relied upon by the Board, this Court finds that the evidence considered was sufficient to support its conclusions. As such, this Court upholds the findings of the Board.

Furthermore, the Union contends that Margaret Santiago (Santiago), RIDE's Director of Human Resources, acted as the Keeper of the Records during the Board proceedings. (Union's Br. 48.) During the April 22, 2021 hearing, Santiago was asked if it was true that she did not have any "'other documents relating to the evaluation of job performance,'" to which she answered affirmatively. *Id.* (quoting Tr. Vol. III 22:12-18, Apr. 22, 2021). However, the Union alleges that it has "in its possession RIDE job performance evaluation policy documents and RIDE's computer network usage policy, which includes a progressive discipline provision[.]" *Id.* While the Union "attempted to admit these documents into evidence to show that the Keeper of the Records gave false testimony and was failing to comply with a *subpoena duces tecum*," the Board refused to consider the documents. *Id.*

The Board's Decision thoroughly addressed the correspondence between RIDE and Pontarelli which continuously addressed his actions and poor work ethic. The Board found that Pontarelli was terminated due to several issues already considered above by this Court. The Board rested its decision on sufficient evidence that would not be negated due to the consideration of the excluded documents. Despite the Union's contentions that documents exist to show that Pontarelli

was a model employee with positive job performance documents, this Court holds that the evidence before the Board was sufficient to find that his employment was terminated for reasons other than anti-union animus.

Furthermore, the Union argues that the Board erred in ruling that a settlement proposal was inadmissible because the upholding of the amended charge made the proposal relevant. (Union's Br. 56.) A proposed Settlement Agreement was sent to Pontarelli by Santiago following Pontarelli's request that he "be able to retire voluntarily, rather than have his employment terminated, so that he could 'take advantage of the more generous retirement policies applicable, *inter alia*, accrued vacation days and health insurance . . .'" *Id.* at 54. This proposal was rejected by Pontarelli. *Id.* Following this, Pontarelli was informed that he "was ineligible for any accrued sick leave payment because he was discharged for cause." *Id.* As the proposal was not considered by the Board, the Union contends that it was not offered to "'show that the party offering the settlement somehow had less faith in its position'" but rather to "prove the portion of allegation number [five] in the complaint relating to amended charge's claim that RIDE/Council unlawfully conditioned payment of the accrued sick leave upon Pontarelli dismissing the original charge." *Id.* at 56 (quoting Decision 28).

The Board found that the agreement had nothing to do with the strength or weakness of the case and would not consider it. (Decision 27.) The Board's determination that it would not "ascribe a nefarious reason to [RIDE]'s proposal of settlement and, in fact, does not consider it a legitimate

piece of evidence to be considered in this matter" is a factual finding which the Court will not disturb. *Id.* at 28.

IV

Conclusion

For all of the foregoing reasons, the Union's appeal is hereby denied, and the Rhode Island State Labor Board's Decision is affirmed. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**RIDE Legal Counsel/Hearing Officer Professional Union v. Rhode Island State Labor Relations Board, et al.**
CASE NO:	**PC-2023-05072**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 17, 2025**
JUSTICE/MAGISTRATE:	**Cruise, J.**
ATTORNEYS:	
For Plaintiff:	**Paul Pontarelli, Esq.**
For Defendant:	**Jeffrey W. Kasle, Esq.** **Matthew H. Parker, Esq.**