ROBBINSVILLE EDUCATION ASSOCIATION,	
Appellant,	**SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION**
	DKT. NO. A-000889-24
vs.	
	ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, COUNTY OF MERCER, CHANCERY DIVISION
ROBBINSVILLE TOWNSHIP BOARD OF EDUCATION,	
Respondent.	**SAT BELOW:**
	Hon. Patrick J. Bartels, P. J.Ch.
	Docket No. MER-C-28-24

BRIEF ON BEHALF OF THE APPELLANT, ROBBINSVILLE EDUCATION ASSOCIATION

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STATEMENT OF PROCEDURAL HISTORY

With the beginning of the 2022-2023 school year, the Pond Road Middle School in the Robbinsville School District introduced Block Scheduling, whereby each class period was 84 minutes long, rather than 48 or 42 minutes long, as it was previously. (95 a). It replicated the Block Schedule already in place at the High School.

When the Board of Education failed to provide 84 minutes of preparation time, as required in the Collective Negotiations Agreement (142 a), to teachers employed at the Middle School, the Association filed a grievance under the Collective Negotiations Agreement between the parties. The matter proceeded to arbitration before Arbitrator, Ira Cure, Esq. A hearing was held before Arbitrator Cure on October 27, 2023. In his decision dated January 15, 2024, Arbitrator Cure denied the grievance filed by the Robbinsville Education Association ("REA") and held that the Robbinsville Township Board of Education had not violated the terms of the Collective Negotiations Agreement by failing to provide teachers in the Middle School with 84 minutes of preparation time. (47 a).

A Verified Complaint and Order to Show Cause to vacate said Arbitration Award was filed by Plaintiff with the Mercer County Superior Court, Civil Division on April 8, 2024 (and Docketed as MER-L-682-24). (112 a).

On April 8, 2024, an Order Transferring to Mercer Chancery Division was issued by Judge Douglas H. Hurd. (114 a), and Docketed as MER-C-28-24.

On April 10, 2024, an Order to Show Cause was issued by the Honorable Patrick J. Bartels, P.J.Ch. (108 a).

On April 29, 2024, a Notice of Motion for the Board's Motion to Confirm an Arbitration was filed by the Defendant Robbinsville Township Board of Education. (115 a).

On May 6, 2024, a Reply Brief was filed by the Plaintiff, Robbinsville Education Association.

The matter was argued before the Honorable Patrick J. Bartels, P.J.Ch. on June 17, 2024 (1T) [1] and Judge Bartels issued his Order confirming the Arbitration Award on October 23, 2024. (6 a). It is from this Order that the instant appeal is being taken. A Notice of Appeal was filed on November 25, 2024. (1 a).

STATEMENT OF FACTS

It is submitted that there is not one fact, either material or otherwise, that is in dispute in this matter. Prior to the beginning of the 2022-2023 school year,

[1] 1T is the Transcript of oral argument for Order to Show Cause on June 17, 2024, (8 pages)

teachers at the Pound Road Middle School in Robbinsville Township always received a prep period equal to a teaching period. (142 a). In the 2021-2022 school year it was 48 minutes, which was the exact same length as a teaching period. (97 a-101 a).

The length of the preparation period at the Pound Road Middle School was consistent with the language found at the first paragraph of Section 5.1.3 of the parties' Collective Negotiations Agreement (142 a), which reads in full:

ARTICLE 5

Work Day

> 5.1.3 **Prep Time:** In addition to a duty-free lunch period, teachers shall have the equivalent of one (1) teaching period, as designated on the school's master schedule, for daily preparation, during which they shall not be assigned other duties.
>
> High school teachers shall have the equivalent of a full block for preparation every other day. On the other days, high school teachers shall have the equivalent of one half (1/2) of a block for preparation.
>
> Pond Road School core subject teachers (Math, Social Studies, Science, English/Language Arts, Special Education/support, and World Language) shall have five (5) preparation periods per week (at least one per day); equal to a teaching period; and three (3) team planning times per week. One team planning period will be for administration meetings. Team planning periods shall be established collaboratively between teaching teams and administration during the first full week of the school year. Encore teachers (Health and Physical Education, Computer, Art, Music, Technology, etc.) shall have a minimum of one (1) preparation period per day; equal to a teaching period and no more than forty (40) minutes of duty per day. Duties may be assigned for consecutive minutes or split as needed by

> the building administrators. Core subject teachers shall not be assigned duties for any reason other than classroom responsibilities or an emergency situation and shall be compensated (5.1.5) if lunch duty or class coverage is assigned during a preparation period. (142 a).

With the beginning of the 2022-2023 school year, the Board of Education exercised its managerial right to change the students schedule at the Pound Road Middle School from a "traditional schedule", where each teaching period was 48 minutes in length, to a "block schedule" which already existed at the High School, whereby each teaching period would be 84 minutes in duration. (95 a).

For the purposes of this matter, the REA did not dispute that the Board legitimately believed that there is an educational benefit to block scheduling. Nor did the REA dispute that as a matter of pre-existing PERC law, the Board had a managerial prerogative to determine the schedule for its students. However, just as clearly, the REA continues to believe that the impact of such decision constitutes a negotiable term and condition of employment.

It is clear to the REA that the Board of Education violated the explicit and unambiguous language of the Collective Negotiations Agreement concerning the length of the prep period at Pound Road Middle School ("PRMS"), specifically the first paragraph of Article 5.1.3, referred to *supra.* (142 a). At all times relevant hereto, it has been the position of the REA that said provision mandates that all teachers get one period per day for preparation ("a prep period"), which pursuant

to the clear and unambiguous language of the Collective Negotiations Agreement, shall be the length of a teaching period for teachers in the Master Schedule[2]. (142 a). Accordingly, the Association filed a grievance on behalf of the faculty PRMS when the Board of Education did not afford each faculty member a prep period having 84 minutes in duration as that was the length of the imposed block teaching period.

The matter proceeded to arbitration and despite the clear and unambiguous language of the Collective Negotiations Agreement, which somehow he managed to ignore, the arbitrator in his Decision dated January 15, 2024, denied the grievance and held that the Board "did not violate the Collective Negotiations Agreement by failing to pay teachers at the Pound Road Middle School for 84 minutes of preparation time."[3] (47 a).

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[2] "Teachers shall have the equivalent of one (1) teaching period, as designated in the school's master schedule, for daily preparation."

[3] It is submitted it is neigh impossible to make the Arbitrator's Decision and Award comprehensible. In fact, his award is not only incomprehensible, but to the extent it can be understood, it is internally contradictory. The Arbitrator first specifically found that the Board adopted a block schedule, "Once the Block Schedule was implemented." (46 a), and it is undenied that a true block schedule period is 84 minutes. Yet the Arbitrator, with no factual or legal support, also stated that the REA was trying to stretch and redefine a prep period into two (42 minute) periods of instruction. (44 a). In truth, if the REA was seeking to redefine a prep period as being the equivalent of two teaching periods, that would have necessarily meant that the REA was seeking a prep period of 168 minutes (84 minutes times two). This is something unequivocally, the REA never did.

Immediately upon the Board of Education adopting the block period scheduling, the Principal at PRMS created a master schedule and distributed same to all of the staff for the 2022-2023 school year. (95 a). The initial schedule he distributed, again this document was created by the District itself, is entitled "PRMS Schedule For School Years 2022-2023". (95 a). On the bottom of the page, they read in full:

- Full blocks are 84-minutes and half blocks are 42 minutes.
- Teachers will have a prep on an (A/B) day for a full block and the following day teachers have a one-half block duty period. That pattern will follow throughout. (95 a).

It must be emphasized, again, that the above is precisely the schedule in place of the High School which was achieved through the negotiations process when the High School implemented block period scheduling.

In the initial schedule, again produced by the Principal of the Middle School (95 a) once block period scheduling was implemented, there are three columns. The three columns are headed: "Time", "A" and "B." Those are the A and B days to which the Principal referred with the second bullet point at the bottom of the page. Reading across, the first row, on both A and B days, is Period 1. (95 a). And the time for period 1 indicates that it starts at 8:00 am and ends at 9:24 am. That's the precise 84 minutes referred to in the first bullet point. (95 a). Also, of tremendous significance herein is that this schedule is precisely the schedule at the

High School and is consistent with the second paragraph of Article 5.1.3, the section applicable only to the High School. (142 a). It would have made sense to automatically adopt the only existing schedule in the District which had block scheduling and apply it to the new but identical block schedule at PRMS. Also, this schedule indicates that between each period there is a period of time for the students to pass from one classroom to the next one. (95 a). So, the first block ends at 9:24 and ADV begins at 9:26 (a two-minute period to pass). (95 a). ADV ends at 9:39 and Period 2 begins at 9:42 (a three-minute period to pass). (95 a). Period 2 ends at 1:06 (after an 84-minute full block) and lunch begins at 11:09 (a three-minute period to pass). (95 a). Lunch ends at 1:07 and Period 4 begins at 1:10 (a three-minute period to pass). (95 a). Finally, Period 4 ends at 2:34 and WIN begins at 2:37 (again, a three-minute passing period). In each and every instance, in the block schedule, there is a passing period between classes for the student, and usually it is three minutes. (95 a).

Subsequently, the principal at PRMS created a second schedule. (111 a). It is the belief of the Association that when the District saw what the PRMS principal had initially disseminated, it directed that he pull it back and he then put out a second schedule. While difficult to see, it is acknowledged that while it looks different and is color-coded, in reality, it is the exact, precise, same schedule as he first disseminated and still identical to the block period schedule at the High

School.[4] (111 a). The second schedule, by example, has all of the Middle School teachers (grades 6, 7 and 8) having the precise same schedule and is entitled "Schedule Grade 8 Teacher". (111 a). This schedule has Periods 1 and 2 in grey. (111 a). It purports to show that whereas the previous schedule has one block starting at 8:00 and ending at 9:24 (84 minutes), now there are two periods, with Period 1 reading "8:00- 8:42" and Period 2 reading "8:42-9:24". (111 a). However, for many reasons this is simply a sham schedule. While it seems as if there are two periods, it cannot be emphasized enough that, just like Period 1 on the original schedule, the first period begins at 8:00 and ends at 9:24. (111 a). That, again is 84 minutes, or, what has been agreed-upon constitutes a block period. (111 a). Moreover, and just as important, while purporting to show two periods, it really does nothing of the kind. While the first period starts at 8:00 (the same time the first period started on the original schedule), the light grey Period 1 purports to end at 8:42. (111 a). But, and this both should have been determinative before the arbitrator and must make his Award not reasonably debatable, still in light grey, shows Period 2 also starting 8:42. (111 a). This is the exact same time the Board claims Period 1 ended. (111 a). *There is no passing time.* (111 a). **In other words, the exact same students will be in the exact same**

[4] The board originally color coded this new schedule which could not be reproduced herein. It will therefore be described.

classroom, with the exact same teacher, being taught the exact same subject, with no passing time, from 8:00 to 9:24, in both the old original and new schedules.[5] There is simply is no true two periods of instruction, as found by the Arbitrator (44 a). The absence of any passing time should have been determinative.

There can be no clearer demonstration of a purported distinction without a difference. And the same structure is repeated throughout the purported new schedule. In the old schedule, Period 2 reads "9:42-11:06." (95 a). Likewise, Periods 3 and 4 on the new schedule, also starts at 9:42 and ends at 11:06. (111 a). Both clearly constitute 84-minute blocks. Likewise, Period 4 on the old schedule and Periods 5 and 6 in dark grey on the new schedule are both 84-minute blocks. (95 a). Similarly, Period 4 on the old schedule and Periods 7 and 8, both start at 1:10 and end at 2:34. (95 a). Again, an 84-minute block of time. Finally, in both schedules the end of the day "WIN" period begins at 2:37 and ends at 3:00. (95 a).

What is both significant and ignored by the Arbitrator, despite his finding of a block schedule being in place at the middle school, is the issue of passing time. As has already been noted, between each period in the old schedule, there is a three-minute passing time between periods. That remains the case even with the

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[5] This is also why the arbitrator was constrained to find that the board adopted block scheduling at the middle school.

adopted schedule. Between Period 1 and 2, in light grey, there is no passing time. (111 a). But between the end of Period 2, in light grey, and the beginning of the "ADV" period, there is a three-minute passing time (9:24 -9:27). (111 a). Likewise, between the ADV and the beginning of Period 3, in white, there is again three minutes for students to pass in the hallway. And, again, there is no passing time between Periods 3 and 4. (111 a). But between the end of Period 4 and the beginning of Period 5, there is, again, three minutes for students to pass in the hallway. (111 a). And, again, between Periods 5 and 6, there is no passing time. Period 6 ends at 12:33 and lunch begins at 12:37. (111 a). Lunch ends at 1:07 and Period 7 begins at 1:10, again after three minutes passing. (111 a). In the old schedule, Period 4 went from 1:10 (after a three-minute passing period) and ended at 2:34. (95 a). That is precisely the same as Periods 7 and 8. (111 a). But, again, between Period 7 and Period 8, there is no passing period. (111 a).

This analysis should have conclusively demonstrated to the Arbitrator that when there is a true end to a period, there must be time for the students to get from one class to the next. That is true in both schedules.[6] (95 a, 111 a). But when it is a sham/false period, with the same students, in the same classroom, with the same teacher, being taught the same subject, while on paper the Board attempted to

[6] And perhaps he actually did, as he did find that there existed block scheduling at the middle school. (46 a).

make it look like there were two separate periods of 42 minutes, that clearly cannot be the case, as *there is not one time that a passing period exists between two adjacent periods having the same color*.

Also, put into evidence before the Arbitrator were the schedules for each school year since the 2017-2018 school year. (98 a-101 a). In each instance, there exists a three-minute passing period for each year for each period. Moreover, also put into evidence at the arbitration hearing, and not disputed by the Board, was that over the years the length of a teaching period at PRMS changed. But what is important is that whenever the length of a teaching period changed, so did the length of the concomitant prep period.[7] The Arbitrator also acknowledged this fact in his Decision. (45 a).

It is not mere coincidence that for all purposes both at the High School and in the first schedule for PRMS, as well as in the CNA, a block period consists of 84-minutes. (95 a, 103 a). In the adopted schedule at PRMS, as there is no passing time between any of the color-coded periods, each colored block is also 84-minutes. (111 a). It is immediately apparent that the schedule presently in effect at PRMS is exactly the same schedule as the High School's block scheduling. (111 a, 103 a).

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[7] Once a block schedule was implemented at Pond Road Middle School, there simply was no longer a teaching period of 42 or 48 minutes. Each block teaching period is unambiguously 84 minutes.

On June 17, 2024, the parties appeared before the Honorable Patrick Bartels pursuant to a Verified Complaint and Order to Show Cause filed by Appellant. During that hearing, the parties argued but no decision was rendered.[8]

On October 23, 2024, Judge Bartels issued an Order Confirming the Arbitration Award. (6 a). He found, inter alia:

> Here, the arbitrator's award is reasonably debatable and does not add additional terms to the contract. The 2020-22 Contract provided PRMS teachers at least one prep period per day. . . Yet neither the Association nor the Board agreed to the language of the 2022-2023 contract. . . There was no intent the teachers would receive eighty-four minutes of prep . . . (10 a-11 a).
>
> Whether the Arbitrator is correct or not, the award is reasonably debatable . . . The contract does not provide the length of the prep periods, so either interpretation would be reasonable. . . (11 a).

It is from this decision that the Appellant appeals, as the Judge misapplied the law.

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[8] 1T, the Transcript of oral argument for Order to Show Cause on June 17, 2024 (8 pages) has been filed with this appeal. Other than the oral argument, Judge Bartels made no decision on the record. The decision as issued on October 23, 2024 via a written decision (6 a).

ARGUMENT

POINT ONE

ON APPEAL, THE TRIAL COURT'S INTERPRETATION OF BOTH THE CONTRACT AND THE LAW IS ENTITLED TO NO SPECIAL DEFERENCES (This issue was not raised below)[9]

At all times, the Association has acknowledged that there is a strong public policy in favor of the confirmation of the Arbitration Awards. It has been the Association's position throughout this matter that the award of this Arbitrator (to the extent that it is discernable), is not reasonably debatable and that it violated clear and unambiguous contract language. It thus violated N.J.S.A. 2A: 24-8(d), which provides a basis for vacation. See, City Ass'n. of Sup'rs. & Admiss. v. State Operated Sr. Dep. of Nemb, 311 N.J. Super. 300, 312 (App. Div. 1998).

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[9] The trial court made a final determination, as was appropriate, based upon the documents submitted (all of which are part of our appendix, and referred to where necessary) and argument had on the return date of the Order to Show Cause. The only issue was whether an arbitration award between the parties should be vacated or confirmed. Thus, although there is a transcript, it is entirely comprised of the oral argument made by both sides. There is absolutely no testimony or evidence of any kind reflected in the transcript.

In addition, the very first point in our appellate brief addresses the standard of appellate judicial review in this type of matter. It was not raised below, nor could it have been raised below, as the scope of appellate review only becomes an issue *after* the trial court, below, has ruled. I did not and could not have made this argument on the return date of the Order to Show Cause.

Although the Trial Court acknowledged that it is "possible that the Association has the stronger argument that the terms of Article 5.1.3 which allow an interpretation of eighty-four minutes as one teaching period" (11 a), the Court nonetheless found that the Arbitrator's Decision was "reasonably debatable" and the Court therefore confirmed the award. Thus, there exists the blatant inconsistency in the arbitrator's award; he found, as the REA requested, that block scheduling existed at the middle school, but at the same time, did not award the REA a prep period of equal duration, as required by the CBA.

Significantly, the law has uniformly been that an appellate court owes no special deference to a trial court's interpretation of the law or the Collective Negotiations Agreement. Yarborough v. State Operated Sch. Dist. of Newark, 455 N.J. Super. 136, 139 (N.J. App. 2018).

In The Port Authority of New York and New Jersey v. The Port Authority of New York and New Jersey Police Benevolent Association, Inc., 459 N.J. Super. 278., 282-283 (App. Div. 2019), the Court cited Manalapan Realty, L.P. v. TCP., Comm of Manalapan, 140 N.J. 366, 378 (1995) and ruled:

> Indeed, a trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled any special deference.

Specifically material to an appellate court's review of a trial court's determination involving an application to vacate an arbitration award is the

decision of our Supreme Court in Sanjuan v. Sch. Dist. of W. New York, 236 N.J. 369, 381 (2024), wherein the court held that appellate review of decision on a motion to vacate a grievance arbitration award is *de novo.*

POINT TWO

THE AWARD OF THE ARBITRATOR IS NOT REASONABLY DEBATABLE (44 a, 45 a, 46 a)

In all candor, there is no need to spend a great deal of time citing the relevant law. We acknowledge the presumption in favor of the confirmation of arbitration awards and that the only reason, relevant herein, for the instant award to be vacated, is if we can demonstrate to the Court that said award is not reasonably debatable. See, generally, Kearny PBA v. Town of Kearny, 81 N.J. 208, 221 (1979), State v. Local 195, IFPTE, 169 N.J. 505, 530 (2001) and Linden Bd of Ed v. Linden Ed Assoc, 202 N.J. 268, 276-277 (2010). See also, N.J.S.A. 2A:24-8.

However, even acknowledging the relevant law and the presumptions against vacation, it is submitted that this is the rare matter in which the arbitrator's award is simply so nonsensical that it cannot be deemed to be reasonably debatable.

Arguably, it also violates a clear and unambiguous provision of the parties' CBA. (142 a). Perhaps the place to start our discussion is City Association of Supervisors and Administrators v. State Operated School District of Newark, 311

N.J. Super. 300, 304 (App. Div. 1998). In that matter the provision of the CNA in dispute read:

> Directors shall be entitled to twenty (20) days of annual paid vacation to be elected as consecutive work days or other by the personnel involved. Vacations may be taken at any time between July 1 and June 30 *of the following year* with the approval of the Executive Superintendent.
>
> (Emphasis supplied)

The past practice of the parties was that the directors received their annual allotment of vacations on the first day of the current contract year, not on the first day of the *following year.*

The Association grieved the Board's unilateral change in the manner in which vacation days were allocated as being violative of the long-standing past practice. The issue before the arbitration panel was:

> Did the Newark State-Operated District violate the vacation provisions of the collective bargaining agreement? If so, what shall be the remedy?

After the Association prevailed in the arbitration, the Board moved in court to vacate the award. The trial court confirmed the award, but on appeal it was vacated by the Appellate Division. The Court held (Id at 316):

> The State District is asking this court to enforce the clear and unambiguous language of Article XVI which states: "vacations may be taken at anytime between July 1 and June 30 of the following year." Even the arbitration panel acknowledged there was no alternative explanation for

> this provision because it clearly meant that twelve-month administrative employees earned their vacation time in the prior year.

Thus, because the arbitrator ignored the clear and unambiguous language in the CNA directly on point, "the judgment of the Law Division confirming the award is vacated." (Id at 317). Likewise, here, not ordering the Board to give each teacher at PRMS a full block teaching period (of 84 minutes) as a prep period violates the clear and unambiguous language found in Section 5.1.3.[10] (142 a).

This brings us to the clear and unambiguous language in the Robbinsville CNA, which specifically deals with preparation time at the Pond Road Middle School ("PRMS") at the third paragraph of Article 5.1.3. (142 a). This provision clearly and unambiguously reads that each teacher "shall have five (5) preparation periods per week (at least one per day); *equal to a teaching period...* " (emphasis supplied). And with a block schedule in place, a teaching period was 84 minutes in duration. (142 a).

The conflict was created when the Board exercised its admitted management prerogative and decided to implement block scheduling (where each block period is 84 minutes, such as is the schedule at the high school), rather than the traditional 48 minute class period at PRMS. There is language in the preceding paragraph of

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[10] And, again, the arbitrator specifically found that block scheduling existed at PRMS.

Article 5.1.3 directly applicable to the high school and its block scheduling. (142 a). However, for whatever reason, despite the logic of its application, the district chose to not to seek to also implement the high school's prep period language, already in the CNA, at PRMS when it implemented block scheduling there. It is submitted that had the Board done so, this entire controversy would have been avoided. However, it cannot be disputed that the only language in the CNA directly applicable to prep period at PRMS is that discussed above, one prep period per day equal to a teaching period. (142 a). And, with the beginning of the 2022-2023 school year, a teaching period at PRMS was indisputable one block period of 84 minutes. (142 a).

As the matter could not be resolved by the parties in the grievance procedure, it proceeded to arbitration before Ira Cure, Esq., in PERC Casse No.: AR-2-23-552. In language which is difficult to understand, the arbitrator in ruling against the REA and denying the grievance stated, at Page 11, in his Discussion:

> The concept of prep period cannot be stretched and redefined to include two periods of instruction. The Association implicitly acknowledged this, since in its demand for relief in this proceeding it has referred to this provision and is seeking twenty-seven ($27) dollars per day for each-teacher who was not scheduled for a prep period equal to a Block of instructional time or eighty-four (84) minutes. (44 a).

Of course, the REA did no such thing. It was the Board that by a sham schedule

created the issue of there being two periods of instruction.

In his next paragraph, at the top of Page 12, the arbitrator discussed the contractual provision dealing with the high school, but purports to distinguish it as "The contract provides that the High School operates according to a block schedule."[11] (45 a). The most salient fact, that the arbitrator ignored, is that while at the high school the block scheduling was negotiated into the CNA, at the Middle School, the Board imposed the precise same schedule, a block schedule, but did it by fiat, as it is permitted to do as a matter of management prerogative. It is only because of the Board's unilateral action in imposing block scheduling at the Middle School that there is no agreed upon specific language concerning the impact of that determination at PRMS. If there were, there would have been no dispute. And PERC has also held that the impact of the imposition of a block schedule is mandatorily negotiable. Moreover, reviewing the arbitrator's first sentence above, while a Block Schedule period might be equal in time to two traditional periods in the previous year's schedule, it, indubitably, is still just one period; albeit a block period, rather than traditional period at PRMS.

So, the ultimate question boils down to, under the clear contract language in Article 5.1.3, what constitutes a teaching period, as the prep period must be "equal to a teaching period". In ruling against the Association, the arbitrator ignored the

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[11] As does the Middle School.

clear contract language and the undisputed evidence. In no fashion can there have possibly been a finding that the Association was attempting to stretch or redefine anything. It is exceedingly happy with the existing, non-stretched and non-redefined, language applicable to the PRMS found in Article 5.1.3. In fact, quite to the contrary, it is the Board who has indeed stretched and redefined that provision by instituting block scheduling at the Middle School creating a second sham schedule, and not applying the clearly applicable language, nor the past practice of insuring that the length of the prep changes as the length of a teaching period changes (20 a). The Board committed these violations by not giving each teacher at PRMS a prep period equal in length to the 84 minute block period schedule it instituted at the beginning of the 2022-2023 school year.

What is clear and in truth cannot be denied by the Board, is that with the beginning of 2022-2023, it was the Board who introduced a new schedule at PRMS. And this schedule called for 84 minute blocks, just as exists at the high school. That the district later connived or manipulated a sham schedule (perhaps stretched and redefined are more applicable adjectives), is made clear from the undisputed documents put in the record before the arbitrator, and all of these documents were based upon handouts distributed by the district, or data provided by the district.

Most importantly, however, is the unassailable fact that the arbitrator at one

point appears to have seen through the board's sham schedule and decided that a block schedules did exist at the middle school.[12] Once he made that decision, it necessarily follows, based on the clear and unambiguous contract language, that each teacher, at PRMS, was entitled to a prep period equal to a teaching period, and with block scheduling that is an 84 minute prep period daily. By far the most important document is the schedule that was initially distributed to staff at MRHS by its building principal. (95 a). It is entitled "PRMS Schedule (22-23)" and is applicable to grades 6-8; grades 6-8 comprise the grades at PRMS. The first bullet point on the bottom of the pages correctly notes that a full block is 84 and that half blocks are 42 minutes. It then notes, at the second bullet point:

> • Teachers will have a prep on a/an (A/B) day for a full block and the following day teachers will have a ½ block duty. That pattern will follow throughout. (95 a).

For the record, that is the precise block schedule and therefore prep schedule established in the second paragraph of Article 5.1.3. Accordingly, it is the precise schedule, and therefore prep schedule, at the high school.

Relatively quickly this schedule was withdrawn and the second ("sham") schedule was disseminated and put in place. As stated, openly and repeatedly, in

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[12] Compare the sentence "The concept of a prep period cannot be stretched and redefined to include two periods of instruction" (21 a) with "Once the block schedule was implemented…" (46 a).

the Verified Complaint (at paragraph 10) this new, color coded schedule is exactly the same schedule as in the "PRMS Schedule (22-23)"; except that this one is color coded, and whereas in the previous schedule, the acknowledged Block Schedule, Period 1 ran from 8:00 to 9:39, 84 minutes or a clear block period, in the color coded schedule, Periods 1 and 2 start at 8:00, (the same time as the First Period started in the Block Schedule), an end at 9:24, (the same time as Period 1 ended in the Block Schedule). The only purported difference is that although they are shown in the same color, light grey, there is now a Period 1 and a Period 2. (95 a).

But, and this cannot be argued too forcefully, this alleged difference is a total sham. It was created by the Board only to bolster its position under the terms of the CNA. (And, I must admit, it did so successfully, at least as far as the arbitrator was concerned.) But, let's now repeat the analysis set forth in the Verified Complaint. (12 a-23 a). The following cannot be denied:

1. Though set forth, in light grey, as two separate periods, Period 1 begins when the Block Schedule Period 1 was set to begin.
2. Likewise, Period 2, again in the light grey ends precisely when the Block Schedule Period 1 was scheduled to end.
3. The same teacher continues to teach for the entire 84 minute periods *set* forth in light grey.
4. The same subject is taught for the entire 84 minutes periods set forth

in light grey.

5. The same students are being taught during the entire 84 minute periods set forth in light grey.

6. And for the entire 84 minutes the students are, obviously, being taught in the same classroom.

7. And, perhaps most importantly, while the light grey Period 1 is shown as ending at 8:42, nothing actually happens at 8:42. Whenever a true period ends, whether a 84 minute Block Schedule, or a 42 minute traditional schedule, there is uniformly a three-minute period before the next class period commences. That is a passing period; it is intended to allow the students three minutes to go from one classroom to the next. YET, IN THE GREY SCHEDULE PERIOD 2 BEGINS PRECISELY WHEN PERIOD 1 ENDS. There is no passing time, nor need there be any, because the Board well knows that Paragraphs 2, 3 4, 5 and 6, above, are absolutely true, that although nominally different, even the color coded schedule is a *de facto* Block Schedule.

8. Moreover, what has just been established above replicates itself at every stage of the two schedules being compared. In between every period, Block Schedule, there is a three-minute passing period. Likewise, at the end *of* every color coded block, there also *is* a three

minute passing period.

9. However, within each color coded block, there is no passing time whatsoever. So, going down the color coded schedule, it can be seen, going from the light grey Period 2 to ADV, in pink, there is a three minute passing period, precisely as there is in the Block Schedule. Between the pink ADV and the white Period 3, there is a three minute passing schedule, again just as there is in the Block Schedule. But, as before in the light grey, there is no passing time between the white Periods 3 and 4. Concurrently, Period 2; begins at 9:42 and Period 3 ends at 11:06. That is 84 minutes, just as Block Schedule Period 2. Dark grey Period 5 begins at 11:09 and Period 6 ends at 12:33. Again, an 84 minute period, with no passing time in between, just as identified at Period 3 in the Block Schedule. Dark Blue Period 7 begins at 1:10 (after lunch) and Dark Blue Period 8 ends at 2:34, 84 minutes later, with no student passing time in between. Again, it is identical to Block Period 4. Finally, there is the same WIN Period ending the day, for the same duration, in both schedules.

10. And again, these documents were both created and disseminated by the PRMS principal.

11. The schedules at the high school demonstrates that regardless of

which of the two schedules discussed is considered, in reality they both mirror the high school's historical Block Schedule, with an 84 minute period.

12. These schedules also demonstrate that over the years a teaching period at PRMS has varied in length. Yet, every time the District chose to vary the length of a teaching period, it also followed the contractual mandate to likewise vary the length of the prep period. The beginning of the 2022-2023 school year was the first time the Board chose to vary from this clear and undisputed past practice, and thereby violated the CNA.

13. Finally, in this regard, the previous, traditional schedule at PRMS must be discussed. These schedules usually have the traditional 42 minute periods, with students passing time between each of the 8 periods. This is the schedule contemplated for PRMS in the third paragraph of Article 5.1.3. And, again, when a teaching period was either increased or decreased by the Board, so was the length of the prep period.

Of tremendous importance herein, and again something which incredibly appeared to have absolutely no impact on the arbitrator, are the schedules at PRMS for each and every year going back as far as the 2017-2018 school year. For each

year, for each period, there is a passing time, usually three minutes between each period. As there is a three minute student passing time for each year, I will examine only the most recent year in detail, the 2021-2022 school year, the last year before block scheduling was introduced at PRMS. It should initially be noted not only is that there is a three minute passing time between each period, but that this is a true traditional eight period schedule. Period 1 begins at 7:50 and ends at 8:38. That is one 48 minute period, with one teacher, in one classroom, teaching one subject. There is then a passing time when the students go to ADV, which lasts from 8:40 to 8:56. When ADV ends, the students go to Period 2, which starts at 8:59, after a three minute passing time, and ends at 9:47, 48 minutes later[13]. Also noteworthy is that as opposed to a Block Schedule, Period 2, after the student passing time, is in a different classroom, with a different teacher, teaching a different subject. Period 2 then ends at 9:47 and Period 3 begins, again three minutes later, at 9:50, again in a different classroom, with a different teacher, teaching different subjects. Period 3, again, lasts 48 minutes.

At this point there is no need to so thoroughly analyze each period. The schedules are before the Court. Suffice it to say that what has been just noted

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[13] This also demonstrates that over the years, the length of a teaching period at PMRS has changed, and that with each such change, so has the length of a teacher's prep period. For example, in the 2017-2018 school year, each teaching period was 62 minutes. Therefore, each teacher at PRMS received a 62 minute prep period.

above continues for the rest of the entire school day. In each and every instance there are three minutes of passing time between periods. In each and every instance, a period is 48 minutes. In each and every instance, the student, in that three minute period, goes to a different classroom (after all, that is why is why the passing time exists in the first place), to be taught by a different teacher a different subject.

Simply putting the 2021-2022 schedule next to the implemented, color coded, schedule, even ignoring the original acknowledged Block Schedule, should have revealed to the arbitrator that it was the Board which was trying to stretch and redefine the schedule by creating the sham color coded schedule, and not the Association. The new schedule, though impressively color coded, and listing 8 periods, in reality, has only four teaching Block periods. There is no passing time between Periods 1 and 2, between Periods 3 and 4, between Periods 5 and 6 and between Period 7 and 8. There is passing time after each true Block Period of 84 minutes in each instance.

POINT THREE

CLEARLY, AS THE NEWLY CREATED SCHEDULE WAS A COMPLETE SHAM, THE ARBITRATOR'S DECISION ACCEPTING THE SHAM MUST BE VACATED (44 a-46 a)

The Board's scheme becomes abundantly clear when the chronology is viewed in retrospect. Initially, as is its right, the Board determined to institute block scheduling at PRMS. It then did two things, which it should have done, to see not only that it was correctly implemented, but that the implementation would be dealt with appropriately in terms of contract language. It made a proposal in negotiations so that the preparation periods at PRMS, with its newly installed block scheduling, would be identical to the preparation periods at the high school, where block scheduling was already in place for some time. However, the Board then decided, rather than operating in good faith, to try to institute a scheme. It did two things to implement this scheme: first, it withdrew its own demand from the negotiations table; and second, it also withdrew the original "PRMS Schedule (22-23)" document which was originally distributed to the staff, which was clearly a Block Schedule, and self-identified as such, and then created the color coded schedule, which made absolutely no substantive change whatsoever. The other sham change was labeling what was truly a Block Period, as being two periods. When, in reality, because of there being no student passing time and the students being in the same classroom, with the same teacher, being taught the same subject,

for the full 84 minutes, nothing had changed whatsoever.

The sham of the Board's color coded schedule, in fact, the sham of the Board's entire position, and absolute proof that the arbitrator's award is in no way reasonable debatable is conclusively demonstrated by the following, not at all farfetched, hypothetical:

1. The Board's original schedule, which it admitted was a Block Schedule, clearly indicated that each Period was 84 minutes long. Under the existing, and only language in the CNA pertaining to the PRMS's preparation periods, the implementation of that schedule mandated a 84 minute daily prep period.
2. The Board, while making absolutely no substantive change in the originally adopted Block Schedule, merely, on paper, divided each Block into two periods (again, with no student passing time in between, and with each student thus being in the same classroom, with the same teacher, being taught the same subject, for 84 minutes), with, on paper only, each period being 42 minutes long. The Board then granted each teacher at PRMS a 42 minute prep period.
3. But each clear 84 minute Block Period, could have been divided into three periods on the color coded sham schedule. As the students stayed in the same room with the same teacher being taught the same subject, with no passing time, that would have been easy to do. In that event, again only on

paper, but not in reality, the light grey could have shown Period 1 being 8:00 to 8:28 (28 minutes times three equals the magic number for Block Scheduling, 84). Then Period 2 would be 8:28 to 8:56. And Period 3 would be 8:46 to 9:24. The newly created three periods on the schedule would still coincide with one true Block Period, but now the Board could claim that as the CNA only mandates that a prep period be the same as a teaching period, each teacher would only get a 28 minute prep period each day.

4. 84 is also divisible by four. If the Board would have implemented four 21 minute sham periods in its color coded schedule, it would have achieved an even more desirable result, from its perspective. *De Facto*, there would still be one 84 minute Block. But by dividing it in fourths, it could claim that each teacher was only entitled to a 21 minute prep period.

Yet, somehow, the arbitrator sanctioned this clear perversion of a schedule, where, in reality, each teacher was teaching four Block periods of 84 minutes daily.

The trial court was correct when it noted that there was no meeting of the minds to change the terms of the CNA as to the prep periods at PRMS. (11 a). But absent such a meeting of the minds, the pre-existing language continues to govern.

POINT FOUR

INTERNALLY, THE AWARD IS SO BIZARRE AND CONTRADICTORYY THAT IT DOES NOT DRAW ITS ESSENSE FROM THE CBA. IT MUST BE VACATED (46 a)

Perhaps the ineptitude of the arbitrator and perhaps making it even more clear that his award is not even reasonably debatable, is the following sentence from the last paragraph of his discussion. (46 a). It is simply incompressible (and to the extent it is comprehensible, it appears to support the Association's position). In full, the sentence reads:

> Once the Block Schedule was implemented, this fundamental change precluded the Union relying on the language of Article 5.3.1 (sic: Article 5.1.3) to achieve daily eighty-four (84) minute prep periods.[14]

From the above sentence, it seems the arbitrator accepted that the new schedule was a sham and that Block Scheduling, despite the Board's denial, was actually implemented at PRMS. If that is indeed the case, what possible justification is there for the arbitrator not to apply the clear and unambiguous language as to preparation periods at the Middle School? The arbitrator in his sentence cited above, surely didn't provide any. The Court must bear in mind the clear contract language that a prep period at the Middle School must be equal to a teaching period. If the arbitrator actually determined, as he appears to have done,

[14] In light of the rest of his award, it should not be surprising that the arbitrator also got the only contractual provision under discussion incorrect.

that there existed a Block Schedule at PRMS, then, likewise, it is not reasonable debatable, that anything other than an 84 minute prep period must follow. Rendering an award to the contrary, especially in light of the above apparent finding, is simply not reasonably debatable.

That raises the interesting questions as to when the trial court ruled that although perhaps the REA had the stronger argument (11 a), the award was still reasonably debatable; which part of the Award was reasonably debatable? In PBA v. City of Trenton, 205 N.J. 422, 429 (2011), our Supreme Couty ruled:

> That is not to suggest that an arbitrator's award is impervious to attack.
>
> Indeed, it is axiomatic that an arbitrator's "award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." *Id.* at 597, 80 *S.Ct.* at 1361, 4 *L.Ed.2d* at 1428.
>
> Thus, our courts have vacated arbitration awards as not reasonably debatable when arbitrators have, for example, added new terms to an agreement or ignored its clear language. See, *e.g., Cnty. Coll. of Morris Staff Ass'n v. Cnty. Coll. of Morris*, 100 N.J. 383, 397-98, 495 *A.*2d 865 (1985) (declining to sustain arbitration award which declared unambiguous meaning of clause and interpreted it to contrary by adding extra term); *City Ass'n of Supervisors Adm'rs v. State Operated Sch. Dist.*, 311 N.J.Super. 300, 312, 709 *A.*2d 1328 (App.Div. 1998) (rejecting arbitration award which relied on past practices and "ignor[ed] the clear language of the agreement"); *PBA Local 160 v. Twp. of N. Brunswick*, 272 N.J.Super. 467, 475, 640 *A.*2d 341 (App.Div.) (overturning

> arbitration award that disregarded explicit term of negotiated agreement), *certif. denied*, *138 N.J. 262*, 649 *A.*2d 1283 (1994); *see also Beaird Indus., Inc. v. Local 2297, Int'l Union*, 404 *F.*3d 942, 946-47 (5th Cir. 2005) (overturning arbitration award in which arbitrator balanced parties' interests instead of applying contract language).

The question therefore is, how does the instant arbitrator award, in anyway, draws its essence from the terms of the CBA. The only applicable language that appears in the CBA is that a teaching prep period must be equal to a teaching period. And, significantly, the Arbitrator did find that Block Scheduling did exist in PRMS. Once he made that finding, with there being no language explicit to PRMS, as there is for the High School, how can an award, which did not award the amount time of a Block teaching period, to the Middle School staff as a prep, find its essence in the CBA? And how can such an award be deemed reasonably debatable when it ignores the only clear and unambiguous language in the CBA directly on point?

CONCLUSION

It is thus respectfully submitted, in accordance with established law, that this Court reverse the decision of Judge Bartels and direct that the subject arbitrator's award be vacated.

Respectfully submitted,
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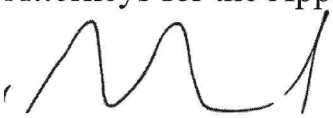

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ROBBINSVILLE EDUCATION ASSOCIATION, **APPELLANT,** **v.** **ROBBINSVILLE TOWNSHIP BOARD OF EDUCATION,** **RESPONDENT.**	**SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION** **DKT. NO. A-000889-24** **ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, COUNTY OF MERCER, CHANCERY DIVISION** **SAT BELOW:** **Hon. Patrick J. Cartels, P. J.Ch.** **Docket No. MER-C-28-24**

RESPONDENT ROBBINSVILLE TOWNSHIP BOARD OF EDUCATION'S OPPOSITION BRIEF

DATE SUBMITTED: April 8, 2025

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PRELIMINARY STATEMENT

This appeal stems from the Robbinsville Education Association ("Association")'s dissatisfaction with the outcome of a binding arbitration and the Superior Court's sound and well-reasoned confirmation of the resulting award. After a full evidentiary hearing and comprehensive post-hearing briefing, Arbitrator Ira Cure, Esq. ("Arbitrator Cure") issued a detailed Opinion and Award denying the grievance filed by the Association, concluding that the Robbinsville Township Board of Education ("the Board") did not violate the Collective Negotiations Agreement ("the Agreement") by implementing a block schedule at Pond Road Middle School ("PRMS") without providing teachers with 84 minutes of daily preparation time. The trial court correctly found the award to be, at a minimum, reasonably debatable and confirmed it in its entirety, as required under well-settled law.

On appeal, the Association raises four arguments, none of which withstand scrutiny. First, it asserts that the trial court's interpretation of the law and contract language is entitled to no deference. This point, while doctrinally accurate in the abstract, is largely beside the point. The appropriate focus on appeal is not the trial court's reasoning, but whether the arbitrator's decision is reasonably debatable—a standard that is intentionally deferential and rooted in New Jersey's strong public

policy favoring the finality of arbitration, particularly in the public-sector labor context.

Second, the Association contends that the arbitrator's award fails the "reasonably debatable" standard. That assertion is unavailing. The Agreement does not define the length of a "teaching period" at PRMS and has historically accommodated variation. Arbitrator Cure evaluated the contract language, bargaining history, relevant past practices, and the parties' respective positions before issuing a reasoned decision firmly grounded in the record. Even if a different interpretation were possible, that is of no consequence. As long as the arbitrator's interpretation is plausible—and here, it plainly is—the award must be upheld.

Third, the Association insists that the adopted schedule at PRMS was a "sham," designed to obscure a contract violation. This accusation, replete with hyperbole, was fully litigated before the arbitrator and definitively rejected. Arbitrator Cure made specific factual and credibility findings concerning the schedules at issue, including the nature of instructional blocks and preparation periods. Those findings, drawn from the hearing record and documentary evidence, are not subject to second-guessing on appeal. The Association's effort to relabel the same arguments as a "sham" theory cannot manufacture a basis for vacatur where none exists.

Fourth, the Association claims that the award is internally inconsistent and fails to draw its essence from the Agreement. This argument misstates the substance of the award, which cogently reconciles the text of Article 5.1.3 with the parties' bargaining conduct and the Agreement's express compensation provisions. The arbitrator's conclusions—particularly his reliance on the "Extra Work/Extra Pay" clause and the lack of mutually agreed-upon language addressing block scheduling at PRMS—are not only reasonable, but correct. The Association's attempt to secure through arbitration what it failed to obtain at the bargaining table is precisely the kind of maneuver that arbitral deference is designed to foreclose.

The Association's appeal constitutes a transparent effort to relitigate issues that were thoroughly addressed and resolved in arbitration, and subsequently confirmed by the trial court under the appropriate deferential standard. Arbitrator Cure's award embodies a careful, fact-specific interpretation of the Agreement that is, at a minimum, reasonably debatable. That is the sole threshold required by law. As the trial court correctly recognized, no basis exists to disturb the award, and this Court should likewise affirm its confirmation in full.

Accordingly, the October 23, 2024 Order confirming the arbitration award should be affirmed, and the Association's appeal should be denied in its entirety.

COUNTERSTATEMENT OF PROCEDURAL HISTORY

This matter arises from a grievance filed by the Association alleging that the Board violated the parties' Agreement by failing to provide teachers at PRMS with eighty-four (84) minutes of daily preparation time during the 2022–2023 school year. (13 a). In accordance with the parties' negotiated grievance procedures, the dispute proceeded to binding arbitration before Arbitrator Cure under the auspices of the New Jersey Public Employment Relations Commission ("PERC"). (33 a - 35 a). A full evidentiary hearing was held on October 27, 2023, during which both parties presented testimony, documentary evidence, and legal argument. (35 a). The record closed following the submission of post-hearing briefs on or about December 15, 2023. Id. On January 15, 2024, Arbitrator Cure issued a detailed Opinion and Award denying the grievance and concluding that the Board had not violated the terms of the Agreement. (47 a).

On April 8, 2024, the Association filed a Verified Complaint and Order to Show Cause in the Superior Court of New Jersey, Mercer County, seeking to vacate the arbitration award pursuant to N.J.S.A. 2A:24-8. (12 a). The matter was docketed in the Chancery Division under Docket No. MER-C-28-24 and transferred the same day by the Honorable Douglas H. Hurd, P.J.Cv. (114 a). The Board opposed the application and filed a Cross-Motion to Confirm the Arbitration Award on April 29, 2024. (115 a). Following oral argument on June 17, 2024, the Honorable Patrick J.

Bartels, P.J.Ch., issued a written opinion and order on October 23, 2024, confirming the arbitration award in its entirety. (6 a). The Court expressly found that Arbitrator Cure's decision was reasonably debatable, and therefore entitled to confirmation under well-settled New Jersey law. (11 a). The Association filed a Notice of Appeal on November 25, 2024. (1 a).

COUNTERSTATEMENT OF FACTS

Arbitrator Cure issued his Opinion and Award on January 15, 2024, denying the grievance filed by the Association and concluding that the Board did not violate the parties' Agreement by declining to provide eighty-four (84) minutes of daily preparation time to teachers at PRMS. (47 a). The matter proceeded to arbitration following the Association's demand, alleging that the Board violated the Agreement by implementing a block schedule at PRMS without adjusting the duration of preparation periods to match the new instructional period length. (33 a).

A hearing was held on October 27, 2023, under the auspices of the PERC via Zoom teleconferencing. (35 a). Both parties had a full and fair opportunity to present evidence, examine and cross-examine witnesses, and submit written arguments. Id. The arbitral record closed on or about December 15, 2023, following post-hearing briefing. Id. The parties stipulated to the following issue for determination:

> Did the Board violate the Agreement when it did not provide teachers at the Pond Road Middle School eighty-four (84) minutes of prep time? If so, what is the remedy? Id.

Arbitrator Cure found that the parties are long-standing participants in collective bargaining and are bound by an Agreement effective July 1, 2022, through June 30, 2026. (37 a). The parties debated the interpretation of Article 5.1.3 of the Agreement, which provides in relevant part:

> In addition to a duty-free lunch period, teachers shall have the equivalent of one (1) teaching period, as designated on the school's master schedule, for daily preparation, during which they shall not be assigned other duties." Id.

Historically, the length of a "teaching period" at PRMS had varied, ranging from forty (40) to sixty-two (62) minutes. (38 a). Nevertheless, teachers always received preparation time equal to one instructional period per day. Id.

In 2022, PRMS considered a transition to block scheduling, similar to that used at the high school. (39 a). During contract negotiations, the Board proposed express language tying PRMS prep time to the block schedule — a full block for prep every other day, and a half block on the remaining days — mirroring the high school's provision. (38 a - 39 a). The Association rejected this proposal, and the Board withdrew it. (39 a).

Subsequently, in June 2022, PRMS' Principal imposed a block schedule for the 2022-2023 school year. Id. The Board maintained this was a managerial prerogative, and the Association did not demand bargaining over its impact. Id. Under the new schedule, instructional blocks lasted eighty-four (84) minutes. Id.

Teachers were provided prep time consisting of one full block on alternating days and a half block on the other days. Id.

The Association contended that the Agreement requires teachers to receive one daily preparation period equal in length to a teaching period. (41 a - 42 a). It argued that this language had historically been applied in accordance with the length of instructional periods, which had varied at PRMS from 40 to 62 minutes depending on the year. Id. Based on that past practice, the Association maintained that prep time must be adjusted to match the instructional period length under the block schedule, which extended each teaching block to eighty-four (84) minutes. Id.

According to the Association, the Agreement was clear and unambiguous: if a teaching period consists of eighty-four minutes, then the prep period must be of equal length. Id. The Association emphasized that prep time is a mandatory subject of negotiations and that, during bargaining, the Board had proposed specific language addressing prep periods under a potential block schedule at PRMS—language mirroring the provision already applicable to high school teachers. Id. The Association rejected that proposal, and the Board withdrew it. Id. The Association argued that this history demonstrated that no mutual agreement was reached regarding prep time under a block schedule and that the Board could not unilaterally impose a different standard. Id.

The Association further asserted that it was not required to pursue a charge with PERC or demand impact bargaining, because the Board's conduct constituted a clear contract violation. Id. While conceding that the Board had the managerial authority to implement a block schedule, the Association maintained that the prep time provision remained binding and enforceable, and that the burden rested on the Board to negotiate any deviation from the Agreement. Id. As a remedy, the Association sought monetary compensation for affected teachers pursuant to the Agreement's "Extra Work/Extra Pay" clause. Id.

The Board, in contrast, argued that the grievance should be denied because the Association had failed to demonstrate a contractual violation. (42 a - 43 a). It contended that Article 5.1.3 does not apply to the block schedule implemented at PRMS and emphasized that the Association's own witness, Frances Mazzone, acknowledged during the hearing that the provision did not govern the new format. Id.

The Board asserted that it retained the managerial prerogative to determine the structure of the school day, and that it lawfully exercised that authority by implementing the block schedule. Id. It further argued that the Association did not request to bargain over the impact of the schedule change and could not now invoke that issue through grievance arbitration. Id.

According to the Board, the prep periods provided—consisting of a full block every other day and a half block on alternating days—were consistent with the Agreement when read in its entirety. Id. It pointed to the Agreement's "Extra Work/Extra Pay" provision, which equates a prep period with a half block for purposes of compensation. Id. In the Board's view, this language confirmed that a full block and a prep period were not synonymous. Id.

The Board also noted that the Agreement includes specific language governing prep periods for high school teachers under a block schedule, while no similar provision was ever adopted for PRMS teachers. Id. This distinction, coupled with the Association's rejection of the Board's proposal during negotiations, supported the conclusion that the Agreement did not require daily eighty-four-minute prep periods at PRMS. Id. The Board maintained that the Association was seeking through arbitration what it had failed to obtain through bargaining and that the grievance should be denied. Id.

After reviewing the full record, including the parties' contractual language, past practices, bargaining history, and hearing testimony, Arbitrator Cure concluded that the Association failed to meet its burden of proving a contractual violation. (44 a - 45 a). He framed the central issue as whether the newly implemented eighty-four (84) minute instructional block at PRMS constituted one "teaching period" or two,

for purposes of determining the length of the required daily preparation period under the Agreement. (44 a).

Arbitrator Cure began by recognizing that the Agreement entitles teachers to a daily preparation period equal to one teaching period, as designated on the school's master schedule. Id. However, he noted that the contract does not define the length of a "teaching period" and that PRMS instructional periods have historically varied — from as short as 40 minutes to as long as 62 minutes — depending on the school year. (45 a)

He found that the Association's position required redefining a prep period as equivalent to two periods of instruction under the block schedule, rather than one. (44 a). He expressly rejected this approach, finding no contractual basis for it. Id. In support, he pointed to the "Extra Work/Extra Pay" provision of the Agreement, which treats a "Prep Period" and a "½ Block" as equivalents for compensation purposes — confirming that a full "Block" of eighty-four (84) minutes is distinct from a standard prep period. Id. He explained:

> ***On page 84 of the Agreement, the schedule entitled "Extra Work/Extra Pay" makes clear that a teacher who misses a "Prep Period or ½ Block" is entitled to twenty-seven ($27) dollars. It follows that there is no equivalency between "a Block" (2 periods) of instructional time and "a prep period." The concept of prep period cannot be stretched and redefined to include two periods of instruction***. The Association implicitly acknowledges this, since in its demand for relief in this proceeding it has referred to this provision and is seeking twenty-seven ($27) dollars per day for each teacher who was

> not scheduled for a prep period equal to a Block of instructional time or eighty-four (84) minutes. (44 a) (emphasis added).

He also emphasized that the Association implicitly acknowledged this distinction by seeking monetary relief under that very clause — $27 per day per teacher — for each missed half-block, not a full one. Id.

Arbitrator Cure then compared the language applicable to PRMS teachers with that governing the high school, where the contract expressly provides for a full block of prep every other day, and a half block on the remaining days — thus totaling eighty-four (84) minutes across two days. (45 a). In contrast, the PRMS provision contains no such reference or special accommodation for block scheduling. Id. He viewed this omission as further evidence that the contract did not entitle PRMS teachers to full-block prep periods under the new schedule. Id.

Although the Association relied on prior practice, where prep periods always matched instructional periods, Arbitrator Cure found that the shift to a block schedule marked a "fundamental change" in the structure of the school day. (46 a). Once that change occurred, he reasoned, the direct relationship between prep time and instructional time changed as well. Id. As a result, PRMS teachers continued to receive one prep period per day — in line with the Agreement — but that prep period corresponded to a standard instructional unit of forty-two (42) minutes, rather than the full eighty-four (84) minute block. Id.

In sum, Arbitrator Cure determined that the Association's effort to obtain extended preparation periods under the block schedule lacked support in the text of the Agreement, was inconsistent with the parties' bargaining history and the Agreement's compensation provisions, and amounted to an attempt to secure through arbitration what had not been achieved at the bargaining table. (44 a - 46 a). The Agreement did not contain express language addressing block scheduling at PRMS, and its silence or ambiguity on that point left room for differing interpretations. Id. Given this context, Arbitrator Cure concluded that the Board's interpretation was reasonable and did not constitute a contractual violation. Id. Accordingly, he denied the grievance. (47 a).

STANDARD OF REVIEW

The party seeking to vacate the award bears the burden of establishing a basis to vacate. Minkowitz v. Israeli, 433 N.J. Super. 111, 136 (App. Div. 2013). Appellate Courts "review the court's decision on a motion to vacate an arbitration award de novo." Bound Brook Bd. of Educ. v. Ciripompa, 442 N.J. Super. 515, 520 (App. Div. 2015). However, the Appellate Division, like the Law Division, must apply "[t]he well-established standard" of judicial review of public-sector arbitration awards, namely that "an arbitrator's award will be confirmed 'so long as the award is reasonably debatable.'" Policemen's Benevolent Ass'n v. City of Trenton, 205 N.J.

422, 428-29 (2011) (quoting Linden Bd. of Educ. v. Linden Educ. Assoc., 202 N.J. 268, 276 (2010)). The Appellate Division must hew to that standard of review.

Further, "[t]he public policy of this State favors arbitration as a means of settling disputes that otherwise would be litigated in a court." Badiali v. N.J. Mfrs. Ins. Group, 220 N.J. 544, 556 (2015) (citing Cty. Coll. of Morris Staff v. Cty. Coll. of Morris Staff Ass'n, 100 N.J. 383, 390 (1985)). Arbitration's "usefulness for labor-management issues is well-recognized in this state." Borough of E. Rutherford v. E. Rutherford PBA Local 275, 213 N.J. 190, 201 (2013). Accordingly, ***"courts grant arbitration awards considerable deference***." Id. (emphasis added). "'[T]o ensure finality, as well as to secure arbitration's speedy and inexpensive nature, there exists a strong preference for judicial confirmation of arbitration awards.'" Id. (citation omitted). "[A]rbitration of public-sector labor disputes, in particular, 'should be a fast and inexpensive way to achieve final resolution of such disputes and not merely "a way-station on route to the courthouse."'" Id. (quoting Policemen's Benevolent Ass'n, supra, 205 N.J. at 429). "Thus, arbitration awards are given a wide berth, with limited bases for a court's interference." Id.

Moreover, under the Arbitration Act, N.J.S.A. 2A:24-1 to -11, a "court shall vacate the award in any of the following cases:"

> a. Where the award was procured by corruption, fraud or undue means; b. Where there was either evident partiality or corruption in the arbitrators, or any thereof; c. Where the arbitrators were guilty of misconduct . . . ; [or] d. Where the

> arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made. N.J.S.A. 2A:24-8.

Pertinent to this appeal, an arbitrator exceeds his or her authority where they ignore "the clear and unambiguous language of the agreement[.]" City Ass'n of Supervisors & Adm'rs v. State Operated Sch. Dist. of City of Newark, 311 N.J. Super. 300, 312 (App. Div. 1998). "Thus, an arbitrator may not disregard the terms of the parties' agreement, nor may he [or she] rewrite the contract for the parties." Cty. Coll. of Morris, 100 N.J. at 391 (citations omitted).

Here, however, the Association does not contend that the arbitration award was procured by corruption, fraud, or undue means; nor does it allege evident partiality, corruption, or misconduct by the arbitrator that prejudiced its rights. Instead, the Association argues that the award is not reasonably debatable and appears to rely on N.J.S.A. 2A:24-8(d), suggesting that the arbitrator failed to apply clear and unambiguous contract language. Nonetheless, this Court should affirm Judge Bartels's October 23, 2024 Order confirming the arbitration award, as the award is not only reasonably debatable, but also entitled to substantial judicial deference consistent with New Jersey's strong public policy favoring the finality of arbitration.

LEGAL ARGUMENT

I. COURTS MUST AFFORD SUBSTANTIAL DEFERENCE TO ARBITRATION AWARDS. (Responding to the Association's Point I)

The threshold consideration on this appeal concerns the appropriate standard of review. While the Association seeks to reframe this case as a question of contract interpretation for the courts, it is well settled that judicial review of arbitration awards is highly deferential. This section briefly outlines the governing principles and confirms that Arbitrator Cure's award is entitled to substantial deference.

Arbitration is "a favored means of dispute resolution." Hojnowski v. Vans Skate Park, 187 N.J. 323, 342 (2006); see also Middletown Twp. PBA Loc. 124 v. Twp. of Middletown, 193 N.J. 1, 10 (2007) ("Arbitration of labor-management disputes is favored in New Jersey."). Arbitration awards are presumed valid. Del Piano v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 372 N.J. Super. 503, 510 (App. Div. 2004). "Consistent with the salutary purposes that arbitration as a dispute-resolution mechanism promotes, courts grant arbitration awards considerable deference." Borough of E. Rutherford, 213 N.J. 190 at 201. To ensure finality, as well as to secure arbitration's speedy and inexpensive nature, there exists a strong preference for judicial confirmation of arbitration awards. N.J. Tpk. Auth. v. Loc. 196, I.F.P.T.E., 190 N.J. 283, 292 (2007).

The New Jersey Supreme Court has advised that, "[g]enerally, when a court reviews an arbitration award, it does so mindful of the fact that the arbitrator's

interpretation of the contract controls." Tretina Printing, Inc. v. Fitzpatrick & Assocs., 135 N.J. 349, 364-65 (1994). In public sector arbitration, "a court will confirm an arbitrator's award so long as the award is 'reasonably debatable.'" Middletown Twp. PBA Loc. 124, 193 N.J. at 11 (quoting N.J. Tpk. Auth., 190 N.J. at 292).

In this case, while a trial court's interpretation of a contract or legal issue is not entitled to special deference on appeal, a different standard applies to arbitration awards. Courts are required to give substantial deference to an arbitrator's decision, particularly in the context of public sector labor disputes, where arbitration is a strongly favored method of resolving contractual disagreements.

This deference is grounded in the well-established policy that values the finality, efficiency, and cost-effectiveness of arbitration. It also reflects the limited role of the judiciary in reviewing arbitration awards. When parties agree to arbitration, they vest the arbitrator with the authority to interpret and apply their agreement. As a result, it is the arbitrator's interpretation—not the court's—that controls.

The issue on this appeal is not whether the trial court reached the correct interpretation of the contract, but whether Arbitrator Cure's award is reasonably debatable. That standard properly frames the analysis that follows. For present purposes, it is enough to emphasize that this Court must defer to Arbitrator Cure's

award so long as it represents a plausible, reasoned, and factually supported construction of the parties' agreement—which it plainly does.

II. THE ARBITRATOR'S AWARD WAS REASONABLY DEBATABLE AND WAS PROPERLY CONFIRMED BY THE TRIAL COURT. (Responding to the Association's Point II)

The Association's primary challenge to the arbitrator's award centers on its assertion that the contract language is clear and unambiguous, and that the arbitrator simply got it wrong. That contention misrepresents both the nature of the dispute and the applicable standard of review. The issue before this Court is not whether a different interpretation of the Agreement could have been reached, but whether Arbitrator Cure's interpretation was reasonably debatable. The Association's briefing fails to engage with that standard, and instead attempts to relitigate the merits of its position while distorting the record and injecting arguments that the arbitrator already considered and rejected.

As discussed more fully in the standard of review section above, when reviewing the parties' contentions, the Appellate Division must remain mindful that in the context of a "public sector arbitration, courts will accept an arbitrator's award so long as the award is 'reasonably debatable.'" N.J. Tpk. Auth., 190 N.J. at 292. Under the "reasonably debatable" standard, a court reviewing an arbitration award "may not substitute its own judgment for that of the arbitrator, regardless of the court's view of the correctness of the arbitrator's interpretation." N.J. Transit Bus

Operations, Inc. v. Amalgamated Transit Union, 187 N.J. 546, 554 (2006) (citing State v. Int'l Fed'n of Prof'l & Tech. Eng'rs, Local 195, 169 N.J. 505, 514 (2001)).

In this case, Arbitrator Cure presided over a full evidentiary hearing and reviewed the parties' competing interpretations of Article 5.1.3. The provision requires teachers to receive one daily prep period "equal to a teaching period," but does not define the length of a teaching period. As Arbitrator Cure found, teaching periods at PRMS had historically ranged from 40 to 62 minutes. (45 a). In the 2022–2023 school year, PRMS adopted a block schedule in which each instructional block lasted eighty-four minutes. Arbitrator Cure concluded that the implementation of this schedule marked a fundamental change in the structure of the school day, which disrupted the historic one-to-one alignment between prep periods and instructional periods. (46 a).

The Association's position required reinterpreting a prep period to mean the full length of an instructional block—effectively treating one prep period as equal to two periods of instruction. Cure rejected this view and instead grounded his interpretation in the Agreement's "Extra Work/Extra Pay" provision, which defines a "Prep Period or ½ Block" as equivalent for compensation purposes. (44 a). He observed that the Association itself relied on that clause in seeking $27 per day for each missed half-block, further confirming the contractual distinction between a prep period and a full block. Id.

In addition, Arbitrator Cure relied on the bargaining history. The Board had proposed adopting specific language during negotiations that would have aligned PRMS prep periods with the high school's block-based schedule. That language provided for a full block every other day and a half block on the remaining days. The Association rejected the proposal, and it was withdrawn. (38 a - 39 a). Arbitrator Cure viewed the lack of an adopted provision addressing prep time under the block schedule as significant. (45 a). He concluded that the Agreement's silence or ambiguity on this issue left room for differing interpretations and did not require the daily provision of eighty-four-minute prep periods. (44 a - 46 a).

The Association's attempt to recast the new schedule as a "sham" was also raised before the arbitrator and rejected. (39 a). Arbitrator Cure credited the Board's testimony concerning how prep time was scheduled and found that the teachers received prep periods consistent with the Agreement. These are credibility-based determinations fully grounded in the record. The Association's continued reliance on the "sham" characterization serves only to distract from the applicable standard of review. This appeal does not permit relitigation of factual disputes already resolved through arbitration.

The trial court properly confirmed the award under the "reasonably debatable" standard. In its October 23, 2024 Order, the court emphasized that the Agreement

did not define the length of a prep period, and that either side's interpretation could be reasonably advanced. The court concluded:

> Whether the Arbitrator is correct or not, the award is reasonably debatable. It is possible the Contract was intended to keep the prep periods the same as they were for the past few years: Approximately forty-two minutes. It is also possible the Association has the stronger argument that the terms of Article 5.1.3 allow an interpretation of eighty-four minutes as one teaching period. The Contract does not provide the length of the prep periods, so either interpretation could be reasonable. Perhaps applying the intent of the old contracts, which had shorter teaching periods, is proper. Perhaps it is not, and the prep periods should be eighty-four-minutes. Reasonable minds may disagree on which party should prevail, which meets the reasonably debatable standard. (11 a).

The Association's brief, in contrast, largely ignores this standard. It offers little more than a restatement of its position before the arbitrator, paired with criticisms of Arbitrator Cure's reasoning that fall well short of meeting the high bar for vacating an award. Essentially, the Association seeks to rehash the arbitration process in hopes of securing a more favorable result. While it is not uncommon for one party to disagree with the outcome of arbitration, that disagreement—no matter how strongly held—does not justify judicial intervention. Arbitrator Cure reviewed the full record, applied the terms of the Agreement, and issued a reasoned decision supported by the evidence. Under the governing standard, that is sufficient.

The Association has not shown that Arbitrator Cure disregarded the contract, added new terms, or ignored unambiguous provisions. Nor has it shown that his

award was irrational or unsupported by the record. The arbitrator's decision falls squarely within the range of reasonable interpretations and must be upheld. Indeed, the very fact that the Association presents one contractual interpretation while the Board presents another only reinforces that this was a dispute over ambiguous language, properly resolved by the arbitrator. The existence of two competing, rational interpretations is itself proof that the award is reasonably debatable. Accordingly, this Court must deny and dismiss the Association's appeal.

III. THE "SHAM SCHEDULE" ARGUMENT DISTORTS THE RECORD AND WAS PROPERLY REJECTED BY THE ARBITRATOR. (Responding to the Association's Point III)

The Association's "sham schedule" argument misrepresents the record and distracts from the legal standard that governs this appeal. This theory was presented to Arbitrator Cure, thoroughly considered during the hearing, and expressly rejected. (38 a – 39 a). Its reintroduction on appeal amounts to a renewed attempt to relitigate factual disputes that have already been resolved through a reasoned arbitration award.

The record reflects that the Board proposed clear contractual language that would have aligned PRMS preparation periods with the established block schedule at the high school—specifically, a full block every other day and a half block on alternating days. Id. That proposal was rejected by the Association during negotiations and was subsequently withdrawn. Id. Arbitrator Cure relied on this

bargaining history in concluding that the Association could not impose, through arbitration, a provision it affirmatively declined to adopt at the negotiating table. (44 a – 46 a). The Association's continued failure to acknowledge this key fact further undermines the credibility of its position.

The Association now asserts that the Board acted in bad faith by withdrawing both its proposal and the initial PRMS schedule, and by replacing that schedule with a color-coded version that allegedly concealed the block format. (Appellant's Br. at 28). This allegation was not ignored. The arbitrator considered the entire record, reviewed testimony regarding the assignment of prep periods, and found that PRMS teachers received one preparation period per day consistent with the terms of the Agreement. (44 a - 46 a). These findings reflect credibility assessments and contractual interpretation, both well within the arbitrator's authority and supported by the evidentiary record.

The trial court properly confirmed the award, noting that the parties advanced competing, reasonable interpretations of ambiguous language and that the arbitrator resolved those disputes through a thorough and principled analysis. (11 a). The existence of a factual disagreement—particularly one rooted in a rejected proposal and a disputed schedule format—does not render the award irrational or unsupported.

The "sham schedule" claim is, at most, a disagreement with the arbitrator's evaluation of the facts. It was fully considered, firmly rejected, and offers no basis for vacating the award. The decision was grounded in the record, consistent with the Agreement, and plainly meets the standard of being reasonably debatable. The trial court correctly confirmed the award, and this Court should do the same.

IV. THE ARBITRATOR'S AWARD DRAWS ITS ESSENCE FROM THE AGREEMENT AND IS NOT INTERNALLY CONTRADICTORY. (Responding to the Association's Point IV)

The Association contends that Arbitrator Cure's award should be vacated due to an internal inconsistency. This claim is based on a single sentence from the arbitrator's decision, which the Association lifts out of context in an effort to undermine the award's integrity. This argument is unpersuasive. It distorts the arbitrator's reasoning and ignores the deferential standard governing judicial review of arbitration awards. The Association's position amounts to a disagreement with the outcome—not a legitimate basis to overturn it.

Arbitrator Cure issued a comprehensive fourteen-page decision following a full evidentiary hearing and post-hearing briefing. (33a – 47a). He carefully evaluated the parties' competing interpretations of Article 5.1.3, reviewed the language of the Agreement, considered past practice and bargaining history, and ultimately concluded that the Board had not violated the Agreement by providing PRMS teachers with alternating full and half-block preparation periods. (44 a - 46

a). The central question, as the arbitrator framed it, was whether the term "teaching period"—which the Agreement does not define—required daily preparation periods of eighty-four minutes under the new block schedule. (44 a). He concluded that it did not. (46 a).

The Association attempts to manufacture a contradiction from the arbitrator's observation that "this fundamental change in scheduling precluded the Union from relying on the language of Article 5.3.1 to achieve daily eighty-four (84) minute prep periods." Id. Taken in context, that statement is entirely consistent with the rest of Arbitrator Cure's reasoning. He did not suggest that Article 5.1.3 ceased to apply. Rather, he concluded that the shift to block scheduling fundamentally altered the structure of the school day, such that the Association's application of that provision was no longer warranted in the form it proposed. The provision's historical application did not automatically compel prep periods to mirror new instructional blocks in length.

Arbitrator Cure's reasoning throughout the award is cohesive and well supported. He pointed to the "Extra Work/Extra Pay" clause in the Agreement, which treats a missed "Prep Period or ½ Block" as equivalent for compensation purposes. (44 a). This language confirmed that a full eighty-four-minute block was not interchangeable with a single prep period. The Association's own reliance on

this clause, seeking $27 per day per teacher, further validated the arbitrator's reading. Id.

Arbitrator Cure also considered the bargaining history. The Board proposed language that would have adopted the high school's block-scheduling prep structure for PRMS—providing a full block every other day and a half block on the remaining days. The Association rejected that proposal, and the language was withdrawn. (38 a - 39 a). The final Agreement did not include any provision expressly tying PRMS prep time to block scheduling. The arbitrator reasonably concluded that the Association could not now obtain through arbitration what it had declined to secure through negotiation. (45 a).

The trial court correctly rejected the Association's attempt to elevate a single sentence to a ground for vacatur. In its October 23, 2024 Order, the court recognized that both the Board and the Association had advanced reasonable interpretations of the Agreement, and that the arbitrator resolved the dispute by applying the contractual language to a changed factual context. The court expressly noted that this was a close question on which reasonable minds could differ—and that fact alone was sufficient to satisfy the reasonably debatable standard. (11 a).

The Association's continued disagreement with the arbitrator's conclusions does not render the award invalid. Arbitrator Cure did not ignore the Agreement or depart from its terms. He interpreted the contract based on the language, history, and

structure the parties themselves created. His award is coherent, consistent, and firmly grounded in the record. The fact that the Association presents one interpretation and the Board another only underscores that this was a genuine interpretive dispute—precisely the kind of disagreement arbitration is designed to resolve.

Accordingly, the arbitrator's decision draws its essence from the Agreement, was properly confirmed by the trial court, and must be upheld by this Court.

CONCLUSION

For the foregoing reasons, the Board respectfully requests that this Court affirm the October 23, 2024 Order of the Superior Court confirming the arbitration award and deny the Association's appeal in its entirety.

LENOX, SOCEY, FORMIDONI, GIORDANO, LANG, CARRIGG & CASEY, LLC

s/ Costadinos J. Georgiou

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