APPENDIX A

Supreme Court of Rhode Island

Robin BRINDLE et al.
v.
RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING, by and through its Director, et al.

No. 2016-324-M.P. (PC 12-3075)
No. 2016-325-M.P. (PC 12-3076)
No. 2016-326-M.P. (PC 12-3073)
No. 2016-328-M.P. (PC 12-3072)
No. 2016-329-M.P. (PC 12-3071)

June 18, 2019

Justice Goldberg, for the Court.

These consolidated cases came before the Supreme Court on November 27, 2018. The petitioners, Robin Brindle, Kathleen Brown, Sandra Carter, Marcie LaPorte, and Kelvin Ramirez (a/k/a Kevin Ramirez) (collectively petitioners), filed petitions for writ of certiorari to this Court pursuant to the Administrative Procedures Act, G.L. 1956 § 42-35-16, seeking review of a Superior Court judgment affirming a decision of the Rhode Island Department of Labor and Training (the DLT) that denied the petitioners' wage and hour claims against Delta Airlines, Inc. (Delta). Before this Court, the petitioners argue that the Superior Court erred in affirming the DLT's finding that G.L. 1956 § 25-3-3 is preempted by federal law, specifically, 49 U.S.C. § 41713(b)(1) of the Airline Deregulation Act (ADA). For the reasons set forth herein, we affirm the judgment of the Superior Court.

Facts and Travel

Between September 6, 2011, and September 13, 2011, petitioners, who were customer service agents for Delta at its facility at the T.F. Green Airport in Warwick, Rhode Island, filed five separate individual "nonpayment of wages" complaints with DLT. Each complaint alleged that Delta violated the provisions of § 25-3-3 by failing to pay petitioners time-and-a-half for hours worked on Sundays and holidays. Delta filed a response with DLT on November 16, 2011, arguing that the complaints should be dismissed because § 25-3-3, which mandates the payment of time-and-a-half for work performed on Sundays and holidays, is preempted by the ADA. Section 25-3-3(a) provides, in part, that:

> "Work performed by employees on Sundays and holidays must be paid for at least one and one-half (1 1/2) times the normal rate of pay for the work performed; provided: (1) that it is not grounds for discharge or other penalty upon any employee for refusing to work upon any Sunday or holiday enumerated in this chapter[.]"

The petitioners' complaints and Delta's letter were addressed at a hearing before a DLT hearing officer on May 8, 2012. At the hearing, the hearing officer did not take testimony or receive other evidence. Instead, the hearing officer indicated that she was "inclined to agree with" Delta that § 25-3-3 is preempted by the ADA; but she allowed petitioners to raise any arguments that their wage complaints were not preempted. The petitioners elected not to raise any argument before the hearing officer on the

issue of preemption. In a written decision,[1] the hearing officer concluded that the DLT was "preempted from enforcing wage laws for airline employees" because requiring Delta to pay petitioners time-and-a-half for hours worked on Sundays and holidays relates to Delta's prices, routes, or services, which, in turn, triggers preemption in accordance with the ADA. The hearing officer declared that DLT has no authority to adjudicate the claims, and therefore dismissed all five complaints. The petitioners timely appealed to the Superior Court, in accordance with § 42-35-15.[2]

On appeal before the Superior Court, petitioners argued that the hearing officer's decision to dismiss the complaints was affected by an error of law because the ADA does not preempt § 25-3-3. The Superior Court subsequently concluded that the hearing officer erred in dismissing petitioners' complaints because she failed to hear, review, or weigh evidence demonstrating that petitioners' wage complaints had a sufficient connection to Delta's prices, routes, or services to warrant preemption. In accordance with § 42-35-15, the Superior Court remanded the case to the DLT for a further hearing and a finding of fact on the issue of the effect of employee wages on Delta's prices, routes, and services.

The remand hearing was conducted by the DLT on May 4, 2015, before the same hearing officer. At

[1] Because petitioners filed separate individual complaints with the DLT, the DLT issued five separate decisions, indistinguishable in substance.

[2] The petitioners originally filed separate appeals with the Superior Court on June 15, 2012; however, because each case presented identical legal issues, petitioners' appeals were consolidated by the Superior Court on October 5, 2012.

that hearing, Kelly Fredericks, President and CEO of the Rhode Island Airport Corporation (RIAC), testified to his experience in the aviation and transportation industry, which spanned more than thirty years. Mr. Fredericks explained that a critical component of his job at RIAC was to attract and maintain air-carrier service at T.F. Green Airport, which services eight airline carriers and approximately 10,000 travelers per day. He testified that cost and demand, including labor costs, are factors that air carriers take into consideration when deciding whether to do business in Rhode Island. Mr. Fredericks agreed that higher labor costs in Rhode Island would make RIAC "less competitive in the market for air services" and therefore that a statute that requires Sunday and holiday premium pay could have a significant negative impact on air carriers conducting business in Rhode Island; could alter flights into and out of the airport; or could affect the number of employees scheduled for Sundays or holidays.

Sandra LaPlante, the station manager for Delta at T.F. Green Airport, testified next that she had worked for Delta for twenty years and that her duties include oversight of Delta's day-to-day operations, including managing and scheduling a team of twenty-five customer service agents and ensuring that Delta's T.F. Green location is sufficiently staffed for operations. Ms. LaPlante testified that service on Sundays and holidays is important to Delta, as its T.F. Green Airport location operates seven days per week. She next explained that, if Delta were forced to pay Sunday premium time to its Rhode Island workers, it could affect the customer service that is provided at T.F. Green Airport and cause Delta to modify the services that it provides on those particu-

lar days because it could lead to a reduction of staff.

After considering the testimony and weighing the credibility of the witnesses, the hearing officer, for the second time, concluded that petitioners' wage claims were preempted by the ADA, and she dismissed the complaints. In a written decision, the hearing officer found that Ms. LaPlante's testimony was persuasive because of her twenty years with Delta, in various positions, including station manager charged with overseeing customer service. In reaching her conclusion, the hearing officer pointed to Ms. LaPlante's testimony that an increase in employees' wages would affect Delta's services. The hearing officer also found that, although not specific to Delta, the testimony of Mr. Fredericks about the factors that an air carrier considers when determining whether to locate or remain at a particular airport applied to air carriers such as Delta and was supported by the testimony of Ms. LaPlante. Therefore, because the testimony demonstrated "that increased pay on Sundays and holidays could impact staffing which would impact the level of service[,]" the hearing officer found that § 25-3-3's time-and-a-half requirement is preempted from application at T.F. Green Airport by the ADA.

The petitioners appealed the second decision to the Superior Court and argued that the hearing officer committed an error of law in finding that § 25-3-3 was preempted because the potential for an increase in labor costs posed by compliance with § 25-3-3 is, petitioners opined, insufficient to trigger preemption. The petitioners also argued that the decision of the hearing officer is flawed because Delta failed to prove that increased labor costs would have a significant impact on prices, routes, or services. In

turn, it was Delta's contention that § 25-3-3 is a "blue law" designed to regulate work and wages on Sundays and holidays. Delta argued that, if made applicable to airlines, § 25-3-3 would dictate how airline carriers can employ employees, which is sufficient to trigger preemption.[3] Delta also claimed that the decision of the hearing officer was supported by substantial evidence in the record to demonstrate that requiring Delta to comply with § 25-3-3 would significantly impact its prices, routes, and services.

In a written decision, the Superior Court affirmed the decision of the hearing officer. The Superior Court justice found that, as a matter of law, § 25-3-3 is preempted by the ADA because the statute attempts to regulate the work force on Sundays and holidays, which "affects the competitive market force of airlines." The Superior Court justice explained that requiring air carriers in Rhode Island to comply with § 25-3-3's premium pay provision would have a direct impact on the prices, routes, and services of Delta because it would influence their decision-making process regarding discretionary services, customer interaction, and staffing. In addition, the Superior Court justice concluded that the decision of the hearing officer was not clearly erroneous, but it was supported by adequate and legally competent evidence. Specifically, the Superior Court justice explained that the hearing officer accepted Mr. Fredericks and Ms. LaPlante's testimony concerning the effect that § 25-3-3 would have on Delta's prices, routes, and services as credible, and she favorably

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[3] Although not raised by the parties, we note that G.L. 1956 § 25-3-3 allows an employee to refuse "to work upon any Sunday or holiday[.]"

noted their demeanor and forthright answers. The Superior Court thus concluded that the decision of the hearing officer was "neither affected by error of law nor clearly erroneous."

Standard of Review

On certiorari, this Court does not weigh the evidence; instead, "we limit the scope of our review to the record as a whole to determine whether any legally competent evidence exists therein to support the trial court's decision or whether the trial court committed error of law in reaching its decision." *Rhode Island Temps, Inc. v. Department of Labor and Training, Board of Review*, 749 A.2d 1121, 1124 (R.I. 2000). Legally competent evidence is defined as "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance." *Id.* at 1125 (quoting *Center for Behavioral Health, Rhode Island, Inc. v. Barros*, 710 A.2d 680, 684 (R.I. 1998)). This Court engages in a *de novo* review of determinations of law made in the course of an administrative proceeding. *See Johnston Ambulatory Surgical Associates, Ltd. v. Nolan*, 755 A.2d 799, 805 (R.I. 2000). We will reverse a decision of the Superior Court in this context only if we find that the decision has "no reliable, probative, [or] substantial evidence" to support it. *State v. Rhode Island State Labor Relations Board*, 694 A.2d 24, 28 (R.I. 1997) (quoting *Barrington School Committee v. Rhode Island State Labor Relations Board*, 608 A.2d 1126, 1138 (R.I. 1992)).

Discussion

The sole issue before the Court is whether the Su-

perior Court erred in affirming DLT's finding that § 25-3-3 is preempted by 49 U.S.C. § 41713(b)(1) of the ADA. Specifically, we are tasked with considering whether the Superior Court justice committed an error of law in upholding the decision of the DLT that compliance with the requirements of § 25-3-3 will significantly impact the prices, routes, and services of airline carriers and, thus, is preempted by the ADA. We perceive no error.

The ADA was enacted in 1978 to promote "efficiency, innovation, and low prices" in the air transportation industry through "maximum reliance on competitive market forces and on actual and potential competition[.]"49 U.S.C. §§ 40101(a)(6), 12(A); *Northwest, Inc. v. Ginsberg*, 572 U.S. 273, 280, 134 S.Ct. 1422, 188 L.Ed.2d 538 (2014). By enacting the ADA, Congress largely deregulated domestic air transportation. *See American Airlines, Inc. v. Wolens*, 513 U.S. 219, 222, 115 S.Ct. 817, 130 L.Ed.2d 715 (1995). "To ensure that the States would not undo federal deregulation with regulation of their own," Congress included a preemption clause as part of the ADA. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992). Under the preemption clause, the party claiming that preemption applies must establish that "a State, political subdivision of a State, or political authority of at least [two] States * * * enact[ed] or [is] enforc[ing] a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier[.]" *See* 49 U.S.C. § 41713(b)(1). A law "relates to" a price, route, or service of an air carrier if it has "a connection with, or reference to" an air carrier's prices, routes, or services. *Morales*, 504 U.S. at 384, 112 S.Ct. 2031.

Thus, where a state law has "the forbidden significant effect" on the prices, routes, or services of an air carrier, the ADA preempts that law. *See id.* at 388, 112 S.Ct. 2031; *see also United Parcel Service, Inc. v. Flores-Galarza*, 318 F.3d 323, 335 (1st Cir. 2003).

It is clear that federal preemption of state law is a matter of federal constitutional law. The Supremacy Clause, in Article VI of the United States Constitution, directs that federal law "shall be the supreme law of the land; and the judges in every state shall be bound thereby * * *." U.S. Const. Art. VI, cl. 2. Under the Supremacy Clause, if Congress so intends, state laws may be preempted by federal law and will be considered to be "without effect." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992) (quoting *Maryland v. Louisiana*, 451 U.S. 725, 746, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981)). The intention to preempt state law may arise explicitly from the language employed in the statute or implicitly from the statute's structure and purpose. *Morales*, 504 U.S. at 383, 112 S.Ct. 2031. In the case at bar, Delta relies upon the express language of the ADA in asserting that petitioners' state law claims are preempted.

The United States Supreme Court has offered important guidance as to how the ADA's preemption clause is to be interpreted. Notably, the Supreme Court has recognized that the term "related to" in the phrase "related to a price, route, or service" expresses "a broad pre-emptive purpose." *See Ginsberg*, 572 U.S. at 281, 134 S.Ct. 1422 (noting that the phrase "other provision having the force and effect of law" is much more broadly worded than other legislation that expressly applies only to a law or regulation; therefore, ADA preemption includes suits at

common law); *see also Wolens*, 513 U.S. at 225, 115 S.Ct. 817; *Morales*, 504 U.S. at 383, 384, 112 S.Ct. 2031. For example, in *Morales*, the United States Supreme Court held that the ADA expressly preempted the application of state deceptive business practice statutes to airline fare advertisements because such regulation related to the content and format of air carrier fare advertising and had a "significant impact upon the airlines' ability to market their product, and hence a significant impact upon the fares they charge." *Morales*, 504 U.S. at 390, 112 S.Ct. 2031. The Court explained that the ADA's broad preemption clause meant state laws and regulations "having a connection with or reference to airline 'rates, routes, or services,' are pre-empted" by the ADA. *Id.* at 384, 112 S.Ct. 2031. Thus, even an indirect effect by a state law of general applicability is sufficient to meet the "related to" language in the preemption clause. *Id.* at 386-87, 112 S.Ct. 2031. On the other hand, the Supreme Court has recognized that, in some cases in which the preemption bar is raised, the challenged enactment may have "'too tenuous, remote, or peripheral a manner' to have pre-emptive effect." *Id.* at 390, 112 S.Ct. 2031 (quoting *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 100 n.21, 103 S.Ct. 2890, 77 L.Ed.2d 490 (1983)).

Next, in *Wolens*, the Supreme Court reaffirmed the breadth of the ADA's preemption clause; in that case, the plaintiffs were participants in American Airlines' frequent-flyer program who claimed to be injured by modifications to the program and brought suit claiming breach of contract and violation of the Illinois Consumer Fraud Act. *Wolens*, 513 U.S. at 224-25, 115 S.Ct. 817. The Supreme Court held that claims under the Illinois Consumer Fraud Act were

preempted by the ADA, but that the breach-of-contract claims were not. *Id.* at 226, 115 S.Ct. 817. The Supreme Court explained that the frequent-flyer program in question related to the air carrier's rates because the airline gave mileage credits for free tickets, upgrades, and services, and because the program provided access to flights and service class upgrades regardless of capacity controls and blackout dates. *Id.* In contrast, the breach-of-contract claims were not preempted because they did not allege a violation of a state-imposed obligation, but rather alleged a violation of a self-imposed (contractual) obligation. *Id.* at 229, 115 S.Ct. 817. The Supreme Court stressed that the purpose of the ADA was to promote market efficiency and that the ability to enforce private contracts through a breach-of-contract action was fundamental to a stable and efficient market. *Id.* at 230, 115 S.Ct. 817.

Most recently, in *Ginsberg*, the Supreme Court held that an airline customer's claim for breach of the implied covenant of good faith and fair dealing was preempted by the ADA. *Ginsberg*, 572 U.S. at 288, 134 S.Ct. 1422. The airline had terminated the customer's membership in the airline's frequent flyer program based on alleged abuse of the program. *Id.* at 277, 134 S.Ct. 1422. The customer sued, alleging, among other things, that the termination of his membership violated the implied covenant of good faith and fair dealing. *Id.* at 278, 134 S.Ct. 1422. The Supreme Court explained that even state common-law rules such as the implied covenant of good faith and fair dealing are preempted by the broad sweep of the ADA such that an exemption for common-law claims would be contrary to the ADA's central purpose. *Id.* at 281-82, 134 S.Ct. 1422. The Supreme

Court went on to explain that what was important was the effect of the challenged provision on prices, routes, or services, because state common-law rules can undermine the purpose of the ADA as much as a statute or regulation can. *Id.* at 282, 283, 134 S.Ct. 1422. The Supreme Court further explained that the claim in question was clearly related to "rates, routes, or services" because the plaintiff sought reinstatement in the airline's frequent-flyer program so that he could accrue mileage credits that could be redeemed for tickets and upgrades. *Id.* at 284-85, 134 S.Ct. 1422.

Accordingly, federal preemption under the ADA extends to claims related to state consumer-protection statutes, frequent-flyer programs, common-law implied covenants, and advertising guidelines, because of a connection to the core "services" that an airline provides. With these principles in mind, we turn to the merits of whether petitioners' claims are preempted by the ADA.

As a preliminary matter, the fact that § 25-3-3 may impose costs on airlines and therefore adversely affect fares is inconsequential. As the First Circuit noted, were preemption to apply to a state law solely in that circumstance, preemption "would effectively exempt airlines from state taxes, state lawsuits of many kinds, and perhaps most other state regulation of any consequence." *DiFiore v. American Airlines, Inc.*, 646 F.3d 81, 89 (1st Cir. 2011). Because "countless state laws have *some* relation to the operations of airlines and thus *some* potential effect on the prices charged or services provided[,]" we recognize that there is a limit to the ADA's preemptive scope. *Id.* at 86 (emphasis in original). Nevertheless, on certiorari, petitioners argue that Delta failed to satisfy its

burden of proof of demonstrating that compliance with § 25-3-3 would have a "significant impact" on its prices, routes, and services because, petitioners contend, the record is devoid of any facts upon which one could reasonably conclude that an increase in labor costs alone would have any impact on rates, routes, and services, "much less a significant impact." Contrary to petitioners' contention, however, Delta has demonstrated that compliance with § 25-3-3 goes far beyond a mere increase in labor costs.

The First Circuit has emphasized that evidence of "a statute's 'potential' impact on carriers' prices, routes, and services can be sufficient if it is significant, rather than tenuous, remote, or peripheral." *Massachusetts Delivery Association v. Coakley*, 769 F.3d 11, 21 (1st Cir. 2014); *see Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 647 (9th Cir. 2014) (stating that even a statute's potential impact on carrier's prices, routes, and services can be sufficient). Empirical evidence in this regard is not necessary, and courts may "look to the logical effect that a particular scheme has on the delivery of services or the setting of rates." *Coakley*, 769 F.3d at 21 (brackets omitted) (quoting *New Hampshire Motor Transport Association v. Rowe*, 448 F.3d 66, 82 n.14 (1st Cir. 2006)). Such "logical effect can be sufficient even if indirect." *Id.*

The petitioners take issue with the fact that Delta's evidence at the remand hearing was limited to two witnesses who failed to provide "a single fact upon which it could base a prediction of such baleful effects." Specifically, petitioners assert that Delta failed to satisfy its burden of demonstrating how compliance with § 25-3-3 would affect labor costs and how compliance with § 25-3-3 would be so onerous as

to drive airlines away from Rhode Island, because Delta's witnesses were not experts, their opinions were speculative, and their conclusions were unsupported by facts or quantifiable evidence. However, we are hard-pressed to agree because, as elucidated above, conclusive evidence of the potential impact is not required to trigger preemption. The First Circuit in *Coakley* did not announce a categorical rule that an airline always needs to provide analytical data on the effect of a petitioner's claim on its prices or services in order to demonstrate preemption under the ADA. Rather, in deciding the preemption question, the First Circuit explicitly "allowed courts to 'look to the logical effect that a particular scheme has on the delivery of services or the setting of rates.'" *Coakley*, 769 F.3d at 21 (brackets omitted) (quoting *Rowe*, 448 F.3d at 82 n.14).

During the remand hearing before the hearing officer, Delta offered the sworn testimony of Ms. LaPlante, the station manager for Delta at T.F. Green Airport, and Mr. Fredericks, President and CEO of RIAC. They testified that forcing Delta, and other airlines, to comply with the requirements of § 25-3-3 could impact the services that Delta and other airlines provide on Sundays and holidays.[4] Mr. Fredericks testified that, in his experience, forcing compliance with § 25-3-3's time-and-a-half pay would have a direct impact on an airline's decision-making process concerning discretionary services, customer interaction, and staffing. He testified that Sundays and holidays are some of the most im-

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[4] As relevant here, "service" includes "steps that occur before * * * the airplane is actually taxiing or in flight." *DiFiore v. American Airlines, Inc.*, 646 F.3d 81, 87-88 (1st Cir. 2011).

portant days to RIAC and stated that increased labor costs "could lead to reduction in service from a flight frequency opportunity[.]" In addition, Ms. LaPlante testified that one of her main duties is to ensure that Delta provides superior customer service, and that forcing Delta to pay premium pay to its Rhode Island employees could impact or modify staffing and services; this, according to Ms. LaPlante, would likely cause airlines like Delta to reduce staff on Sundays and holidays and would make Delta less competitive in the Rhode Island market. With this testimony in hand, the conclusion that requiring airlines such as Delta to provide one-and-one-half-times the normal rate of pay for work on Sundays and holidays does in fact "relate to" the services provided by Delta. Thus, the "logical effect" of § 25-3-3 on Delta's delivery of services is sufficient to bring it within the preemptive scope of the ADA.

Accordingly, we are satisfied that there was sufficient evidence in the record for the Superior Court to conclude that DLT's decision was supported by adequate and legally competent evidence.

Conclusion

For the reasons set forth herein, we affirm the judgment of the Superior Court. The record may be remanded to the Superior Court with our decision endorsed thereon.

APPENDIX B

Superior Court of Rhode Island
Providence County

Kathleen BROWN, Robin Brindle, Sandra Carter, Kimberly Clayman, Marcie Laporte, and Kelvin Ramirez, aka Kevin Ramirez, Plaintiffs,
v.
DELTA AIRLINES, INC., Defendants.

No. PC 12-3075.
October 3, 2016.

Decision

MCGUIRL, J. The Plaintiffs—Kathleen Brown, Robin Brindle, Sandra Carter, Kimberly Clayman, Marcie Laporte, and Kevin Ramirez (Plaintiffs)—seek judicial review of a decision of the Board of Review of the Department of Labor and Training (Board of Review or DLT). In its decision, the Board of Review rejected the Plaintiffs' claims for wages and found that requiring Delta Airlines, Inc. (Delta) to pay its employees one and one-half times the normal rate of pay for hours worked on Sundays and holidays, as required by G.L. 1956 § 25-3-3, is related to the rates, routes, or services of airline carriers and therefore is preempted by the Airline Deregulation Act (ADA), 49 USC § 40101(a)(12). The Court exercises jurisdiction pursuant to G.L. 1956 §§ 42-35-15, *et seq*. For the reasons set forth herein, this Court affirms the DLT's decision.

I

Facts and Travel

The Plaintiffs were employees of Delta at Delta's facility in the T.F. Green Airport in Warwick, Rhode Island (TF Green). Between September 6 and September 13 of 2011, the Plaintiffs filed complaints with the DLT, alleging that Delta violated provisions of §§ 25-3-1, *et seq.*, entitled "Work on Sundays or holidays." Specifically, the Plaintiffs claimed that Delta violated § 25-3-3[1] by failing to pay them one and one-half times their normal rate of pay (premium pay) for the hours they worked on Sundays and holidays.

On May 9, 2012, Mary Ellen McQueeney Lally, a DLT hearing officer (Hearing Officer), conducted a hearing on the Plaintiffs' claims against Delta. *See Ramirez v. R.I. Dep't of Labor and Training*, 2014 WL 4412618 (R.I. Super. Sept. 3, 2014). During such hearing, Delta moved to dismiss the case as a matter of law and asserted that requiring Delta to provide its employees with premium pay for the hours that they worked on Sundays and holidays is related to Delta's rates, routes, or services, and therefore triggers preemption under the ADA.[2] *See id.* The DLT

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[1] Section 25-3-3(a) requires that "[w]ork performed by employees on Sundays and holidays must be paid for at least one and one-half (1 1/2) times the normal rate of pay for the work performed; provided: (1) that it is not grounds for discharge or other penalty upon any employee for refusing to work upon any Sunday or holiday enumerated in this chapter[.]"Sec. 25-3-3(a).

[2] The ADA was enacted by Congress "to encourage, develop, and attain an air transportation system which relies on competitive market forces to determine the quality, variety, and price of air services, and for other purposes." *See* 49 USC §§ 40101, *et seq.*

issued six decisions[3] and found that requiring Delta to provide the Plaintiffs with premium pay relates to its prices, routes, and services. *See id.* The DLT explained that as a result, the ADA preempted the Plaintiffs' claims under § 25-3-3, and therefore, the statute could not be applied against Delta. *See id.* Accordingly, the DLT ruled that it was "preempted from enforcing wage laws for airlines employees" and that it had no jurisdiction to adjudicate the Plaintiffs' claims. *Id.*

Thereafter, on June 15, 2012, the Plaintiffs timely appealed[4] to the Superior Court. *See id.* at *2; *see also* § 42-35-15. In their appeal, the Plaintiffs asserted that the DLT's decision was affected by error of law because it misconstrued the breadth of the ADA. *See Ramirez*, 2014 WL 4412618 at *4. The Plaintiffs further claimed that Delta failed to produce any evidence to support the DLT's conclusion that requiring Delta to compensate its employees with premium pay for hours worked on Sundays and holidays would have a significant impact on its rates, routes, and services, and therefore, such statutory require-

[3] The DLT issued six separate decisions because, at that point in time, the Plaintiffs each had filed a separate complaint with the DLT; however, each of the Plaintiffs' claims were indistinguishable in substance.

[4] Plaintiffs originally filed separate appeals with the Superior Court on June 15, 2012. *Id.* at *2. On September 18, 2012, Plaintiffs filed a motion to consolidate their appeal because each case presented identical legal issues. *Id.*; *see* Super. R. Civ. P. 7(b)(3)(ii) (allowing for parties to submit a motion to consolidate cases for trial). Both the DLT and Delta did not object to such request. On or about October 3, 2012, the Plaintiffs' motion to consolidate PC-2012-3071, PC-2012-3072, PC-2012-3073, PC-2012-3074, and PC-2012-3076 was granted. *See Ramirez*, 2014 WL 4412618 at *2.

ment was not preempted by the ADA. *See id.* at *7. In response, Delta asserted that the DLT properly found that the Plaintiffs' claims for premium pay were preempted by the ADA. *See id.* As a result, Delta moved to dismiss the Plaintiffs' claims. *See id.* at *4.

On September 3, 2014, this Court issued a decision concluding that the DLT erred in dismissing the Plaintiffs' claims without the presentation of factual evidence on the preemption issue. *See id.* at *8-9. This Court remanded the matter to the DLT for a further hearing and a finding of fact on the issue of the effect of employee wages on Delta's rates, routes, and services. *See id.* at *9.

Consequently, on May 4, 2015, the parties went before the DLT for the remanded hearing that was ordered on this matter. *See* Department of Labor and Training, Division of Labor Standards Claim No. LS 2011-396, September 1, 2015 decision at 2 (Decision). During the hearing, Kelly Fredericks (Mr. Fredericks), President and CEO of the Rhode Island Airport Corporation (RIAC), and Sandra LaPlante (Ms. LaPlante), station manager for Delta at TF Green, testified on behalf of Delta. *See id.* Neither witness qualified as an expert.

Mr. Fredericks testified that he was President and CEO of the RIAC for two years, but had experience in the aviation and transportation industry as a civil engineer and as the chief operating officer of an international airport for approximately thirty-five years. Tr. at 19-20, 21-22. Mr. Fredericks stated that as President and CEO of RIAC, a critical component of his job is attracting and maintaining air carrier services at TF Green. *Id.* at 22-23. Mr. Fredericks

testified that TF Green services eight airline carriers and approximately 10,000 travelers per day, with Sundays and holidays being some of its most important days. *Id.* at 20-21, 32-33. Mr. Fredericks further stated a statute that allows employees to either refuse to work on Sundays and holidays without repercussions or receive premium pay for such hours, could significantly impact the air carriers that service RIAC. *Id.* at 32-33. In addition, Mr. Fredericks stated that the two main factors that influence whether a carrier will locate in Rhode Island are cost and demand. *Id.* at 24, 37, 40-45. When asked if additional labor costs in Rhode Island would make RIAC less competitive in the market for air services, Mr. Fredericks answered affirmatively. Tr. at 25-26. Mr. Fredericks further claimed that increased costs could make Rhode Island a less attractive site to airlines in general. *Id.* at 26-27. Specifically, Mr. Fredericks testified that increased labor costs "could lead to reduction in service from a flight frequency opportunity," and could "diminish[] [RIAC's] competitive advantage." *Id.* at 31.

Ms. LaPlante testified that she has been Delta's station manager at TF Green for three years but has worked for Delta for twenty years. *Id.* at 47-48. Ms. LaPlante explained that as a station manager, her job is to oversee day-to-day operations, perform administrative work, provide superior customer service, manage schedules, and lead a team of twenty-five employees. *Id.* at 49-50. Ms. LaPlante testified that Sundays and holidays are extremely important to Delta because it is open seven days per week and operates approximately four to five flights on Sundays. *Id.* at 53-54. Ms. LaPlante also claimed that,

as a station manager, she is responsible[5] for managing the employee schedule to ensure that minimum staff is available to operate Delta's flights at TF Green and is in charge of ensuring counter, gates, and baggage staffing. *Id.* at 57, 59, 71-73. In addition, Ms. LaPlante explained that she is also responsible for allocating money for employee salaries and benefits from the budget that she obtains from Delta's corporate headquarters. *Id.* at 63. Ms. LaPlante asserted that if Delta is required to pay premium pay to its Rhode Island employees for the hours worked on Sundays and holidays, that requirement could impact or modify the services that Delta provides on such days. *Id.* at 61-63, 64. Additionally, Ms. LaPlante stated that the increased cost could likely cause airlines to reduce staff on Sundays and holidays, making Delta less competitive. *Id.* at 63.

Based on the testimony given and the evidence submitted, the DLT reasoned that "[a]n increase in salaries would change [Delta's] budget with the possibility that an adjustment in services or staffing would have to be made." *See* Decision at 4. In reaching its conclusion, the DLT reasoned that "the logical effect[s] that … [§ 25-3-3] has on [Delta's] delivery of services or the setting of rates" is "sufficient even if indirect." *Id.* at 5 (internal citations omitted). The DLT explained that Ms. LaPlante's testimony, which indicated that an increase in employees' wages would, in fact, affect Delta's services, was both "persuasive" and from "a unique perspective." *Id.* at 4.

[5] Ms. LaPlante did acknowledge that she is not involved in the following: deciding how many Delta flights arrive to, and depart from, TF Green; Delta's minimum staffing levels; the rates Delta charges for flights; the routes Delta flies; or the services offered by Delta. Tr. at 57, 71-73.

The DLT also noted that, although Mr. Fredericks' testimony was not particular to Delta, it was "credible as pertaining to air carriers and supportive of the points made by Ms. LaPlante." *Id.* Therefore, the DLT found that compensating employees with the premium pay is related to Delta's rates, routes, and services, and, as a result, the ADA preempts § 25-3-3's application against Delta. *Id.* at 5, 6.

Thereafter, on November 18, 2015, the Plaintiffs again timely appealed the DLT's Decision to this Court. *See* Pls.' Brief; *see also* § 42-35-15. In their appeal, the Plaintiffs assert that the DLT committed an error of law in finding that § 25-3-3 was preempted by the ADA because the possible increase in labor costs posed by the Sunday and holiday premium pay requirement is insufficient to trigger preemption. *See* Pls.' Brief at 7, 21. The Plaintiffs also assert that even if the DLT did not commit error of law, the DLT's Decision is clearly erroneous because Delta failed to prove, by reliable and substantial evidence, that increased labor costs would have a significant impact on its rates, routes, or services. *See id.* As a result, the Plaintiffs contend that the Court should reverse the DLT's Decision and remand the case solely for the purpose of calculating wages, penalties, and attorney fees. *See id.* Conversely, Delta asserts that the DLT did not commit an error of law because § 25-3-3 is a "blue law" that dictates how airline carriers, like DLT, can employ and, in and of itself, is sufficient to trigger preemption. *See* Defs.' Brief at 1, 5, 14. Delta further asserts that the DLT's Decision is not clearly erroneous because reliable and substantial evidence in the record proves that requiring Delta to abide by § 25-3-3 would significantly impact its rates, routes, and services. *Id.* at 10.

II

Standard of Review

The Superior Court exercises jurisdiction over appeals from the DLT pursuant to § 42-35-15(g) of the Rhode Island Administrative Procedures Act, which provides as follows:

"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 or 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." Sec. 42-35-15(g).

As a general rule, "[a]dministrative agencies retain broad enforcement discretion" and, thus, considerable deference is accorded to an agency's decision. *Arnold v. Lebel*, 941 A.2d 813, 820 (R.I. 2007). Such deference is additionally given to an agency's interpretation of a statute, whose administration and enforcement has been entrusted to that agency.

See In re Lallo, 768 A.2d 921, 926 (R.I. 2001) (stating that an agency's interpretation of its own statute or regulations should be accorded "weight and deference as long as that construction is not clearly erroneous or unauthorized") (internal citations omitted).

When considering questions of law, however, the Court is not bound by the determination of the agency, but instead may be "freely reviewed to determine the relevant law and its applicability to the facts presented in the record." *State, Dep't of Envtl. Mgmt. v. State Labor Relations Bd.*, 799 A.2d 274, 277 (R.I. 2002). Therefore, "questions of law—including statutory interpretation—are reviewed *de novo*." *Iselin v. Ret. Bd. of Emps' Ret. Sys. of R.I.*, 943 A.2d 1045, 1049 (R.I. 2008).

Conversely, when considering questions of fact, the Court "may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are 'clearly erroneous.'" *Guarino v. Dep't of Soc. Welfare*, 410 A.2d 425, 428 (R.I. 1980) (citing § 42-35-15(g)(5)). Further, the Court cannot "weigh the evidence [or] pass upon the credibility of witnesses [or] substitute its findings of fact for those made at the administrative level." *E. Grossman & Sons, Inc. v. Rocha*, 118 R.I. 276, 285, 373 A.2d 496, 501 (1977). Rather, § 42-35-15(g) limits the Court to an examination of the record in order to ascertain whether the agency's decision is supported by legally competent and substantial evidence. *See Ctr. for Behavioral Health, R.I., Inc. v. Barros*, 710 A.2d 680, 684 (R.I. 1998); *Kirby v. Planning Bd. of Review of Middletown*, 634 A.2d 285, 290 (R.I. 1993). Legally competent evidence is such "relevant evidence that a reasonable mind might accept as adequate to support a conclusion [and] means an

amount more than a scintilla but less than a preponderance." *Town of Burrillville v. R.I. State Labor Relations Bd.*, 921 A.2d 113, 118 (R.I. 2007).

III

Analysis

A

In their memorandum, the Plaintiffs argue that the DLT's Decision is affected by error of law, as the ADA does not preempt § 25-3-3 because costs alone—such as the costs imposed by § 25-3-3's premium pay requirement—are insufficient to trigger preemption. The Plaintiffs contend that the connection between a state law and an airline's rates, routes, or services cannot be *de minimis*, but instead, must have a forbidden and significant impact on rates, routes, or services. The Plaintiffs further assert that although the ADA may preempt some state laws governing employer and employee relationships, it may not do so on the grounds of increased labor costs alone. The Plaintiffs also allege that § 25-3-3 only affects labor costs because it merely dictates how much money Delta is required to pay its workers—not how Delta is required to employ its workers. The Plaintiffs claim that, as a result, § 25-3-3 presents no significant impact on Delta's rates, routes, or services, and therefore, there is no justification to preempt its application. In addition, the Plaintiffs suggest that if airlines, like Delta, were permitted to invoke preemption based on costs alone, such a finding would effectively exempt airlines from state taxes, state lawsuits, and most other state regulations. The Plaintiffs conclude that § 25-3-3 is therefore not preempted by the ADA, and thus, Del-

ta is required to pay the Plaintiffs premium pay for the hours they have worked, and continue to work, on Sundays and holidays.

In its response brief, Delta avers that the DLT's Decision is not affected by error of law, as the Hearing Officer properly determined that § 25-3-3 is preempted by the ADA. Delta insists that § 25-3-3 is not a wage statute dictating the amount of money employers are required to pay employees, but instead, is a "blue law" that dictates how employers can employ. Specifically, Delta asserts that—unlike wage laws that are intended to ensure a competitive wage, encourage hiring, protect workers from harm, and enforce suitable working hours—§ 25-3-3 is intended to only manage the days a business is open, the number of employees it staffs and, thus, the services it provides. Delta claims that § 25-3-3 is therefore fundamentally different from the type of overtime and minimum wage laws that were found to be precluded from ADA preemption. Delta additionally contends that a law with the express purpose of discouraging employers from remaining open and, consequently, staffing employees on Sundays and holidays in order to promote a common day of rest and relaxation for Rhode Island citizens works to unravel the ADA's objective, because it substitutes the competitive market forces proscribed by Congress for those proscribed by the Rhode Island Legislature. Delta asserts that this fact alone is sufficient to warrant ADA preemption because § 25-3-3, by its very nature, regulates air carrier services rather than permitting those services to be directed by market forces, as the ADA requires. Delta concludes that § 25-3-3 is therefore undoubtedly related to the rates, routes, and services of the airline, and is consequent-

ly preempted by the ADA.

In 1978, Congress enacted the ADA in order to promote the competitive market forces of air carriers by guaranteeing the efficiency, innovation, low prices, variety, and quality of transportation. *See* 49 U.S.C. App. §§ 1302(a)(4), 1302(a)(9). By enacting this federal regulation, Congress essentially deregulated domestic air transport. *See id.* To ensure that both its purpose was achieved and "that the States would not undo federal deregulation with regulation of their own," Congress included a preemption[6] clause within the ADA. *Morales v. Trans World Air-*

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[6] Article VI, clause 2 of the United States Constitution, also known as the Supremacy Clause, is the foundation of the federal preemption doctrine. *See Verizon New England Inc. v. R.I. Pub. Utils. Comm'n*, 822 A.2d 187, 192 (R.I. 2003). Preemption requires that "[w]here a state statute conflicts with, or frustrates, federal law, the former must give way." *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 663 (1993) (citing U.S. Const., art. VI, cl. 2; *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981)). Therefore, in a preemption case, state law is displaced "to the extent that it actually conflicts with federal law." *Pacific Gas & Elec. Co. v. State Energy Res. Conservation and Dev. Comm'n*, 461 U.S. 190, 204 (1983). To determine whether a federal regulation, such as the ADA, preempts a state statute, such as § 25-3-3, the Court must ascertain whether the ADA "expressly provide[s] that it shall supersede related state law[.]" *Verizon New England*, 822 A.2d at 192. In making this determination, courts are required to assume that a federal statute is not to supersede the police powers of a state unless it was Congress' "clear and manifest purpose" to do so. *California v. ARC Am. Corp.*, 490 U.S. 93, 101 (1989). As previously stated, the ADA expressly preempts states from enacting any law that relates to the rates, routes, or services of an airline carrier. *See* 49 U.S.C. App. § 1305(a)(1). Therefore, the ADA would preempt § 25-3-3 if this Court finds that § 25-3-3 relates to the rates, routes, or services of an airline carrier. *See id.*; *see also Verizon New England*, 822 A.2d at 192; *Pacific Gas & Elec. Co.*, 461 U.S. at 204.

lines, Inc., 504 U.S. 374, 378 (1992). This preemption clause[7] "prohibit[s] the States from enforcing any law 'relating to rates, routes, or services' of any air carrier.'" *Id.* at 378-79 (citing 49 U.S.C. App. § 1305(a)(1); *see Mass. Delivery Ass'n v. Coakley*, 769 F.3d 11, 21-22 (1st Cir. 2014) (stating that the purpose of this preemption doctrine is to ensure that states do not unravel Congress' purposeful deregulation in this area). In *Morales*, the United States Supreme Court made it clear that the ADA's preemption clause would have an expansive and broad interpretation. *See* 504 U.S. at 384. The Court went on to explain, for instance, that a state law will be found to relate to the rates, routes, or services of any air carrier, and thus in violation of the ADA, if the state law has any connection or reference thereto, whether directly or indirectly. *See id.* at 385-86. In addition, such relation can be found to be present when the logical effects of a statute relates to the rates, routes, or services of an air carrier. *See id.*; *see also Coakley*, 769 F.3d at 22 (stating that the phrase "related to" is purposefully expansive, and further explaining that such a determination does not require a factual inquiry into the empirical effect of a statute on a single employer in a particular situation, but instead, a reviewing court need only look at the real and logical effects of the state statute); *N.H. Motor Transp. Ass'n v. Rowe*, 448 F.3d 66, 82 n.14 (1st Cir. 2006) (agreeing with the district court that "there is no such quantification requirement[,]" but instead, "[t]he cases in this area have looked to the

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[7] Specifically, § 1305(a)(1) expressly preempts states from "enact[ing] or enforce[ing] any law, rule, regulation, standard or other provision having force and effect of law relating to rates, routes, or services of any carrier." 49 U.S.C. App. § 1305(a)(1).

logical effect that a particular scheme has on the delivery of services or the setting of rates and have not required the presentation of empirical evidence"); *Dilts v. Penske Logistics, LLC*, 769 F.3d 637 (9th Cir. 2014) (stating that even a statute's potential impact on carrier's prices, routes, and services can be sufficient). In applying this logic, the First Circuit found that any state law which attempts to unravel Congress' purposeful deregulation in the area of air transport will also be preempted. *Coakley*, 769 F.3d at 21-22. Therefore, a state law that tries to substitute its own policies for the competitive market forces explicitly protected by the ADA will be preempted. *Tobin v. Fed. Express Corp.*, 775 F.3d 448, 455 (1st Cir. 2014).

Sunday closing laws were enacted to "set one day apart from all others" in order to encourage "a day of rest, repose, recreation and tranquility—a day which all members of the family and community have the opportunity to spend and enjoy together[.]"*McGowan v. Maryland*, 366 U.S. 420, 450 (1961).[8] Therefore, in order to embrace and effectuate the promotion of "a common day of rest and recreation," the Rhode Island Legislature enacted § 25-3-3, entitled Work on

[8] Sunday restrictions were first called "blue laws" during the colonial period. Lesley Lawrence-Hammer, *Red, White, but Mostly Blue: The Validity of Modern Sunday Closing Laws* (citing *Under the Establishment Clause*, 60 Vand. L. Rev. 1273, 1306 (2007); David N. Laband & Deborah Hendry Heinbuch, *Blue Laws: The History, Economics, and Politics of Sunday-Closing Laws* 8 (1987)). Rhode Island's "blue laws" were designed to promote a common day of rest and recreation for Rhode Island citizens by discouraging employers from requiring employment on Sundays and holidays. *See Ramirez v. R.I. Dep't of Labor and Training*, 2014 WL 4412618 at *6-7 (R.I. Super. Sept. 3, 2014).

Holidays and Sundays. *City of Warwick v. Almac's, Inc.*, 442 A.2d 1265, 1270 (R.I. 1982); *see Ramirez*, 2014 WL 4412618 at *3 (stating that the purpose of § 25-3-3 is "to preserve the health, safety and welfare of [Rhode Island] citizens") (citing Dilloff, *Never on Sunday: The Blue Laws Controversy*, 39 Md. L. Rev. 679 (1980)); *see also* Opinion Letter of the Rhode Island Office of the Attorney General, 1984 WL 62942 (R.I.A.G.) (recognizing that Rhode Island's Sunday closing law, § 25-3-3, was enacted to preserve the health, safety, and welfare of citizens). To accomplish this purpose, § 25-3-3 encourages businesses to remain closed on Sundays and holidays by forcing employers to compensate their employees with premium pay for work performed on those days. *See Almac's*, 442 A.2d 1265; *see also* §§ 25-3-3(a), 25-3-3(a)(1). The statute does not offer employers any sort of recourse, and, in fact, further provides that an employee cannot be discharged, or otherwise penalized, for refusing to work on Sundays or holidays. *See* § 25-3-3(a)(1).

Here, § 25-3-3's clear and unambiguous statutory purpose is to promote a common day of rest and recreation by regulating the workforce and incentivizing businesses to remain closed on Sundays and holidays. *See Almac's*, 442 A.2d at 1270. Specifically, § 25-3-3 forces employers to pay a penalty if they choose to remain open on Sundays and holidays, by requiring them to compensate employees with premium pay for the hours worked on such days. *See* § 25-3-3. In dictating how employers can employ workers, § 25-3-3 attempts to regulate the work force on Sundays and holidays, which undoubtedly affects the competitive market force of airlines. *See Almac's*, 442 A.2d at 1270; *see also Tobin*, 775 F.3d 448 (ex-

plaining that a state statute that tries to substitute its own policies regarding the market place will be preempted by the ADA in light of the protection provided by its preemption clause). As the United States Supreme Court has made clear, a state law is preempted by the ADA when it directly substitutes the state's own policies for competitive market forces. *Tobin*, 775 F.3d at 455. That effect is no different if the state law provides an incentive to employers, a penalty, or an absolute prohibition. *See Tobin*, 775 F.3d 448. On this basis alone, this Court finds that § 25-3-3 is preempted by the ADA and cannot be applied to air carriers like Delta. Furthermore, given the expansive interpretation of the ADA, the logical effects of § 25-3-3 would affect Delta's rates, routes, and services, as well as other air carriers servicing RIAC. *See DiFiore v. Am. Airlines*, 646 F.3d 81, 88 (1st Cir. 2011) (considering the implementation of a local statute on the industry as a whole, not just on the individual defendant). For instance, requiring Rhode Island air carriers to comply with § 25-3-3's premium pay provision would have a direct influence on their decision-making process regarding discretionary services, customer interaction, and staffing. *See* Tr. at 30-31; *see also Morales*, 504 U.S. at 384. As a consequence, § 25-3-3 has a direct impact on, and therefore relates to, the rates, routes, and services of Delta. *See Morales*, 504 U.S. at 385-86 (stating that a state law will be found to relate to the services of any air carrier if the law has any connection or reference thereto, whether that connection be direct or indirect).

Consequently, in order to ensure that § 25-3-3 does not unravel Congress' purposeful deregulation of the airline industry, the statute must be found to

be preempted by the ADA. *See Coakley*, 769 F.3d at 21-22 (to ensure that states do not unravel Congress' purposeful deregulation in the airline industry, state statutes that relate to the routes, rates, or services of airlines are preempted by the ADA). Accordingly, the Court finds that the DLT's Decision is not controlled by error of law because, as a matter of law, § 25-3-3 is preempted by the ADA. *See* § 42-35-15(g); *see also State, Dep't of Envtl. Mgmt.*, 799 A.2d 274.

B

Substantial Impact on Rates, Routes, or Services

Even assuming, *arguendo*, that § 25-3-3 is a wage law that solely dictates how much money employers are required to pay employees, the statute would still be preempted by the ADA if it has a substantial impact on the rates, routes, or services of the airline industry.

In their brief, the Plaintiffs seemingly contend that the DLT's Decision is clearly erroneous because the record is devoid of competent evidence demonstrating that § 25-3-3's premium pay requirement has a substantial impact on Delta's rates, routes, or services. The Plaintiffs state that in order to be entitled to ADA preemption, Delta had to prove that the increased costs required by § 25-3-3 has, or will have, a substantial impact on its rates, routes, and services—a burden which the Plaintiffs assert Delta failed to meet. In order to meet this burden, the Plaintiffs claim that Delta had to offer far more supporting facts and evidence than merely pointing to the potential increased labor costs that § 25-3-3 would impose. The Plaintiffs claim that Delta could

have demonstrated this supposed impact by providing adequate and specific facts showing the actual amount that § 25-3-3 would have on Delta's costs. Instead of doing so, the Plaintiffs submit that Delta tried to invoke preemption on its "own say so" by simply presenting witnesses to testify that § 25-3-3 may lead to increased costs. The Plaintiffs assert that Delta's attempt ultimately failed because its witnesses were not experts; did not point to exact, conclusive evidence of the potential cost impact; did not have firsthand knowledge of the potential impact; and, ultimately, made broad, generalized conclusions based on their opinions. The Plaintiffs further contend that, although the Hearing Officer found Mr. Fredericks and Ms. LaPlante's testimony to be credible, credibility does not substitute for the substantial evidence that was required for the DLT to come to its Decision. Finally, although the Plaintiffs acknowledge that a statute's potential impact on a carrier's costs may, at some point, be sufficient to trigger preemption, without the requisite underlying facts or data, there is no support for such a conclusion here. As a result, the Plaintiffs insist that the DLT's Decision is clearly erroneous as the record is devoid of substantial, reliable, and probative evidence demonstrating the impact that § 25-3-3 would have on Delta's rates, routes, and services.

Conversely, Delta responds by claiming that the record reflects that it did, in fact, produce ample, credible evidence to demonstrate that compliance, even with just the premium pay provision of § 25-3-3, logically relates to, and has a substantial impact on, Delta's services. Delta contends that empirical or quantifying evidence is not needed in order to determine whether a law, rule, or regulation is related

to the rates, routes, and services of an airline, but instead, the reviewing court need only look at the logical effects that a statute would have on the rates, routes, or services of air carriers. Delta further asserts that such analysis "cannot be applied on a piecemeal basis" to some, based on the potential effects on those specific employers, but not to others, but must be "preempted as to all carriers or to none." Consequently, Delta claims that this Court may not "engage in a case by case analysis" of each individual airline and the specific effect that § 25-3-3 would have on its operations, but instead, must ask whether compliance with § 25-3-3 would logically affect the rates, routes, or services of any airline carrier. Delta further argues that the record provides an abundance of legally competent evidence demonstrating the resulting impact. In particular, Delta asserts that both Mr. Fredericks and Ms. LaPlante testified that Sundays and holidays are some of the busiest times for airports, and maintaining adequate levels of employees on these days is necessary to ensure competitiveness in the marketplace. Delta further argues that the testimony of Mr. Fredericks and Ms. LaPlante demonstrates that Delta would be motivated to change its staffing decisions and, as a result, alter the customer service it provides to passengers at TF Green as a direct result of compliance with § 25-3-3. Delta explains that the record additionally shows that the premium pay requirement could motivate Delta to utilize less staff on Sundays or altogether cease operating on Sundays—"exactly the result that the statute envisions." As a result, Delta asserts that since reducing staffing would logically affect its routes and services, the DLT properly found that the ADA preempts the application of § 25-

3-3. Delta concludes that the DLT's Decision was based on witness testimony and the evidence before it, which must be entitled deference and may not be overturned by this Court unless clearly erroneous.

Here, the DLT accepted Mr. Fredericks and Ms. LaPlante's predictions regarding the effects that § 25-3-3 would have on Delta's rates, routes, and services as credible, and favorably noted their demeanor and forthright answers. The DLT further explained that Ms. LaPlante's testimony—which indicated that an increase in employees' wages would, in fact, affect Delta's services—was both "persuasive" and from "a unique perspective." *Id.* In addition, the DLT noted that although Mr. Fredericks' testimony was not particular to Delta, it was "credible as pertaining to air carriers and supportive of the points made by Ms. LaPlante." *Id.* In deciding issues of fact, the Court may not weigh the evidence of the administrative record, pass upon the credibility of witnesses, or substitute its findings of fact for those made by the DLT. *See E. Grossman & Sons, Inc.*, 118 R.I. at 285, 373 A.2d at 501. Rather, the Court's review is limited "to an examination of the certified record" in order to ascertain whether the DLT's Decision is supported by substantial evidence. *See Ctr. for Behavioral Health, R.I., Inc.*, 710 A.2d at 684. The record shows that Mr. Fredericks had personal knowledge regarding the factors involved in attracting and maintaining air carrier services in Rhode Island and explained that the two main considerations are cost and demand. Tr. at 22-23, 24, 37, 40-45. Mr. Fredericks further emphasized that Sundays and holidays are important days for RIAC and claimed that a statute which allows employees to either refuse to work on Sundays and holidays or receive

premium pay, could significantly impact the air carriers servicing RIAC. Tr. at 30-33. Mr. Fredericks also asserted that additional labor costs in Rhode Island would make RIAC less competitive in the market for air services. Tr. at 25-26. Specifically, Mr. Fredericks testified that increased labor costs "could lead to reduction in service from a flight frequency opportunity," and could "diminish[] [RIAC's] competitive advantage." Tr. at 31. The record demonstrates that, similarly, Ms. LaPlante had personal, more specific, knowledge regarding Delta's day-to-day operations at TF Green. Tr. at 49-50. Similar to Mr. Fredericks, Ms. LaPlante claimed that Sundays and holidays are extremely important to Delta. Tr. at 53. Ms. LaPlante asserted that— as someone who is responsible for allocating money for employee salaries—if Delta is required to provide premium pay to its Rhode Island employees for the hours worked on Sundays and holidays, that requirement could impact the services that Delta provides on such days. Tr. at 57, 61-63, 64. Ms. LaPlante also stated that the increased costs might cause Delta to reduce staff on Sundays and holidays and, as a result, become less competitive. Tr. at 63-64.

Based on the record before it, the Court finds that the DLT's Decision is not clearly erroneous, but is supported by adequate and legally competent evidence. Accordingly, the Court affirms the DLT's Decision. *See Ctr. for Behavioral Health, R.I., Inc.*, 710 A.2d at 684.

IV

Conclusion

After review of the entire record, this Court finds

that the DLT's Decision was neither affected by error of law nor clearly erroneous. *See* § 42-35-15(g)(4) and (5). The Plaintiffs' substantial rights were not prejudiced. Accordingly, the Court affirms the DLT's Decision.

Counsel shall submit the appropriate judgment for entry.

APPENDIX C

Superior Court of Rhode Island
Providence County

Kelvin RAMIREZ,
v.
RHODE ISLAND DEPARTMENT OF LABOR AND TRAINING.

No. PC20123071.
September 3, 2014.

Decision

MCGUIRL, J. Before this Court are six consolidated appeals from decisions of the Rhode Island Department of Labor and Training[1] (DLT), in which the DLT issued decisions determining that the Director of the DLT could not exercise jurisdiction over the disputes due to federal preemption under the Airline Deregulation Act of 1978 (ADA). 49 U.S.C. app. §§ 1301, *et seq*. Jurisdiction is pursuant to G.L. 1956 § 42-35-15. For the reasons set forth in this Decision, this Court reverses the decisions of the DLT and remands them to the DLT for findings of fact.

I

Facts and Travel

The Petitioners in this matter were employees of Delta Airlines, Inc. (Delta), at Delta's facility at the

[1] Plaintiffs filed a motion to consolidate on September 18, 2012 and Defendant did not object. Thereafter, Judge Matos granted Plaintiffs' motion to consolidate matters PC-2012-3071, PC-2012-3072, PC-2012-3073, PC-2012-3074, PC-2012-3075, and PC-2012-3076.

T.F. Green Airport in Warwick, Rhode Island. The Petitioners filed Complaints with the DLT between September 6 and September 13, 2011, alleging that Delta had violated the provisions of G.L. 1956 § 25-3-3, "Work on Sundays or holidays." Specifically, the Petitioners assert that Delta violated § 25-3-3 by failing to pay Petitioners one and one-half times their normal rate of pay for work performed on Sundays and holidays.

The DLT held a hearing on these matters before Hearing Officer Ellen McQueeney Lally (Hearing Officer) on May 9, 2012. During that hearing, Delta asserted that all complaints should be dismissed because § 25-3-3 was preempted by the ADA, 49 U.S.C. § 40101(a)(12).[2] On May 18, 2012, the Hearing Officer issued decisions for each Petitioner's claim.[3] The Hearing Officer, DLT Director's designee, declared that § 25-3-3 could not be applied against Delta. (Hearing Officer's Decision at 3.) Specifically, the Hearing Officer explained that the wages of airline employees are related to prices, routes, and services within the meaning of the ADA. *Id.* Accordingly, the Hearing Officer held that the DLT was "preempted from enforcing wage laws for airline employees" and that the DLT had no jurisdiction to adjudicate the Petitioners' claims. *Id.*

Thereafter, Petitioners filed timely appeals pur-

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[2] At the hearing, the Hearing Officer addressed the Petitioners and stated that "[Delta's Counsel] [had] submitted to the DLT, a letter along with some case law alleging or indicating that he believes that this matter is something that state law cannot impact." (Hr'g Tr. at 3.)

[3] The DLT issued six separate decisions; however, the decisions were indistinguishable in substance—the only difference being the date that each complaint was originally filed.

suant to § 42-35-15. The Petitioners moved to consolidate their appeals into one action because each case presented identical legal issues. *See* Super. R. Civ. P. 7(b)(3)(ii). The DLT and Delta did not object to consolidation, and the motion was granted by this Court on or about October 3, 2012. The parties submitted memoranda. Following a chamber pretrial conference on July 30, 2013, this Court requested briefing from both parties regarding Petitioners' demand that the Court disregard an Affidavit submitted by Delta as an exhibit to its Memorandum of Law filed February 25, 2013.[4] Thereafter, Delta requested that this Court allow it to withdraw the Affidavit as an exhibit on August 7, 2013. The Petitioners filed a response to Delta's Motion to Withdraw Exhibit on August 16, 2013.[5]

II

Standard of Review

This Court's review on appeal from a decision of an administrative agency is governed by the Rhode Island Administrative Procedure Act, §§ 42-35-1, *et seq*. *See Rossi v. Employees' Retirement Sys. of R.I.*, 895 A.2d 106, 109 (R.I. 2006). This Court may reverse, modify, or remand an agency's decision if "substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

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[4] Affiant is Vincent Joshua Maxwell, the Airport Customer Service Time and Attendance Manager for Delta.

[5] Substantively, Petitioners assert that this Court cannot consider the Affidavit because the Affidavit was not submitted at the hearing before the DLT, was not part of the certified administrative record, and constitutes inadmissible hearsay.

"(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 or 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." Sec. § 42-35-15(g).

This Court's review of an agency decision is, in essence, "an extension of the administrative process." *R.I. Pub. Telecomms. Auth. v. R.I. State Labor Relations Bd.*, 650 A.2d 479, 484 (R.I. 1994).

In reviewing an agency decision, this Court "shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Sec. 42-35-15(g). This Court will defer to an agency's factual determinations so long as they are supported by legally competent evidence. *Town of Burrillville v. R.I. State Labor Relations Bd.*, 921 A.2d 113, 118 (R.I. 2007). Our Supreme Court has defined legally competent evidence as "some or any evidence supporting the agency's findings." *Auto Body Ass'n of R.I. v. State of R.I. Dep't of Bus. Regulation*, 996 A.2d 91, 95 (R.I. 2010) (citation omitted). "[I]f 'competent evidence exists in the record, [this] Court is required to uphold the agency's conclusions.'" *Auto Body Ass'n*, 996 A.2d at 95 (quoting *R.I. Pub. Telecomms. Auth.*, 650 A.2d at 485).

However, a judicial officer may reverse such find-

ings in instances wherein the conclusions and the findings of fact are "totally devoid of competent evidentiary support in the record," *Milardo v. Coastal Res. Mgmt. Council*, 434 A.2d 266, 272 (R.I. 1981), or from the reasonable inferences that might be drawn from such evidence. *Guarino v. Dep't of Soc. Welfare*, 122 R.I. 583, 588–89, 410 A.2d 425, 428 (1980). "An administrative decision which fails to include findings of fact required by statute cannot be upheld. *Sakonnet Rogers, Inc. v. Coastal Res. Mgmt. Council*, 536 A.2d 893 (1988). A Superior Court justice has some discretion in fashioning a remedy when hearing an appeal from agency decision. *Birchwood Realty, Inc. v. Grant*, 627 A.2d 827 (1993). A reviewing court will neither search record for supporting evidence nor will it decide for itself what is proper in the circumstances, but will either order hearing de novo or remand in order to afford agency an opportunity to clarify and complete its decision. *Hooper v. Goldstein*, 104 R.I. 32, 241 A.2d 809 (1968). Under the Administrative Procedure Act, the Superior Court has authority to remand for taking of further evidence. *Lemoine v. Dep't of Mental Health, Retardation and Hospitals*, 113 R.I. 285, 320 A.2d 611 (1974).

In contrast to its review of findings of facts, this Court reviews agency determinations of law *de novo*. *Arnold v. R.I. Dep't of Labor and Training Bd. of Review*, 822 A.2d 164, 167 (R.I. 2003). In general, this Court will accord deference to an agency's interpretation of '"a statute whose administration and enforcement have been entrusted to the agency."' *Town of Richmond v. R.I. Dep't of Envtl. Mgmt.*, 941 A.2d 151, 157 (R.I. 2008) (quoting *Murray v. McWalters*, 868 A.2d 659, 662 (R.I. 2005)). However, "[d]eference

is not owed when the agency has completely failed to address some factor [,] consideration of which[,] was essential to [making an] informed decision." *See Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.,* 422 F.3d 782, 798 (9th Cir. 2005).

III

Background of § 25-3-3

Section 25-3-3, like other Sunday closing laws[6], was enacted pursuant to the "police power to preserve the health, safety and welfare of its citizens." Dilloff, *Never on Sunday: The Blue Laws Controversy*, 39 Md. L. Rev. 679 (1980).[7] In *City of Warwick v. Almacs*, 442 A.2d 1265, 1270 (R.I. 1982), the Rhode Island Supreme Court concluded that "the clear objective of Rhode Island's closing law is to promote a common day of rest and recreation." This decision embraces the United States Supreme Court's view that Sunday closing laws serve clearly secular purposes: "set[ting] one day apart from all others as a day of rest, repose, recreation and tranquility—a day which all members of the family and community have the opportunity to spend and enjoy together." *McGowan v. Maryland*, 366 U.S. 420 (1961). The

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[6] Sunday restrictions were first called "blue laws" during the colonial period. Lesley Lawrence-Hammer, *Red, White, but Mostly Blue: The Validity of Modern Sunday Closing Laws* (citing *Under the Establishment Clause*, 60 Vand. L. Rev. 1273, 1306 (2007); David N. Laband & Deborah Hendry Heinbuch, *Blue Laws: The History, Economics, and Politics of Sunday-Closing Laws* 8 (1987)).

[7] "These statutes are an ancient institution in American law … [;] [however,] they are embattled by widespread efforts to repeal or invalidate them or to avoid their application, often initiated by large retail corporations." 10 ALR 4th 246 (originally published in 1981).

Rhode Island legislature effectuated this purpose, in part, by drafting § 25-3-3(a)[8], which requires employers to pay their employees at least one and one-half times their normal rate of pay for work conducted on Sundays and holidays. The legislature further realized their goal of promoting a common day of rest and recreation by drafting and passing § 25-3-3(a)(1)[9], which provides that an employee cannot be discharged or otherwise penalized for refusing to work on Sundays or holidays enumerated within Chapter 25.[10]

IV

DLT's Decisions

In 1978, Congress enacted the ADA. 49 U.S.C. app. §§ 1302(a)(4), 1302(a)(9). The ADA essentially deregulated domestic air transport in order "[t]o ensure that the States would not undo federal deregulation with regulations of their own." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992). In addition, the ADA included a preemption clause which read in relevant part: "[N]o State … shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier

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[8] "Work performed by employees on Sundays and holidays must be paid for at least one and one-half (1 1/2) times the normal rate of pay for the work performed ...." Sec. 25-3-3(a).

[9] "… [I]t is not grounds for discharge or other penalty upon any employee for refusing to work upon any Sunday or holiday enumerated in this chapter… ." Sec. 25-3-3(a)(1).

[10] Holidays include Sunday, New Year's Day, Dr. Martin Luther King, Jr.'s Birthday, Memorial Day, Fourth of July, Victory Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving, and Christmas.

… .” 49 U.S.C. app. § 1305(a)(1). Reenacting Title 49 of the U.S. Code in 1994, Congress revised this clause to read: “[A] State … may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier ....” Sec. 41713(b)(1).[11] In the instant matter, the DLT found that the wages of airline employees were related to prices, routes, and services as contemplated by the language of the ADA. (Hearing Officer’s Decision at 3.) The Hearing Officer determined that it was unnecessary to take testimony or receive evidence because the issue was a question of law.[12] The DLT, therefore, declared that it was without jurisdiction to adjudicate the claims and dismissed each claim.

VI

Preemption

On appeal, Petitioners assert that the DLT’s decisions were affected by error of law. Specifically, the Petitioners maintain that the ADA does not preempt § 25-3-3. In response, Delta and the DLT aver that the Hearing Officer properly determined that § 25-3-3 is preempted by the ADA. The Hearing Officer’s decisions were based on the federal preemption doctrine.

The foundation of the federal preemption doctrine

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[11] Congress intended the revision to make no substantive change. Pub. L. No. 103-272, § 1(a), 108 Stat. 745.

[12] This Court must determine whether the instant matter involves a question of pure law or mixed questions of law and fact. Specifically, this Court must examine whether the record from the DLT’s May 9, 2012 hearing is sufficient to determine the issues presented by this controversy.

is Article VI, Clause 2 of the United States Constitution, the Supremacy Clause. *Verizon New England Inc. V. Rhode Island Pub. Utils. Comm'n*, 822 A.2d 187, 192 (R.I. 2003). Preemption means that "[w]here a state status conflicts with, or frustrates, federal law, the former must give way." *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 663 (1993) (citing U.S. CONST., art. VI, cl. 2; *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981)). There are three main categories of federal preemption. *Verizon New England Inc.*, 822 A.2d 187 at 192 (citing *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 95-96 (1983)). The first, "express preemption," exists when a federal statute "expressly provide[s] that it shall supersede related state law," and that the state law in question "falls within the class of law that Congress intended to preempt." *Id.* (citing *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 95-97 (1992)). The second, "conflict preemption," exists "when compliance with both federal and state regulations is a physical impossibility [and] when under the circumstances of a particular case, [the state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* (quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000) (internal quotations omitted)). The third, "field preemption," exists if Congress implemented a comprehensive regulatory framework, thereby indicating that its intention to reserve the area solely for federal control. *Id.* Field preemption renders any state regulation in that same field invalid. *Id.*

This Court finds that express preemption applies to these particular circumstances. To determine

whether the ADA expressly preempts § 25-3-3, the Court must ascertain whether the ADA "expressly provide[s] that it shall supersede related state law" in the first place. *Verizon New England Inc.*, 822 A.2d at 192. In preemption cases, courts "start with the assumption that the historic police powers of the States were not to be superseded" by a federal statute unless it was the "clear and manifest purpose of Congress" to do so. *California v. ARC Am. Corp.*, 490 U.S. 93, 101 (1989). The Court presumes that "Congress does not cavalierly pre-empt" state law, *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996), particularly when Congress passes a statute "in a field which the States have traditionally occupied." *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (internal quotations omitted)). "If the statute contains an express pre-emption clause, the task of statutory construction must in the first instance focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent." *CSX Transp., Inc.*, 507 U.S. at 664.

In 1978, Congress determined that "maximum reliance on competitive market forces" would best further "efficiency, innovation, and low prices" as well as "variety [and] quality … of air transportation services," and enacted the ADA. 49 U.S.C. app. §§ 1302(a)(4), 1302(a)(9). "To ensure that the States would not undo federal deregulation with regulation of their own, the ADA included a pre-emption provision, prohibiting the States from enforcing any law 'relating to rates, routes, or services' of any air carrier." *Morales*, 504 U.S. at 378-79 (citing 49 U.S.C. app. § 1305(a)(1)). Section 1305(a)(1) expressly preempts the States from "enact[ing] or enforce[ing]

any law, rule, regulation, standard, or other provision having force and effect of law relating to rates, routes, or services of any carrier ....” “For purposes of the present case[s], the key phrase, obviously, is ‘relating to.’” *Id.* at 383; *see* Black’s Law Dictionary 1158 (5th ed. 1979) (“[T]o stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with”). “The ordinary meaning of these words is a broad one … and the words thus express a broad pre-emptive purpose.” *See Morales*, 504 U.S. at 383-84; *see also Am. Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995); *Rowe v. New Hampshire Motor Transport Ass’n*, 552 U.S. 364 (2008).

In *Morales*, the United States Supreme Court likened the language of § 1305(a)(1)’s express preemption clause to a similar express preemption provision contained in the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1144(a), which preempts all state laws “insofar as they … *relate to* any employee benefit plan.” 504 U.S. at 384.[13] (Emphasis added.) For example, the United State Supreme Court held that the “breadth of [ERISA’s express preemption clause’s] reach is apparent from [its] language.” *See id.* at 384 (quoting *Shaw*, 463 U.S. at 95-96); *see also Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739 (1985) (commenting on the “broad scope” of ERISA’s express preemption provision); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47 (1987) (finding that the language of

[13] In the FAAA Act’s legislative history, Congress endorsed the “broad preemption interpretation” adopted by the Court in *Morales*. *See* H.R. Conf. Rep. 103-677, at 83 (1994), reprinted in 1994 U.S.C.C.A.N. at 1755.

ERISA's express preemption clause gives the clause an "expansive sweep" and was "deliberately expansive"). Accordingly, the United State Supreme Court adopted an expansive interpretation of the ADA's express preemption clause because the relevant language of ERISA's express preemption clause was identical: "[S]tate enforcement actions having a connection or reference to airline 'rates, routes, or services' are pre-empted under 49 U.S.C. app. § 1305(a)(1)." *Morales*, 504 U.S. at 384. Specifically, the Court held that a state law may "relate to the ADA, and therefore run afoul of the ADA's preemption clause, even though such law has only an indirect effect on the rates, routes, or services of an air carrier." *See id.* at 385-86. However, the Court acknowledged that some state action that may affect an air carrier's fares is "too tenuous, remote, or peripheral a manner" to have preemptive effect. *Id.* at 390. Moreover, *Morales*, "express[ed] no views about where it would be appropriate to draw the line." *Id.*

The United States Supreme Court revisited the issue of where to draw the line in interpreting the ADA's preemptive scope in *Wolens*. The majority held that state action was preempted to the extent that it imposed its substantive standards on the prices, routes, or services of an air carrier and rejected an interpretation of the ADA's preemption language, limiting preemption to state enactments focusing solely on airlines. *Wolens*, 513 U.S. at 227-232; *see also Morales*, 504 U.S. at 386; *Rowe*, 552 U.S. at 373-76 (rejecting confining preemption to state laws that are aimed at economic regulation as opposed to other state interests). The state laws preempted in *Morales*, *Wolens*, and *Rowe* involved, respectively, deceptive advertising, alleged consumer

abuse, and protection of health. Specifically, "[t]he state regimes at issue in *Morales* and *Wolens*, although based on generally applicable statutes, involved detailed guidelines crafted by state authorities directed against airlines; the statute in *Rowe* directly targeted carriers." *DiFiore v. Am. Airlines, Inc.*, 646 F.3d 81, 87 (2011).

With respect to a wage-related state law facing preemption by the ADA, the First Circuit held that the ADA preempted a Massachusetts tips law, which set forth that no employer or other person shall demand or accept from any service employee any payment or deduction from a tip or service charge given to such service employee by a patron. *DiFiore*, 646 F.3d at 87; 49 U.S.C.A. § 41713(b)(1); M.G.L.A. ch. 149, § 152A(b)(f). In doing so, the Court explained that the State law directly "related to" how airline services were performed because it attempted to prohibit airlines from instituting a two dollar service charge for bags checked at the airport's curb. However, the First Circuit also referred to a case "declining to preempt [a] state prevailing wage law." *Id.* (citing *Californians for Safe and Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1189 (9th Cir. 1998), *cert. denied*, 526 U.S. 1060 (1999)) (holding that California's Prevailing Wage Law (CPWL) was not "related to" motor carrier enterprises' prices, routes, and services within meaning of preemption clause of Federal Aviation Administration Authorization Act, and thus the prevailing wage law was not preempted). The First Circuit stated that "the Supreme Court would be unlikely—with some possible qualifications—to free airlines … from prevailing wage laws ...." *DiFiore*, 646 F.3d at 87. However, "such measures must impact airline opera-

tions—and so, indirectly, may affect fares and services." *Id.*

The tips law can be distinguished from the prevailing wage laws because "the tips law does more than simply regulate the employment relationship … [;] the tips law had a *direct connection* to air carrier prices and services and can fairly be said to regulate both." *Id.* Specifically, "the airline's 'price' includes charges for such ancillary services as well as the flight itself." *Id.* For example, "[t]o avoid having a state law deem the curbside check-in fee a 'service charge' would require changes in the way the service is provided or advertised." *Id.* at 88. However, the court did not find that state regulation is preempted wherever it imposes costs on airlines and therefore affects fares because costs "must be made up elsewhere, *i.e.*, other prices raised or charges imposed." *Id.* at 89.

In particular, 49 U.S.C.A. § 41713(b)(1), in pertinent part, provides that "a State … may not enact or enforce a law, regulation, or other provision having the force and effect of law *related to a price, route, or service* of an air carrier ...." (Emphasis added.). However, the ADA does not preempt any state regulation that affects fares, regardless of the remoteness of the state regulation to the transportation functions protected by the ADA. *See Thompson v. U.S. Airways, Inc.*, 717 F. Supp. 2d 468, 477-79 (E.D. Pa. 2010) (the ADA does not preempt all state employment claims against airlines).[14]

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[14] In *Abdu-Brisson v. Delta Airlines, Inc.*, 128 F.3d 77, 85 (2d Cir. 1997), Delta argued that the ADA preempted plaintiffs' claims because "there [was] a direct relationship between the relief sought and Delta's prices." The Court discussed that air

Whether a law is related to prices, routes, or services includes questions of fact; namely, the degree to which wages relate to an air carrier's prices, routes, and services. In reviewing the administrative record, however, this Court finds no determination was made as to what effect enforcing § 25-3-3(a) would have on Delta's prices or how implementing § 25-3-3(a) relates to an air carrier's ability to control its prices, routes, and services. *See Sakonnet Rogers, Inc.*, 536 A.2d at 896 (an administrative decision that fails to include findings of fact required by statute cannot be upheld). Here, the Hearing Officer viewed the question of preemption to be a question of pure law. (Hr'g Tr. at 3); (Hearing Officer's Decision at 3.) However, to ascertain whether or not § 25-3-3(a) is preempted by the ADA, the Hearing Officer would have had to adduce some evidence that Delta employees' wages were related to Delta's rates, routes, or services. *See Hooper*, 104 R.I. at 44-45, 241 A.2d at 815-16 (holding that a Rhode Island court will not search the record for supporting evidence or decide for itself what is proper, but instead either

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carriers are not sensitive to ordinary pricing structures; rather than being propelled by cost-plus bases, air transportation prices are pushed principally by "yield management systems." *Id.* "Yield management systems are designed to schedule flights at the maximum capacity possible." Aubrey B. Colvard, *Trying to Squeeze into the Middle Seat: Application of the Airline Deregulation Act's Preemption Provision to Internet Travel Agencies*, 75 J. Air L. & Com. 705, 725 (2010). Essentially, a yield management system is a unique formula that is mainly controlled by forces of demand and competition, rather than costs. *See id.* "Thus, because air carrier prices are not driven by common cost bases, things that may appear to affect air carrier prices for the purpose of ADA preemption may in fact only have an insignificant effect." *Id.*

order a hearing de novo or remand in order to afford the board an opportunity to clarify or complete its decision).

The Hearing Officer's decisions effectively found that every state statute that can be tied to an air carrier's prices, routes, or services through the use of logic is preempted. *See* Hearing Officer's Decision at 3 ("[t]hese cases convince me that the wages of airline employees come within the sweep of the 'related to price, route, or service of an air carrier' language of the ADA"). However, the United States Supreme Court has never explicitly held that a state's employee compensation statute is preempted by the ADA. *See Gennell v. FedEx Ground Package Sys., Inc.*, 05-CV-145-PB, 2013 WL 4854362 (D.N.H. Sept. 10, 2013). More recent decisions from the Massachusetts Federal District Court have "expressed skepticism at preemption claims that seek to invalidate … [state] wage and hour laws." *Massachusetts Delivery Ass'n v. Coakley*, CIV-A 10-11521-DJC, 2013 WL 5441726 (D. Mass. Sept. 26, 2013) (citing *Martins v. 3PD, Inc.*, No. 11–11313, 2013 WL 1320454, at 12 (D. Mass. Apr. 4, 2013)); *see also Schwann v. FedEx Ground Package Sys., Inc.*, CIV-A 11-11094-RGS, 2013 WL 3353776 (D. Mass. July 3, 2013) (stating that wage laws may affect price, routes, and services, but that their effect is too "remote").

The indirect economic impact of a state law of general applicability is exactly the tenuous cause-and-effect relationship that the First Circuit held would not trigger preemption. *See DiFiore*, 646 F.3d at 87. This Court agrees that such a categorical approach is inappropriate and that Delta has failed to demonstrate the effect of § 25-3-3(a) on its prices, routes, or services. *See Schwann*, 2013 WL 3353776,

at *4; *see also McGuire v. Reilly*, 386 F.3d 45, 57 (1st Cir. 2004) (discussing standard for facial invalidity). The ADA's preemption provision does not have "infinite reach." *Martins*, 2013 WL1320454, at *12. That a regulation on wages has the potential to impact costs and therefore prices is insufficient to implicate preemption. *See DiFiore*, 646 F.3d at 89; *see also S.C. Johnson & Son, Inc. v. Transp. Corp. of Am., Inc.*, 697 F.3d 544, 559 (7th Cir. 2012) ("It is important in this connection to consider whether enforcement of a state law has a generalized effect on transactions in the economy as a whole, or if it affects only particular arrangements."). Those courts that have found that the ADA preempts state and local regulation of the employment relationship have done so on an "as-applied" basis. *See, e.g., Sanchez*, 2013 WL 1395733, at *13 (considering statute's effect on defendant in isolation).

The Petitioners, Delta, and the DLT heavily rely on *DiFiore*. However, unlike the Massachusetts tips law that was at issue in *DiFiore*, the "Work on Sundays and holidays" statute, in relevant part § 25-3-3(a), a direct connection to Delta's prices, routes, or services has not been shown by Delta. Delta produced no evidence to establish the required relationship between its prices, routes, or services and the Plaintiffs' claims. Thus, the Hearing Officer needed to hear, review, and weigh evidence that Plaintiffs' claims have a sufficient connection to its prices, routes, or services to warrant their preemption.

With respect to the effect an employees' right to refuse work on Sundays and holidays would have on Delta's ability to control its prices, routes, and services, Petitioners' have asked this Court to disregard an Affidavit submitted by Delta. (Delta's Aff.). Delta

requested that this Court allow it to withdraw the Affidavit as an exhibit on August 7, 2013. Petitioners filed a response to Delta's motion to withdraw on August 16, 2013, asserting that this Court could not consider the material because the Affidavit was not submitted at the hearing before the DLT, was not part of the certified administrative record, and constitutes inadmissible hearsay.[15]

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[15] Section 42-35-15, in pertinent part, provides that review is limited to the record before the agency. However, § 42-35-15 provides two instances when the review may include evidence not in the record. Section (e) of said provision notes that:

(e) If, before the date set for the hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

Section (f) of § 42-35-15 permits:

[i]n cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

Also, under the Federal Administrative Procedures Act (APA), other courts have allowed supplementation of the record where there is a failure to explain administrative action. *See Sierra Club v. Marsh*, 976 F.2d 763, 772 (1st Cir. 1992) (citation omitted). Thus, though § 42-35-15 states that this Court's review of an administrative decision is "confined to the record" — *see Nickerson v. Reitsma*, 853 A.2d 1202, 1206 (R.I. 2004) (trial justice exceeded his authority under the APA by considering evidence outside the certified agency record including testimony about events that took place after the administrative hearing)—this rule is not an absolute bar on this Court's ability to take notice of certain relevant materials. *But see* 73A C.J.S.

Delta's Affidavit is immaterial to the present controversy. The instant case does not involve Delta employees' right to refuse work on Sundays and holidays, but whether Delta employees are entitled to receive time-and-one-half rate of pay for Sunday and holiday work. The Affidavit at issue concerns the negative consequences that Delta would experience as a result of its employees being able to refuse work on Sundays and holidays. It does not provide this Court with any facts relevant to the effect a wage increase for Delta employees on Sundays and holidays would have on Delta's "price[s], route[s], or service [s]." *See* 49 U.S.C.A. § 41713.

Here, whether the wage of an employee is related to an air carrier's prices, routes, and services is at issue. The establishment of such a connection includes questions of fact. *See Le Blanc v. Balon*, 104 R.I. 517, 247 A.2d 92, 93 (1968) (finding in the context of a workmen's compensation case that the determination of who is a motor vehicle "helper" within the meaning of the Fair Labor Standards Act is a question of fact). For example, in making her decision, the Hearing Officer stated, "[t]hese cases convince me that the wages of airline employees come within the sweep of the 'related to a price, route or service of an air carrier' language of the ADA." (Hearing Officer's Decision at 3.) The Hearing Officer's decision makes clear that she considered only relevant case law when she made her decision. *See Sakonnet Rogers, Inc.*, 536 A.2d at 893 (an adminis-

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Public Administrative Law And Procedure § 407 (2012) ("Usually, a court trying the issues de novo may receive and consider evidence other than that offered before the administrative body.").

trative decision which fails to include findings of fact required by statute cannot be upheld, § 42-35-15(g)(6)). Whether the wages of air carrier employees come "within the sweep" of the ADA must be measured, and that measurement must be based on facts within the record.

Our Supreme Court has stated that "[t]he underlying philosophy of the administrative process for settling disputes is to give finality to findings of fact made by administrative agencies, when such findings are supported by competent evidence and are procedurally proper." *Lemoine*, 113 R.I. at 291, 320 A.2d at 614. After reviewing the record, the Court finds that the Hearing Officer failed to sufficiently develop the administrative record on the relationship between wages and "rates, routes, and services." *See Cullen v. Town Council of Town of Lincoln*, 850 A.2d 900 (R.I. 2004) (if an agency fails to disclose the basic findings upon which its ultimate findings are premised, the court will neither search the record for supporting evidence nor will it decide for itself what is proper in the circumstances).

Therefore, this Court finds the Hearing Officer did not clearly develop the record on whether the wage of an employee is related to an air carrier's prices, routes, and services. The purpose of requiring sufficient findings of fact is to prevent reviewing courts from having to speculate as to the basis for the agency's conclusions. *See Autobody Ass'n*, 996 A.2d at 95; *see also Milardo*, 434 A.2d at 272. The deficiency in the administrative record warrants remand to the agency for development of the record pertaining to whether the effect of wages on "rates, routes, and services" is proximate or remote. *See Hooper*, 104 R.I. at 44-45, 241 A.2d at 815-16 (proper procedure is

for court to order a hearing de novo or remand in order to afford the administrative agency an opportunity to clarify or complete its decision). The question of law at issue in the instant matter cannot be reached without the Hearing Officer receiving testimony, affidavits, or some other admissible evidence that concerns the relatedness between an increase in wages and disruption of Delta's ability to control its "rates, routes, or services."

IX

Conclusion

After review of the entire record, this Court grants Delta's motion to withdraw its Affidavit and remands this matter to the Department of Labor and Training for a hearing on the issue of the effect of employee wages on Delta's rates, routes, and services. This Court will retain jurisdiction. Counsel shall submit the appropriate judgment for entry.

APPENDIX D

State of Rhode Island and Providence Plantations
Department of Labor and Training
Division of Labor Standards

Kathleen Brown
Robin Brindle
Sandra Carter
Kimberly Clayman
Marcie LaPorte
Kelvin Ramirez
a/k/a Kevin Ramirez

vs. LS# 11-396

Delta Airlines, Inc.

DECISION

These matters were originally heard on May 9, 2012 by the undersigned as the authorized representative of the Director of the Department of Labor and Training (DLT). The hearings were conducted in compliance with R.I.G.L. §28-14-19 as a result of claims filed by several petitioners, against Delta Airlines, Inc., (Delta) alleging failure to pay premium wages.

Decisions were rendered by the undersigned on May 18, 2012 stating that the state law the petitioners were proceeding under was preempted by the Airline Deregulation Act of 1978 (ADA) and DLT had no jurisdiction in the cases. Timely appeals were taken of those decisions to the Superior Court. The cases were consolidated in the Superior Court. A decision by Judge Susan McGuirl of the Rhode Island Superior Court was filed on September 3, 2014 remanding the matter back to the Department of La-

bor & Training for further hearing and findings of fact on the issue of the effect of employee wages on Delta's rates, routes or services. If the employee wages were related to Delta's rates, routes or services the preemption of the ADA be applicable.

Remand Hearing

The remand hearing was held on May 4, 2015. The petitioners were represented by Vicki J. Bejma, Esq. Delta Airlines was represented by Thomas R. Gonnella, Esq and Ira G. Rosenstein, Esq. Kelly Fredericks, President and CEO of the Rhode Island Airport Corporation, and Sandra LaPlante, station manager for Delta at TF Green Airport, testified on behalf of Delta.

Mr. Fredericks testified that he has held his current position for approximately two years. He testified he had experience in the aviation and transportation industry for 30 to 35 years including as a civil engineer and the chief operating officer of an international airport. He stated he oversaw a $2.5 million expansion at an international airport. Mr. Fredericks testified that eight airline carriers operate at TF Green Airport, Rhode Island's primary airport, and the airport services approximately 10,000 travelers per day.

Mr. Fredericks testified that attracting and maintaining air carrier services at Green is a critical component of his job. To aid him in this function he meets with the air carriers serving Green two times per year. Mr. Fredericks testified that the two main considerations of airlines when thinking of coming to Green or continuing there is demand and cost.

Mr. Fredericks was asked if additional labor cost in Rhode Island made the Rhode Island Airport Corporation less competitive in the market for air services. He answered affirmatively. Mr. Fredericks testified that Sundays and holidays are important days in the airline industry. He testified the airline industry operates 365 days per year, 24 hours per day and 7 days per week.

Under cross examination Mr. Fredericks acknowledged that a number of factors influence whether a carrier will locate in Rhode Island. He testified those factors include considerations such as airport location, lease terms, other transportation services, technology, regulatory climate, workforce skill set, tax breaks and local opposition to expansion.

Sandra LaPlante testified that she has been station manager for Delta for three years and worked for Delta for twenty years. She has held the positions of performance leader, customer service agent and reservation agent for Delta. As station manager she oversees the day to day operation, performs administrative work and leads a team of 25 employees.

Ms. LaPlante testified that Delta expects to deliver superior customer service to its customers and her job is to carry out customer service at Green Airport. She testified that service on Sunday and holidays is important to Delta because they operate seven days per week. She testified that currently Delta operates four to five flights on Sundays at Green. They have operated as many as 16 flights on Sundays. Ms. LaPlante testified that she is not involved in deciding how many flights fly. Corporate networking makes those decisions.

Ms. LaPlante described the process used by Delta to schedule employees at Green Airport. She testified that she reviews the schedule to ensure that minimum staff is available to operate flights. She determines that the counter is staffed, the gates are staffed and baggage service is staffed.

Ms. LaPlante testified that if Delta paid Sunday and holiday premium pay to its Rhode Island workers it could impact or modify services the airline provided on those days. She gave the example that a lobby agent is part of Delta's ticket counter services. If premium pay were required it could modify whether Delta had a lobby agent on schedule to service customers.

Ms. LaPlante testified that she receives a budget from corporate and a certain percentage of the budget is allocated for employees' salaries and benefits. She testified that if a cost was increased it would disturb the budget and could result in Delta staffing fewer employees or modifying services offered.

On cross examination Ms. LaPlante testified that corporate determines minimum staffing levels. She testified that they base it on analysis of the number of flights and passengers served. She testified that corporate sets the rates charged for flights, the routes flown and the services offered by Delta.

Two of the complainants, Kathleen Brown and Marcie LaPorte, testified. Ms. Brown submitted a document (Complainant's 2) that she prepared listing the Sundays and holidays worked by the individual complainants and their rates of pay. Ms. LaPorte testified that she regularly works on Sundays and that the flight volume on Sundays fluctuated depending on the time of year. She testified

that staffing levels fluctuate depending on flight volume.

Findings of Fact and Analysis

Ms. LaPlante testified that if Delta was required to pay premium pay on Sunday or holidays it could impact the level of services provided. She stated that Delta could decide not to have certain employees, who provided customer service, on the schedule for those days. She also testified that she receives a budget from corporate headquarters, with a certain amount dedicated to employee salaries and benefits. An increase in salaries would change the budget with the possibility that an adjustment in services or staffing would have to be made. I find this testimony to be persuasive. Her twenty years with Delta, in various positions, and particularly as a station manager overseeing customer service, gives her a unique perspective. I find her testimony indicates that an increase in employees' wages would affect Delta's services.

Mr. Fredericks testified about the factors that an air carrier looks at when determining whether to locate or continue at a particular airport. A number of factors were mentioned by Mr. Fredericks including cost. Although this information was not particular to Delta I find it credible as pertaining to air carriers and supportive of the point made by Ms. LaPlante.

The complainants argue that to determine if the Rhode Island premium pay law affects Delta's rates, routes or services quantitative information must be presented and Delta failed to do that. They further argue that Ms. LaPlante and Mr. Fredericks cannot provide the necessary information because each of

them lacks specific knowledge of how Delta sets its rates, routes and services. They argue Ms. LaPlante lacks the knowledge because these decisions are made above her level in the corporate structure and Mr. Fredericks lacks the knowledge because he is not employed by Delta nor involved in Delta's decisions.

I find the holding in *Massachusetts Delivery Association v. Coakley, 769 F.3d 11 (1st Cir. 2014)* allows for a determination even if quantitative information is not presented. "We have previously rejected the contention that empirical evidence is necessary to warrant FAAAA preemption, and allowed courts to "look to the logical effect that a particular scheme has on the delivery of services or the setting of rates." *N.H. Motor Transp. Ass'n v. Rowe, 448 F3d 66, 82 n.14.* Second, this logical effect can be sufficient even if indirect, as described above." *Coakley at 21.*

The claimants' attorney has provided a case decided August 20, 2015, by the Washington Supreme Court, *Filo Foods, LLC v. The City of Sea-Tac, 2015 WL 494396 (2015).* In that case the Court ruled on a number of issues including whether a city ordinance, setting a minimum wage, was preempted by the ADA from being applied to the SeaTac Airport. The Washington Court acknowledged that the United States Supreme Court has given a broad interpretation to preemption language. However, it found the ordinance (Proposition 1) was not preempted, … "because Proposition 1 regulates employer-employee relationships and its affect on airline prices and services is only indirect and tenuous." Id. at *16.

I find Filo Foods, LLC v. The City of Sea-Tac can be distinguished from the case under consideration. The Washington ordinance set a minimum wage of $15.00 per hour. There is no indication of the previous minimum wage. The present case deals with premium pay of time and one half on Sundays and holidays. Testimony in this case was presented that increased pay on Sundays and holidays could impact staffing which would impact the level of service. Based on that analysis I find that RIGL 25-3-3 is preempted from application at TF Green Airport by the ADA.

September 1, 2015 /s/ Mary Ellen McQueeney-Lally

Mary Ellen McQueeney-Lally
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APPENDIX E

State of Rhode Island and Providence Plantations
Department of Labor and Training
Division of Labor Standards

Kathleen Brown

vs. LS# 11-396

Delta Airlines, Inc.

DECISION

Pursuant to Chapter 14 of Title 28 of the Rhode Island General Laws, entitled "Payment of Wages," a hearing was conducted on May 9, 2012 by the undersigned, as the authorized representative of the Director of the Department of Labor and Training. The hearing was conducted in compliance with R.I.G.L. §28-14-19 as a result of a claim filed by the complainant, Kathleen Brown, against respondent, Delta Airlines, Inc.

The complainant filed a complaint with the Department's Division of Labor Standards on or about September 6, 2011 alleging non payment of premium pay for Sundays and holidays. Rhode Island's statutes on this issue are found in Rhode Island General Laws § 25-3-et seq. These statutes, with some exemptions, require that employers pay one and one-half (1 ½) times the normal rate of pay to employees who work on Sundays and holidays.

Complainant was one of twelve (12) Delta Airlines employees who filed similar complaints. Ten (10) of the employees who filed complaints appeared at the May 9, 2012 hearing. One (1) of the complaining em-

ployees did not appear at the hearing but submitted an affidavit with information relative to the hours she worked on Sundays and holidays.

Counsel for Delta Airlines, Inc., William O'Gara, objected to the jurisdiction of the Department of Labor & Training in this matter. He based his objection on the Airline Deregulation Act of 1978, 49 U.S.C.A. § 1301 et seq. He claimed the Act preempted states from enacting and enforcing wage laws for airline employees (letter dated November 16, 2011, copy enclosed).

ANALYSIS

The Airline Deregulation Act of 1978 (ADA) contains what is known as a preemption clause or provision. This preemption clause prohibits states from enacting or enforcing a law or regulation related to a price, route or service of an air carrier. The United States Supreme Court has interpreted this section of the Airline Deregulation Act in two cases, *Morales v. Transworld Airlines, Inc., 504 U.S. 374, 112 S. Ct. 2031, 119 L. Ed. 2d 157 (1992)* and, *American Airlines, Inc. v. Wolens, 513 U.S. 219, 115 S. Ct. 817, 130 L. Ed. 2d 715 (1995).* It has interpreted a similar preemption section found in the Federal Aviation Administration Authorization Act of 1994 in the case of *Rowe v. New Hampshire Motor Transport Ass'n, 552 U.S. 364, 128 S. Ct. 989, 169 L. Ed. 2d 953 (2008).* Additionally, the United States Court of Appeals for the First Circuit has rendered a recent decision on this issue, *DiFiore v. American Airlines, Inc., 646 F.3d 81 (1st Cir. 2011).*

The *Morales* case determined whether the ADA preempted states from prohibiting what they consid-

ered deceptive airline advertisements on fares. The National Association of Attorneys General had issue guidelines on the content and format of airline fare advertising. The United States Supreme Court found that this was impermissible under the preemption clause of the ADA. "All in all, the obligations imposed by the guidelines would have a significant impact upon the airlines' ability to market their product, and hence a significant impact upon the fares they charge." *Morales 504 U.S. at 390*. The impact that advertising had on fares charged made the guidelines a regulation that was related to a price, route or service of an air carrier and therefore impermissible.

At issue in *Wolens* was American Airline's frequent flyer program. Plaintiffs were participants of the program and complained that changes in the program instituted by American Airlines devalued frequent flyer credits that participants had already earned. Plaintiffs alleged the changes violated the Illinois Consumer Fraud and Deceptive Business Practices Act and was a breach of contract. The Supreme Court held that the preemption clause prohibited American Airlines from being sued under the Illinois Consumer Fraud Act. "... the Consumer Fraud Act serves as a means to guide and police the marketing practices of the airlines; the Act does not simply give effect to bargains offered by the airlines and accepted by the airline customers. In light of the full text of the preemption clause, and of the ADA's purpose to leave largely to the airlines themselves and not at all to States, the selection and design of marketing mechanisms appropriate to the furnishing of air transportation services, we conclude that § 1305(a)(1) preempts plaintiffs' claims under the Con-

sumer Fraud Act." *Wolens, 513 U.S. at 228*. The Court found that Plaintiffs could proceed in that case under a breach of contract theory. A breach of contract, however, has no application in the present matter.

In *Rowe* the United States Supreme Court held that preemption language found in the Federal Aviation Administration Authorization Act prohibited Maine from passing laws that regulated the delivery of tobacco to customers within the State.

In *DiFiore* American Airlines was sued by several of its employees. These employees, known as skycaps, provided curbside luggage service to passengers. In addition to being paid wages by American Airlines these skycaps collected tips from passengers for the baggage they handled. In 2005 American Airlines began charging passengers a $2 fee for each bag checked with the skycaps. Many passengers mistook this for a gratuity that was passed on to the skycaps and stopped tipping them. The skycaps sued American Airlines alleging the $2 fee violated a Massachusetts statute governing tips.

The First Circuit Court of Appeals found that the Massachusetts "tips law has a direct connection to air carrier prices and services and can fairly be said to regulate both." *DiFiore, 646 F.3d at 87*. The court held the preemption provision of the ADA did not allow the Massachusetts law to be applied to the skycaps.

These cases convince me that the wages of airline employees come within the seep of the "related to a price, route or service of an air carrier" language of the ADA. Consequently, I find the state of Rhode Island and the Department of Labor & Training is

preempted from enforcing wage laws for airline employees. Therefore, I have no jurisdiction to adjudicate this claim and I dismiss it.

May 18, 2012 /s/ Mary Ellen McQueeney-Lally

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