COUNTY OF PASSAIC and PASSAIC COUNTY SHERIFF, Plaintiffs-Appellants, v. POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL NO. 197; POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL NO. 197A; POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL NO. 286, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION APP. DIV. DOCKET NO. A-938-24 On Appeal From: SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY DOCKET NO.: MRS-L-1476-24 Civil Action Sat Below: Hon. David H. Ironson, J.S.C.

PLAINTIFFS-APPELLANTS COUNTY OF PASSAIC'S AND PASSAIC COUNTY SHERIFF'S BRIEF

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PRELIMINARY STATEMENT

In conducting the requisite analysis of the April 29, 2024, award, only one conclusion can be reached – and it is beyond reasonable debate – the arbitrator so far overstepped their authority that the award must be vacated pursuant to N.J.S.A. 2A:24-8. The arbitrator ignored the plain language of the parties' agreements and ignoring the uncontradicted evidence in the record. Further, the arbitrator failed to correctly interpret the terms of the parties' agreements in accordance with Chapter 78. Compounding these clear errors of fact and law, the record before the arbitrator (and the trial court) clearly and indisputably demonstrated that a reduction or elimination of Chapter 78 contributions were never a part of the interest arbitration process and were never negotiated by the parties. The flaws in the arbitrator's reasoning highlight that the award was plainly rendered by "undue means".

Moreover, the arbitrator improperly relied upon pre-Chapter 78 language in the parties' agreements and impermissibly ignored the fact that full Chapter 78 contributions were an express term of the collective negotiations agreements by operation of law (which rendered the contrary pre-Chapter 78 language void and unenforceable). Finally, the award clearly violated the public policy mandate of Chapter 78 to require all current and retired employees make statutory contributions toward their medical benefits, **until** those contribution levels were removed through negotiation. It is not subject to debate that an agreement to remove Chapter 78

contributions was never reached, thus, Chapter 78 contributions by all current and retired employees is the status quo.

Contrary to its authority under N.J.S.A. 2A:24-8, the trial court erred in determining that the arbitrator's interpretation was reasonably debatable, that the award was not rendered by "undue means", that the award was not contrary to existing law or public policy and that the award was not required to be vacated. Chapter 78 and the decisions interpreting same, as well as the record before the trial court, clearly elucidated the errors committed by the arbitrator sufficient to require vacation of the award.

Consequently, for the foregoing reasons and as discussed in more detail below, the trial court erred in failing to vacate the award pursuant to N.J.S.A. 2A:24-8, and this decision must be reversed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

Plaintiff-Appellant County of Passaic (the "County") is a public entity organized and existing under the laws of the State of New Jersey, with a principal place of business located at 401 Grand Street, Paterson, New Jersey 07505. Pa64, at ¶ 1. The County, through Plaintiff-Appellant Passaic County Sheriff's Office (the "PCSO") (collectively, "Plaintiffs"), employs sheriff's officers and corrections

[1] For the Court's convenience, Plaintiffs have combined their statement of facts and procedural history due to the intertwined nature of the facts and procedural history relevant to this appeal.

officers who are organized into collective bargaining units. Pa65, at ¶ 2.

Defendants-Respondents Policemen's Benevolent Association Local Nos. 197, 197A and 286 (collectively, "Defendants") are, respectively, the sole and exclusive bargaining representatives of all rank-and-file full-time corrections officers who work in the Corrections Division of the PCSO, all supervisory full-time corrections officers who work in the Corrections Division of the PCSO, and all rank-and-file full-time sheriff's officers who work in the Patrol and Court Divisions of the PCSO. Pa65, at ¶¶ 3-8.

The Agreements Between The Parties

Local 197

A collective negotiations agreement between Plaintiffs and Local 197 was effective from January 1, 2007 through December 31, 2014 (the "Local 197 2007-2014 CNA"), which was modified by a memorandum of agreement between Plaintiffs and Local 197 which was effective from January 1, 2015 through December 31, 2018 (the "Local 197 2015-2018 MOA"). Pa65, at ¶ 9; Pa88-132.

Chapter 78, which required all public employees (active and retired) not otherwise exempt to contribute a percentage of the cost of their healthcare benefits, became effective and part of the parties' collective bargaining agreements upon the expiration of the Local 197 2007-2014 CNA on January 1, 2015. See N.J.S.A. 40A:10-21.1(d). After the four-year phase in period, full contribution levels for

Local 197 members (active and retired) were reached in 2018. See N.J.S.A. 40:10-21.1(a).

In 2020, negotiations for a successor agreement between Plaintiffs and Local 197 stalled, and Local 197 filed a petition for compulsory interest arbitration. As part of the interest arbitration award rendered by Arbitrator Ira Cure on May 13, 2021, a number of provisions were added to or amended in the 2007-2014 CNA, with those unaltered or unaddressed by his award being carried forward to the successor agreement (the "Local 197 IA Award"). Pa66, at ¶ 10; Pa133-191.[2]

The terms of the Local 197 2007-2014 CNA, Local 197 2015-2018 MOA and the Local 197 IA Award were incorporated into a successor collective negotiations agreement effective from January 1, 2019 through December 31, 2023 (the "Local 197 2019-2023 CNA"). Pa66, at ¶ 11; Pa192-220. In its discussion of medical benefits, the Local 197 2007-2014 CNA provided the following:

> Upon retirement, the Employer will continue to provide and pay for the above programs. The Employer reserves the right to select the insurance carrier who shall provide such benefits, as long as the benefits are equivalent to or better than those provided by the policies in effect on the date of this agreement.

Pa66, at ¶ 12; Pa113, at Art. 14.A.5. The Local 197 2007-2014 CNA also states:

> **Except at [sic] otherwise provided herein**, all benefits

[2] The Local 197 IA Award was appealed to the Public Employment Relations Commission for reasons unrelated to the instant matter, which remanded the matter to Arbitrator Cure, who rendered a remand award on May 13, 2021.

> which Employees have heretofore enjoyed and are presently enjoying shall be maintained and continued by the County during the term of this agreement. The personnel policies and regulations of this department, established for all Employees of all divisions, which have mutually agreed upon and are in effect, shall continue to be applicable to all officers except as otherwise provided therein.

Pa66-67, at ¶ 13; Pa116, at Art. 15.C (emphasis added).

As relevant to retirement, the Local 197 2007-2014 CNA also contains the following language:

> All members who file for retirement during the term of this Agreement, shall be fully vested with **all terms** of this Agreement, including but not limited to wages, medical, prescription or any other **terms or conditions listed herein**. Said benefits and entitlements thereto, shall be unaffected by future changes to subsequent contracts. This provision shall survive the expiration of the collective negotiations agreement.

Pa67, at ¶ 14; Pa118-19, at Art. 15.J (emphasis added).

The Local 197 2015-2018 MOA added and/or amended a number of provisions to the parties' collective negotiations agreement. Specifically, as it pertained to medical benefits, the following language was added to Article 15, "[a]ll employees in PBA Local #197 shall be subject to the contributions outlined in Chapter 78 of Public Law 2011." Pa67, at ¶ 15; Pa130.

The Local 197 IA Award also added and/or amended a number of provisions of the parties' collective bargaining agreement and provided that "All provisions of

the existing Collectively Negotiated Agreements shall be carried forward except for those which have bene modified by the terms of this Award and any prior agreements between the parties." The elimination or reduction of Chapter 78 contributions was not part of the Local 197 IA Award. Pa67, at ¶ 16; Pa133-191.

In accordance with the Local 197 IA Award, the Local 197 2019-2023 CNA was prepared by incorporating the terms of the Local 197 2007-2014 CNA, Local 197 2015-2018 MOA and the Local 197 IA Award. The Local 197 2019-2023 CNA, (like the Local 197 2007-2014 CNA) in its discussion of medical benefits, provides as follows:

> Upon retirement, the Employer will continue to provide and pay for the above programs. The Employer reserves the right to select the insurance carrier who shall provide such benefits, as long as the benefits are equivalent to or better than those provided by the policies in effect on that date.

Pa67-68, at ¶ 17; Pa210, at Art. XIV.1.e. The Local 197 2019-2023 CNA also incorporated the language from the Local 197 2015-2018 MOA that all members of Local 197 were responsible for making Chapter 78 contributions: "All employees in the Union shall be subject to the contributions outlined in Chapter 78 of Public Law 2011." Pa68, at ¶ 18; Pa210, at Art. XIV.1.f.

Finally, the Local 197 2019-2023 CNA incorporated the pre-Chapter 78 language in Article 15.C and J from the Local 197 2007-2014 CNA into the Local 197 2019-2023 CNA. Pa68, at ¶ 19; Pa212-13, at Art. XV.3 and XV.9. The Local

197 2019-2023 CNA clearly required all members, including retirees, to make Chapter 78 contributions and contains no exception for retirees from the requirement to make Chapter 78 contributions. Pa68, at ¶¶ 20, 21; Pa210, at Art. XIV.1.f.

Local 197A

A collective negotiations agreement between Plaintiffs and Local 197A was effective from January 1, 2007 through December 31, 2014 (the "Local 197A 2007-2014 CNA"), which was modified by the Local 197 2015-2018 MOA. Pa68, at ¶ 22; Pa128-132; Pa221-258.

Chapter 78, which required all public employees (active and retired) not otherwise exempt to contribute a percentage of the cost of their healthcare benefits, became effective and part of the parties' collective bargaining agreements upon the expiration of the Local 197A 2007-2014 CNA on January 1, 2015. See N.J.S.A. 40A:10-21.1(d). After the four-year phase in period, full contribution levels for Local 197 members (active and retired) were reached in 2018. See N.J.S.A. 40:10-21.1(a).

In 2020, negotiations for a successor agreement between Plaintiffs and Local 197A stalled, and Local 197A filed a petition for compulsory interest arbitration. As part of the interest arbitration award rendered by Arbitrator Ira Cure on December 21, 2020, a number of provisions were added to or amended in the Local 197A 2007-2014 CNA, with those unaltered or unaddressed being carried forward to the

successor agreement (the "Local 197A IA Award"). Pa68-69, at ¶ 23; Pa259-314.

The terms of the Local 197A 2007-2014 CNA, Local 197A 2015-2018 MOA and the Local 197A IA Award were incorporated into a successor collective negotiations agreement effective from January 1, 2019 through December 31, 2023 (the "Local 197A 2019-2023 CNA"). Pa69, at ¶ 24; Pa315-41. In its discussion of medical benefits, the Local 197A 2007-2014 CNA provided the following:

> Upon retirement, the Employer will continue to provide and pay for the above programs. The Employer reserves the right to select the insurance carrier who shall provide such benefits, as long as the benefits are equivalent to or better than those provided by the policies in effect on the date of this agreement.

Pa69, at ¶ 25; Pa245, at Art. 14.A.5. The Local 197A 2007-2014 CNA also stated:

> **Except at [sic] otherwise provided herein**, all benefits which Employees have heretofore enjoyed and are presently enjoying shall be maintained and continued by the County during the term of this agreement. The personnel policies and regulations of this department, established for all Employees of all divisions, which have mutually agreed upon and are in effect, shall continue to be applicable to all officers except as otherwise provided therein.

Pa69, at ¶ 26; Pa248, at Art. 15.C (emphasis added).

As relevant to retirement, the Local 197A 2007-2014 CNA also contained the following language:

> The County of Passaic shall pay in full, all medical and prescription premiums (see 15 A&C). For all members who retire with twenty five (25) years of service or more.

. . .

> All members who file for retirement during the term of this Agreement, shall be fully vested with **all terms** of this Agreement, including but not limited to wages, medical, prescription or any other **terms or conditions listed herein**. Said benefits and entitlements thereto, shall be unaffected by future changes to subsequent contracts. This provision shall survive the expiration of the collective negotiations agreement.

Pa69-70, at ¶ 27; Pa250-51, at Art. 15.J (emphasis added).

The Local 197A 2015-2018 MOA added and/or amended a number of provisions to the parties' collective negotiations agreement, specifically as it pertained to medical benefits, by adding the following language to Article 15, "[a]ll employees in PBA Local #197 shall be subject to the contributions outlined in Chapter 78 of Public Law 2011." Pa70, at ¶ 28; Pa130.

The Local 197A IA Award also added and/or amended a number of provisions of the parties' collective bargaining agreement and provided that "All provisions of the existing Collectively Negotiated Agreements shall be carried forward except for those which have been modified by the terms of this Award and any prior agreements between the parties." The elimination or reduction of Chapter 78 contributions was not part of the Local 197A IA Award. Pa70, at ¶ 29; Pa259-314.

In accordance with the Local 197A IA Award, the Local 197A 2019-2023 CNA was prepared by incorporating the terms of the Local 197A 2007-2014 CNA,

Local 197A 2015-2018 MOA and the Local 197A IA Award. The Local 197A 2019-2023 CNA, (like the Local 197A 2007-2014 CNA) in its discussion of medical benefits, provides as follows:

> Upon retirement, the Employer will continue to provide and pay for the above programs. The Employer reserves the right to select the insurance carrier who shall provide such benefits, as long as the benefits are equivalent to or better than those provided by the policies in effect on that date.

Pa70, at ¶ 30; Pa332, at Art. XIV.1.e. The Local 197A 2019-2023 CNA also incorporated the language from the Local 197A 2015-2018 MOA that all members of Local 197A were responsible for making Chapter 78 contributions: "All employees in the Union shall be subject to the contributions outlined in Chapter 78 of Public Law 2011." Pa70-71, at ¶ 31; Pa332, at Art. XIV.1.f.

Finally, the Local 197A 2019-2023 CNA incorporated the pre-Chapter 78 Article 15.C and J from the Local 197A 2007-2014 CNA into new Articles XV.3 and XV.9 of the Local 197A 2019-2023 CNA. Pa334, at Art. XV.3 and XV.9. The Local 197A 2019-2023 CNA clearly required all members, including retirees, to make Chapter 78 contributions and contains no exception for retirees from the requirement to make Chapter 78 contributions. Pa71, at ¶¶ 32, 33; Pa332.

Local 286

A collective negotiations agreement between Plaintiffs and Local 286 was in effect from January 1, 2007 through December 31, 2014 (the "Local 286 2007-2014

CNA"), and was modified by a memorandum of agreement between Plaintiffs and Local 286 that was effective from January 1, 2015 through December 31, 2018 (the "Local 286 2015-2018 MOA"). Pa71, at ¶ 34; Pa342-83; Pa384-89. In its discussion of medical benefits, the Local 286 2007-2014 CNA provided the following:

> Upon retirement, the Employer will continue to provide and pay for the above programs. The Employer reserves the right to select the insurance carrier who shall provide such benefits, as long as the benefits are equivalent to or better than those provided by the policies in effect on the date of this agreement.

Pa71, at ¶ 35; Pa369, at Art. 15.A.5. The Local 286 2007-2014 CNA also states:

> **Except at [sic] otherwise provided herein**, all benefits which Employees have heretofore enjoyed and are presently enjoying shall be maintained and continued by the County during the term of this agreement. The personnel policies and regulations of this department, established for all Employees of all divisions, which have mutually agreed upon and are in effect, shall continue to be applicable to all officers except as otherwise provided therein.

Pa71-72, at ¶ 36; Pa372, at Art. 16.C (emphasis added).

As relevant to retirement, the Local 286 2007-2014 CNA also contains the following language:

> All members who file for retirement during the term of this Agreement, shall be fully vested with **all terms** of this Agreement, including but not limited to wages, medical, prescription or any other **terms or conditions listed herein**. Said benefits and entitlements thereto, shall be unaffected by future changes to subsequent contracts. This provision shall survive the expiration of the collective

negotiations agreement.

Pa72, at ¶ 37; Pa374-75, at Art. 16.J (emphasis added).

Chapter 78, which required all public employees (active and retired) not otherwise exempt to contribute a percentage of the cost of their healthcare benefits, became effective and part of the parties' collective bargaining agreements upon the expiration of the Local 286 2007-2014 CNA on January 1, 2015. See N.J.S.A. 40A:10-21.1(d). After the four-year phase in period, full contribution levels for Local 286 members (active and retired) were reached in 2018. See N.J.S.A. 40:10-21.1(a).

The Local 286 2015-2018 MOA added and/or amended a number of provisions to the parties' collective negotiations agreement, specifically the following language which was added to Article 15, "All employees in PBA Local #286 shall be subject to the contributions outlined in Chapter 78 of Public Law 2011." Pa72, at ¶ 38; Pa386.

In 2020, Local 286 filed for compulsory interest arbitration. An interest arbitration award rendered by Arbitrator Mark Winters on April 27, 2021, (the "Local 286 IA Award"). While the terms of the Local 286 IA Award were not formally incorporated into a successor collective negotiations agreement, the parties are currently engaged in negotiations for a successor collective negotiations agreement. Pa72, at ¶ 39; Pa390-460.

The Local 286 IA Award also added and/or amended a number of provisions of the parties' collective bargaining agreement and provided that "All provisions of the existing Collectively Negotiated Agreements shall be carried forward except for those which have been modified by the terms of this Award and any prior agreements between the parties." The elimination or reduction of Chapter 78 contributions was not part of the Local 286 IA Award. Pa72-73, at ¶ 40; Pa457.

The Local 286 2007-2014 CNA, as modified by the Local 286 2015-2018 MOA and the Local 286 IA Award, contains no language exempting retirees from the obligation to make Chapter 78 contributions. Pa73, at ¶ 41; Pa390-460.

Negotiations and Interest Arbitrations

All members of Defendants (current and retired) were making full Chapter 78 contributions at the time of 2019-2020 negotiations. Pa73, Pa75, Pa77, at ¶¶ 42, 60 and 78.

For 4 years after Chapter 78 became effective, the level of Chapter 78 contributions was not negotiable. However, when Defendants and Plaintiffs participated in negotiations and the interest arbitration process in 2019-2020, Chapter 78 contributions had become negotiable. Pa73, Pa75, Pa77-78, at ¶¶ 43, 61 and 79.

During the 2019-2020 negotiations between Plaintiffs and Defendants, Defendants proposed to eliminate Chapter 78 contributions. Pa73, Pa75, Pa78, at ¶¶

44, 62 and 80; Pa468-71; Pa535-38; Pa613-14. These proposals were rejected by Plaintiffs. Therefore, Tier IV contributions remained a part of the agreements between Plaintiffs and Defendants. Pa73, Pa75, Pa78, at ¶¶ 45, 63 and 81.

As part of the interest arbitration process, Plaintiffs and Defendants were directed to submit last and final offers. Plaintiffs' last and final offer to Defendants did not contain any offer or proposal to reduce or eliminate Chapter 78 contributions. Pa73, Pa76, Pa78, at ¶¶ 46, 64 and 82; Pa494-520; Pa575-98; Pa633-73. The only language regarding medical insurance benefits was the proposal to remove medical benefits (not contributions) for retirees in Article 14.A.5. This proposal was for the purpose of cleanup of inoperable language that was void upon implementation of the Chapter 78 mandates. Pa73, Pa76, Pa78, at ¶¶ 47, 65 and 83. There was also language which incorporated the terms of the 2015-2018 Local 197 MOA into a successor collective negotiations agreement, to which the parties had already agreed. Pa74, Pa76, Pa78, at ¶¶ 48, 66 and 83; Pa128-32; Pa515-17; Pa593-95; Pa665-67. Defendants made no last and final offers regarding the elimination or reduction of Chapter 78 contributions. Pa74, Pa76, Pa78, at ¶¶ 49, 67 and 84; Pa521-27; Pa599-604; Pa674-81.

Thus, Chapter 78 contributions were not at issue during the interest arbitration process. Chapter 78 had been fully implemented at that time with regard to Chapter 78 contributions and Defendants did not seek any reduction in Chapter 78

contributions. Pa74, Pa76, Pa78, at ¶¶ 50, 68 and 85.

Plaintiffs never made an offer to remove or reduce Chapter 78 contributions for any employee. In fact, the only proposal ever made regarding the reduction or elimination of Chapter 78 contributions was made by Defendants during negotiations prior to the interest arbitration process, and that proposal was rejected. Pa74, Pa76, Pa78, at ¶¶ 51, 69 and 86. During the interest arbitration process, Defendants did not seek to reduce or eliminate Chapter 78 contributions. Pa74, Pa76, Pa79, at ¶¶ 52, 70, 87. Thus, Plaintiffs did not negotiate Chapter 78 contributions during the 2019-2020 negotiations or during the interest arbitration process with Defendants at any time. Pa74, Pa76-77, Pa79, at ¶¶ 53, 71, 88. Plaintiffs' position was simple – everyone was subject to Chapter 78 and required to make contributions in accordance with the law and the provisions of any agreement that were contrary to statute were invalid. Pa74, Pa77, Pa79, at ¶¶ 54, 72, 89.

After the phase in period, Chapter 78 contributions became negotiable – however, full Tier IV contributions were the status quo and the County never negotiated them away. Pa74, Pa77, Pa79, at ¶¶ 55, 73, 90. Plaintiffs would never negotiate something as important as Chapter 78 contributions, which represent a large financial portion of Plaintiffs' employee-related expenses, in the haphazard manner Defendants argued. To the contrary, if Plaintiffs were to negotiate Chapter 78 contributions (which they did not do and were not interested in doing in the

future), they would have made a specific, explicit proposal regarding same. Pa75, Pa77, Pa79, at ¶¶ 56, 74, 91. Moreover, a proposal to eliminate Chapter 78 contributions would not be one made by Plaintiffs, it would be made by Defendants, as the benefit of such a proposal would only flow to their members and such a proposal would financially burden Plaintiffs. Pa75, Pa77, Pa79, at ¶¶ 57, 75, 92. Finally, the financial impact of the elimination of Chapter 78 contributions would result in a significant increase to the operating budget of Plaintiffs, which would need to be addressed by some combination of 1) layoffs; and 2) raising taxes. Pa75, Pa77, Pa79, at ¶¶ 58, 76, 93.

Thus, it is indisputable that neither Plaintiffs nor Defendants sought to reduce or eliminate Chapter 78 contributions during the interest arbitration process. Pa75, Pa77, Pa79, at ¶¶ 59, 77, 94.

The Grievances

On or about November 12, 2021, Local 197, on behalf of retired Officer Christopher Diamond ("Diamond"), submitted a grievance against Plaintiffs alleging that the "County has violated Article 14, *Medical Benefits*, and Article 15, *Miscellaneous*, of the current Agreement, the same provisions in past collective bargaining agreements, the County's past practices, and applicable law[.]" (the "Local 197 Grievance"). Pa80, at ¶ 95; Pa682-86. Specifically, Local 197 claimed that the County violated Article 14.A.5 and 15.J by failing to provide Diamond with

retiree healthcare coverage at no cost. Pa80, at ¶ 96. The Local 197 Grievance did not reference the contractual and statutory requirement that all members of Local 197 were responsible for Chapter 78 contributions, which had been incorporated into the Local 197 2019-2023 CNA. Pa80, at ¶ 97. The Local 197 Grievance was denied. Pa80, at ¶ 98.

Local 197A and Local 286 filed nearly identical grievances, which were also denied. Pa80-81, at ¶¶ 99-105; Pa687-91; Pa692-95. The basis for the denials was that the relief requested was contrary to the plain language of the parties' agreements and the provisions of Chapter 78 of Public Law 2011. Pa81, at ¶ 106. As to Local 286, Plaintiffs specifically responded, "Chapter 78 requires all members of PBA Local 286, including S/O Macnish, to pay a percentage of the cost of their healthcare benefits coverage. This was explicitly recognized in the 2015-2018 MOU[.]" Pa81, at ¶ 107. Further, "[t]he Interest Arbitration Award bearing Docket No. IA-2021-04 did not alter the requirement that all members of PBA Local 286, including S/O Macnish, make Chapter 78 contributions," and "S/O Macnish has made no attempt to demonstrate he is exempt from Chapter 78." Pa81, at ¶ 108.

Consolidated Grievance Arbitration

Defendants filed requests for a panel of arbitrators, which were consolidated. Pa82, at ¶ 109. An arbitrator was appointed by PERC. Pa82, at ¶ 110. Plaintiffs filed a motion to dismiss the consolidated grievances as the relief sought by

Defendants was contrary to the language of the parties' collective negotiations agreements and Chapter 78. Pa82, at ¶ 111. This motion was denied because the arbitrator determined that a hearing was necessary regarding the 2020 negotiations and interest arbitration process. Pa82, at ¶ 112.

Consequently, hearings were held on May 16, 2023 and June 21, 2023 in this matter. John Welsh, President of Local 197 testified on behalf of Local 197, whose testimony was also incorporated on behalf of Local 197A. Ferdinand Fernandez II, Esq., testified on behalf of Local 286. Matthew P. Jordan, Esq., Passaic County Administrator, testified on behalf of Plaintiffs. All three of these individuals were familiar with the agreements at issue in the consolidated grievances and were involved with and possessed personal knowledge regarding the 2019-2020 negotiations and interest arbitrations. Pa82, at ¶ 113. Approximately 34 joint exhibits were received into evidence, including the parties' current and former collective negotiations agreements, memoranda of understanding, negotiations proposals, and interest arbitration awards. Pa82, at ¶ 114. Post hearing briefs were submitted by the parties on or about August 28, 2023. Pa82, at ¶ 115.

The Arbitration Award

On April 29, 2024, the arbitrator forwarded to the parties the award in the consolidated grievance arbitration (the "Award"). Pa82, at ¶ 116; Pa699-722. The Award sustained the consolidated grievances and ordered Plaintiffs to stop deducting

Chapter 78 contributions from Defendants' retired members, and to refund Chapter 78 contributions made by Defendants' retired members. Pa82-83, at ¶ 117; Pa699-722.

In the Award, the arbitrator discussed the impact of Chapter 78:

> On June 28, 2011, the New Jersey Legislature enacted N.J.S.A. 40A:10-21.1 ("Chapter 78"), requiring public employees to contribute to healthcare premiums according to a formula related to an individual's annual income and health insurance choices. The contribution rates were phased in over a four-year period, commencing June 28, 2011, or upon expiration of any collective negotiations agreement in effect on that date, until employees contributed the full contribution rates or "Tier IV."
> . . .
> The law also established that, after full implementation, those contribution levels, became part of the parties' collective negotiations and were then subject to collective negotiations in a manner similar to other negotiable items (Chapter 78). The New Jersey Supreme Court, in a 2020 decision, upheld the principle that the law was "not to achieve only a transient increase . . . in employees' health insurance premium contributions, followed by an immediate reversion to pre-statute contribution rates" but to establish increased contributions over the long term. Ridgefield Park at 23.
>
> Retirees were subject to Chapter 78 by N.J.S.A. 40A:10-23.

Pa712. The arbitrator further recognized that retirees are subject to Chapter 78 despite the existence of pre-Chapter 78 language in the 2007-2014 collective negotiations agreements, that full Tier IV Chapter 78 contributions were status quo of the parties' agreements by operation of law:

> Following the expiration of the 2007-2014 agreements the County and Locals 197, 197A and 286 negotiated and executed memoranda of agreement ("MOAs") for the period 2015 through 2018, incorporating mandatory Chapter 78 contributions, adding "All employees in the Union shall be subject to the contributions outlined in Chapter 78 of Public Law 2011 to all three units' agreements (J-4, J-26).
>
> Chapter 78 also supplanted retirees' contractual benefits in that, unless exempt by the law, **retirees began paying Tier IV level contributions toward premiums and this became the de facto retiree medical benefits term**. Significantly, the language obligating the County to provide and fully pay for retirees' health benefits remained in the MOAs, **even though Chapter 78 had nullified those obligations.** Thus by statute and agreement, at the end of the 2018 contractual period, after the PBAs' members had fulfilled their Chapter 78 obligations and could negotiate new health benefit terms **their retirees existing benefit was Chapter 78 contribution rates, or Tier IV. This was so regardless of the wording of provisions that had originated in 2007 and would continue in effect** unless and until the parties reached agreement through collective negotiations or until the terms were changed through an award issued by an interest arbitrator. Chapter 78 further required that after full implementation (Tier IV), successor negotiations over health benefits were to be negotiated **as if Tier IV of Chapter 78's premium share were explicitly included in the prior contract**.

Pa713 (emphasis added) (citing N.J.S.A. 40A:10-21.20; In the Matter of Ridgefield Park Bd. of Educ., 244 N.J. 1 (2020)).

Despite recognizing that full Tier IV contributions were part of the parties' agreements, and despite that the parties did not negotiate the removal or reduction

of full Tier IV contributions, the arbitrator unreasonably (and with no factual or legal support) concluded that Plaintiffs' final offer in interest arbitration to remove nullified pre-Chapter 78 language constituted a negotiation to remove full Tier IV contributions from the parties' agreements. Pa714-15. Perhaps in recognition that the Award was palpably unreasonable and not supported by the record, the arbitrator recognized that "[n]either Interest Arbitrator specifically awarded changes to Chapter 78 contributions by retirees." Pa715.

Despite making the factual finding that pre-Chapter 78 language regarding health contributions was nullified by Chapter 78, recognizing that full Tier IV contributions were the status quo of the parties' agreements "as if explicitly included in the parties' agreement" and that changes to Chapter 78 contributions were not awarded in the interest arbitration process, the arbitrator relied upon the language she had already concluded was nullified in determining that the retirees were not required to make Chapter 78 contributions. Pa719-20.

Moreover, the arbitrator refused to consider the relevant, competent and uncontradicted testimony offered by Plaintiffs that removing Chapter 78 contributions from retirees would adversely impact Plaintiffs' budget, potentially causing layoffs and/or reductions in service. Pa715-16; Pa721-22.

October 24, 2024 Order And Statement Of Reasons

On July 24, 2024, Plaintiffs filed a verified complaint and order to show cause

in the Superior Court of New Jersey, Passaic County, seeking to vacate the Award pursuant to N.J.S.A. 2A:24-8. Pa1-24. On July 31, 2024, the court, sua sponte, transferred the action to Morris County and the verified complaint was refiled. See Pa63; Pa64-722. On August 2, 2024, the court entered an order to show cause, directing Defendants to submit papers in opposition to the verified complaint and show cause why the relief requested by Plaintiffs should not be granted. Pa723-26. On August 23, 2024, Defendants filed a verified answer to the verified complaint and opposition to the order to show cause. Pa727-62. On September 27, 2024, the trial court heard oral argument on Plaintiffs' application. See T1-T25.[3]

On October 24, 2024, the trial court entered its order and statement of reasons denying Plaintiffs' application to vacate the Award. Pa763-72. After recounting the procedural history and the parties' arguments, the trial court began its analysis with a discussion of the interest arbitration process. Pa767-68. The trial court then discussed the standard of review of arbitration awards under N.J.S.A. 2A:24-8, and the "reasonably debatable" standard of review of an arbitrator's interpretation of a labor agreement, citing Borough of E. Rutherford v. E. Rutherford PBA Local 275, 213 N.J. 190, 200 (2013) and N.J.S.A. 2A:24-8. Pa768.

In coming to its conclusion to not vacate the Award, the trial court relied upon

[3] "T" refers to the transcript of the September 27, 2024 hearing before the trial court, which has been previously filed via eCourts Appellate.

the arbitrator's misstatement of the interest arbitration process and the misreading of the "plain language" of the parties' agreements. Pa769-70. Specifically, the trial court noted that "Arbitrator McGoldrick was persuaded by the contention that the 'plain meaning' of the language was clear and that it must be applied as written. That is, that Chapter 78's requirement that mandated contributions continue until modified through negotiations does not override the "plain meaning" of the Agreements." Pa770. The trial court determined that the Award was not procured by "undue means" because it believed that the arbitrator relied on the plain language of the parties' agreements. Pa771. The trial court went on to conclude that the Award was not contrary to existing law or public opinion. Pa771-72.

Plaintiffs' notice of appeal was filed on December 4, 2024. Pa773.

LEGAL ARGUMENT

POINT I

STANDARD OF REVIEW

The review of a trial court's decision whether to confirm, modify or vacate an award pursuant to N.J.S.A. 2A:24-7 is de novo. Yarborough v. State Operated Sch. Dist. of City of Newark, 455 N.J. Super. 136, 139 (App. Div. 2018) (citing Minkowitz v. Israeli, 433 N.J. Super. 111, 136 (App. Div. 2013)). "A trial court's interpretation of the law and the legal consequences that flow from established law are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm.

of Manalapan, 140 N.J. 366, 378 (1995) (citing cases). See also City of Atl. City v. Trupos, 201 N.J. 447, 463 (2010).

Further, "[a]n arbitration award premised upon a legal conclusion . . . should likewise not be sustained unless the appellate court determines that the arbitrator has correctly interpreted the law." E. Rutherford, 213 N.J. at 211 (Patterson, J., dissenting) (citing Weiss v. Carpenter, Bennett & Morrissey, 143 N.J. 420, 443 (1996) ("arbitrators cannot be permitted to authorize litigants to violate either the law or those public-policy principles that government has established by statute, regulation or otherwise for the protection of the public")).

Pursuant to N.J.S.A. 2A:24-7, either party may move to confirm, modify or vacate an award within three (3) months of the date of its delivery. N.J.S.A. 2A:24-7. A party may seek to vacate or modify an award either in response to an action to confirm or in an independent action. In either case, the action must be instituted within three months of the award delivery. N.J.S.A. 2A:24-8 and -9. Pursuant to N.J.S.A. 2A:24-8,

> the 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 in

> refusing to postpone the hearing, upon sufficient cause being shown therefor, or in refusing to hear evidence, pertinent material to the controversy, or of any other misbehaviors prejudicial to the rights of any party;
>
> (d) Where the arbitrator exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter was not made.

N.J.S.A. 2A:24-8 (emphasis added). For the purpose of N.J.S.A. 2A:24-8(a), "undue means" refers to circumstances where the arbitrator makes a mistake of fact or law that is either apparent on the face of the record or acknowledged by the arbitrator. PBA Local 160 v. Twp. of N. Brunswick, 272 N.J. Super. 467, 474 (App. Div. 1994). See also New Jersey Highway Auth. v. Int'l Fed., Local 193, 274 N.J. Super. 599, 609, 612-13 (App. Div. 1994) (vacating arbitration award in public sector as procured through undue means because arbitrator disregarded contract provisions). Moreover, "the concept of 'undue means' has been greatly enlarged in the public sector." Id. (quoting Old Bridge Twp. Bd. of Educ. v. Old Bridge Educ. Ass'n, 98 N.J. 523, 527 (1985)).

The party seeking to vacate an arbitration award bears the burden of establishing one of the grounds set forth in N.J.S.A. 2A:24-8. Township of Wyckoff v. PBA Local 261, 409 N.J. Super. 344, 354 (App. Div. 2009) (holding an arbitrator's award is entitled to a presumption of validity). "Consistent with the salutary purposes that arbitration as a dispute-resolution mechanism promotes, courts grant arbitration awards considerable deference." E. Rutherford, 213 N.J. at

201. However, this does not mean that an arbitration award is immune from attack. PBA Local 11 v. City of Trenton, 205 N.J. 422, 429 (2011). As the United States Supreme Court has recognized:

> [A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his 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 an award.

United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960).

Against this backdrop, "an arbitrator's award resolving a public sector dispute will be accepted so long as the award is 'reasonably debatable.'" Borough of Carteret v. Firefighters Mut. Benevolent Ass'n. Loc. 67, 247 N.J. 202, 211 (2021) (quoting E. Rutherford, 213 N.J. at 201-02). An award is "reasonably debatable" if it is "justifiable" or "fully supportable in the record". City of Trenton, 205 N.J. at 431 (quoting PBA Local 21 v. Town of Kearny, 81 N.J. 208, 223-24 (1979)). Under the "reasonably debatable" standard, the arbitrator's decision must be "examined to determine whether it was justifiable based on a reasonable interpretation of the contractual language." N.J. Transit Bus Operations, Inc. v. Amalgamated Transit Union, 187 N.J. 546, 554 (2006) (citing Kearny, 81 N.J. at 220-21). Consequently, arbitrators are not permitted to disregard the terms of a collective bargaining agreement or rewrite the agreement to add terms that do not exist. County College

of Morris Staff Ass'n v. Cnty. College of Morris, 100 N.J. 383, 391 (1985). Specifically, New Jersey courts have vacated arbitration awards where arbitrators have added new terms to an agreement or ignored clear language. City of Trenton, 205 N.J. at 429-30. Put differently, an arbitration award that ignores the clear language of the contract cannot be sustained. State, Office of Empl. Relations v. Comm'n Workers of Am., 154 N.J. 98, 112 (1998). Thus, if an arbitrator exceeds their authority by adding a new term to the contract, the award shall be vacated pursuant to N.J.S.A. 2A:24-8(d). See e.g., County College of Morris, 100 N.J. at 397-98 (declining to sustain arbitration award because arbitrator exceeded his authority); City of Trenton, 205 N.J. at 429 (same); PBA Local 258 v. Cnty. of Ocean, 2004 WL 1880779, at *4 (N.J. Super. App. Div. Apr. 30, 2024) (same). 51a.

In addition to the circumstances where N.J.S.A. 2A:24-8, the New Jersey Supreme Court has also adopted a "public policy" exception based upon "legislative enactments, administrative regulations, or legal precedents":

> This Court also has recognized a public policy exception, observing that a court "may vacate an award if it contrary to existing law or public policy." Bd. of Educ. of Alpha v. Alpha Educ. Ass'n, 188 N.J. 595, 603 (2006) (quotation omitted). Our public policy exception requires "heightened judicial scrutiny" when an arbitration award implicates "a clear mandate of public policy," Weiss v. Carpenter, Bennett & Morrissey, 143 N.J. 420, 443 (1996). A court may vacate such an award provided that the "resolution of the public-policy question" plainly violates a clear mandate of public policy. Ibid. Reflecting the narrowness of the public policy exception, that

> standard for vacation will be met only in "*rare circumstances*." Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349, 364 (1994) (emphasis added).

New Jersey Turnpike Auth. v. Local 196, 190 N.J. 283, 293-94 (2007).

When analyzed under the foregoing standard, the trial court erred in failing to vacate the Award, and the trial court's October 24, 2024 Order should be reversed.

POINT II

THE TRIAL COURT ERRED IN FAILING TO VACATE THE AWARD (Pa763)

The Award is not "reasonably debatable." The Award ignores the clear language in the parties' agreements that all members (current and retired) were required to make full Tier IV contributions, and the Award is premised upon language in the agreements that the arbitrator recognized was nullified by Chapter 78. Additionally, the Award must be vacated because it was rendered by undue means due to the numerous legal and factual errors made by the arbitrator. Finally, the Award plainly violates the public policy embodied in Chapter 78 and decisions interpreting same. Put simply, the Award must be vacated pursuant to N.J.S.A. 2A:24-8, and the trial court's failure to do so must be reversed.

A. The Award Was Procured By Undue Means Due To A Multitude Of Mistakes of Fact And Law And The Award Is Not Reasonably Debatable (Pa763)

Every member – active and retired – of Defendants is required to make Chapter 78 contributions, unless otherwise exempt pursuant to statute. N.J.S.A.

40A:10-21.1 provides the following:

> (2) The contribution specified in paragraph (1) of this subsection shall apply to:
>
> (a) employees of employers for whom there is a majority representative for collective negotiations purposes who accrue the number of years of service credit, and age if required, as specified in N.J.S.40A: 10-23, or on or after the expiration of an applicable binding collective negotiations agreement **in force on that effective date**, and who retire on or after that effective date or expiration date, excepting employees who elect deferred retirement, when the employer has assumed payment obligations for health care benefits in retirement for such an employee; and
>
> (b) employees of employers for whom there is no majority representative for collective negotiations purposes who accrue the number of years of service credit, and age if required, as specified in N.J.S.40A: 10-23, **on or after that effective date** or on or after the expiration of a binding collective negotiations agreement **in force on that effective date** if the terms of that agreement concerning health care benefits payment obligations in retirement have been deemed applicable by the employer to those employees, and who retire on or after that effective date or expiration date, excepting employees who elect deferred retirement, when the employer has assumed payment obligations for health care benefits in retirement for such an employee.

N.J.S.A. 40A:10-21.1(emphasis added). The statute uses the term "employees" in reference to both retired and active employees. See generally N.J.S.A. 40A:10-21.1.

The contributions required by N.J.S.A. 40A:10-21.1 apply unless an individual was otherwise exempt. N.J.S.A. 40A:10-21.1(b)(3) creates an exemption

for certain employees, not applicable to the Consolidated Grievances:

> **(3)** Employees described in paragraph (2) of this subsection who have 20 or more years of creditable service in one or more State or locally-administered retirement systems **on the effective date of P.L.2011, c.78** shall not be subject to the provisions of this subsection.

Id. (emphasis added).

Chapter 78 also addresses the commencement date for contributions toward insurance benefits in N.J.S.A. 40A:10-21.1(d):

> The **contribution under subsection a. of this section shall commence**: (1) upon **the effective date of P.L.2011, c.78** for employees who do not have a majority representative for collective negotiations purposes, notwithstanding that the terms of an applicable collective negotiations agreement binding on the employer have been applied or have been deemed applicable to those employees by the employer, or have been used to modify the respective payment obligations of the employer and those employees in a manner consistent with those terms, before that effective date; and (2) **upon the expiration of any applicable binding collective negotiations agreement in force on that effective date for employees covered by that agreement** with the contribution required for the first year under subsection a. of this section commencing in the first year after that expiration, or upon the effective date of P.L.2011, c.78 if such an agreement has expired before that effective date with the contribution required for the first year under subsection a. of this section commencing in the first year after that effective date.

N.J.S.A. 40A:10-21.1(d) (emphasis added). Thus, the health insurance contributions mandated by Chapter 78 commenced on June 28, 2011, or upon the expiration of

any collective negotiations agreement in effect on that date. These mandatory contributions were subject to a four-year phase in period beginning upon the expiration of any collective negotiations agreement in effect on June 28, 2011. After full implementation – completion of the four-year phase in period – the mandatory contribution levels required by Chapter 78 became negotiable and were subject to future negotiations.

Chapter 78 specifically provides that:

> After full implementation, those contribution levels **shall become part of the parties' collective negotiations and shall then be subject to collective negotiations** in a manner similar to other negotiable items.

N.J.S.A. 40A:10-21.2 (emphasis added). Chapter 78's contribution levels are the status quo terms in the parties' agreement and are subject to further negotiation for the next contract. Absent mutual assent of the parties to reduce or eliminate Tier IV contribution levels, the full contribution rate remains in the parties' agreement by operation of law. See N.J.S.A. 40A:10-21.2; In the Matter of Ridgefield Park Bd. of Educ., 244 N.J. 1 (2020); West Essex PBA Local 81 v. Fairfield Twp., 2021 WL 2550536, at *1 (N.J. Super. App. Div. June 21, 2022); PBA Local 191 v. Twp. of E. Windsor, 2022 WL 1052230, at *1 (N.J. Super. App. Div. Apr. 8, 2022); Hamilton Twp. Superior Officers Ass'n v. Twp. of Hamilton, 2019 WL 5824006, at *1 (N.J. Super. App. Div. Nov. 7, 2019).

In Ridgefield Park, the New Jersey Supreme Court discussed the purpose and

application of Chapter 78 in the context of employees of local boards of education. 244 N.J. at 1. The Ridgefield court noted that the Legislature made "Tier 4 contribution level the status quo for the purposes of negotiating contributions for the successor contract." Id. at 20. In coming to this conclusion, the Court reviewed the legislative history of Chapter 78, which confirmed that the Legislature "viewed public employee healthcare costs to present a fiscal crisis and that it acted to provide a **long-term** solution to that crisis". Id. at 21 (emphasis added). Further, the Ridgefield court opined on the purpose of Chapter 78:

> [t]he Legislature did not enact Chapter 78 to achieve only a transient increase in employees' health insurance premium contributions, followed by an immediate reversion to pre-statute contribution rates as soon as employees had contributed at the Tier 4 level for a year. Instead, it envisioned that Chapter 78 would increase employee health insurance contributions over the long term.

Id. at 23.

Two recent Appellate Division decisions apply the reasoning of Ridgefield specifically to retirees who were formerly law enforcement officers, just as in this matter. In Hamilton Twp. SOA, 2019 WL 5824006, at *1, the Appellate Division held that a recently retired police officer was required to make Chapter 78 contributions in retirement towards his health insurance. The insurance clause of the applicable collective negotiations agreements provided as follows:

> "The Employer shall continue to provide medical

> insurance, including prescription, dental and vision. Pursuant to [Chapter 78], though, employees are now required to contribute a portion of their salaries toward the costs of health insurance at a rate set forth in Chapter 78.

Hamilton, 2019 WL 5824006, at *2. The applicable collective negotiations agreements also provided, "[t]he Township shall provide full medical and drug plan for retired employees and their families in accordance as set forth in this Agreement." Id. The trial judge found that the officer had not served twenty years prior to June 28, 2011 (Chapter 78's effective date), and therefore, was not exempt from Chapter 78 contributions. When the four-year phase in period to full implementation had expired, the officer was still subject to a collective negotiations agreement which required employees and retirees to make Chapter 78 mandatory health insurance contributions.

The officer and association appealed, arguing that: (1) the retired officer was entitled to employer paid health insurance under Chapter 78's sunset provision, or, in the alternative, that the retired officer was not required to contribute to health insurance after retirement because full implementation of the statute was reached prior to the expiration of the previous collective negotiations agreement; (2) the retired officer was entitled to employer-paid health insurance during retirement, pursuant to N.J.S.A. 40A:10-21.1(b); (3) defendant-employer breached its agreement to provide employer-paid health insurance; and (4) equitable estoppel considerations entitled the retired officer, and other similarly situated employees, to

employer-paid health insurance after retirement. Id. at *3.

The Appellate Division correctly rejected these arguments. Since the governing collective bargaining agreement in effect on the date of his retirement contained the same requirement of compliance with Chapter 78, the retired officer was bound by its provision to make mandatory health insurance contributions following his retirement. Id. at *4.

In W. Essex, 2021 WL 2550536, at *1, the Appellate Division decided another appeal brought by a retired officer seeking to be relieved of his contractual and statutory obligation to make Chapter 78 contributions after retirement. The retired officer and other members of PBA Local 81 began paying Tier IV rates as of January 1, 2015. When the township and union began negotiating the new collective bargaining agreement, the township rejected the union's proposals to reduce its members health care contributions. When union members started withholding Tier IV contributions, the parties submitted their dispute to arbitration. The arbitrator found, in applying N.J.S.A. 40A:10-21.1, that full Tier IV contributions became an existing term of the collective negotiations agreement. The arbitrator further held that "'Chapter 78 and N.J.S.A. 40A:10-21.2 make clear that the Tier IV rate did not disappear, but must be negotiated – to agreement' and '[a]bsent an agreement Tier IV remain[ed] the health benefits contribution, not merely by operation of collective negotiations process and principles but also by statute.'" Id. at *3 (alteration in

original).

The Chancery Division upheld the arbitrator's decision, and the Appellate Division likewise affirmed the trial court and arbitrator's decision that Tier IV contributions remain until negotiated away. The Appellate Division based its decision on the plain language of N.J.S.A. 40A:10-21.2:

> The statute unambiguously provides where Tier IV contributions were included in the parties' prior CNA, the Tier IV rate formed the starting point for the negotiation of a new CNA. Consequently, the Tier IV rate was the "status quo" for negotiating health care benefit contributions in the subsequent CNA. In accordance with the unequivocal language in N.J.S.A. 40A:10-21.2, the status quo, meaning Tier IV rates, applied for calculating the health care benefit contributions withheld from the PBA members' paychecks.

Id. at *6. The Ridgefield decision further bolstered the W. Essex court's reasoning that "once achieved, Tier 4 contribution levels are to remain in effect unless and until the parties negotiate lower health insurance premium contribution rates in the next CNA", concluding:

> Based on the New Jersey Supreme Court's decision in In re Ridgefield Park Board of Education, we are satisfied the full Tier IV rates were the status quo for the successor 2018-2020 CNA because the Tier IV rates were included in the prior 2015-2017 CNA. To reduce the PBA members' contribution rate for health care benefits, the PBA was required to negotiate such a change. Because no modification was agreed upon or implemented, the Tier IV rates remained in effect for the 2018-2020 CNA.

Id.

Additionally, in E. Windsor, the Appellate Division upheld the Law Division and arbitrator's decision that the employer properly deducted Tier IV contributions from Union members. 2022 WL 1052230, at *1. The union relied upon contract language that pre-dated passage of Chapter 78 to argue that its members were not required to make Tier IV contributions. Id. at *2. In rejecting this argument, the arbitrator properly concluded that Tier IV rates were the "status quo" because there was never a meeting of the minds to move off of the Tier IV rates. Id. at *3. In affirming the trial court and arbitrator's decision, the Appellate Division noted that Tier IV contributions were the starting point for negotiations, and without a meeting of the minds to remove them, full Tier IV rates remained in effect. Id. at *6.

As Ridgefield, Hamilton, E. Windsor, and W. Essex make clear, as every witness confirmed, and as the arbitrator recognized, the four-year phase in period was complete, and Chapter 78 contributions were negotiable upon the expiration of the 2015-2018 memoranda of agreement. Thus, all members of Defendants – active and retirees - were required to make full Chapter 78 contributions unless the removal of that obligation has been negotiated by the parties. Pa713. As the arbitrator further recognized, the requirement of full Tier IV Chapter 78 contributions is the status quo of any collectively negotiated agreement and remains part of such agreement until negotiated away. Pa713. As discussed in more detail below, the applicable collective bargaining agreements all contain the express requirement that all

members (active and retired) make Chapter 78 contributions. Therefore, like the retired officers in Hamilton and W. Essex, here, the retired members of Defendants remain contractually and statutorily obligated to make full Chapter 78 contributions until such time as this requirement is negotiated out of the agreements.

The Supreme Court in Ridgefield Park, 244 N.J. at 1, outlined the purpose and application of Chapter 78 in the context of employees of local boards of education. The Ridgefield court noted that the Legislature made "Tier 4 contribution level the status quo for the purposes of negotiating contributions for the successor contract." Id. at 20. In coming to this conclusion, the Court reviewed the legislative history of Chapter 78, which confirmed that the Legislature "viewed public employee healthcare costs to present a fiscal crisis and that it acted to provide a **long-term** solution to that crisis". Id. at 21 (emphasis added). The Award's interpretation of the parties agreements runs directly contrary to this legislative intent.

Therefore, the Award's multitude of factual and legal errors are clear on its face and the Award's interpretation of the agreements is not even debatable, let alone reasonably debatable, and the trial court should have vacated the Award pursuant to N.J.S.A. 2A:24-8.

1. The Arbitrator Exceeded Their Authority By Improperly Altering The Parties Collective Negotiations Agreements Pertaining To Chapter 78 Contributions (Pa763)

The arbitrator exceeded their authority, and the Award is not "reasonably

debatable" because of the improper wholesale revisions to the parties agreements. As stated above, arbitrators are not permitted to disregard the terms of a collective bargaining agreement or rewrite the agreement to add terms that do not exist. Cnty. College of Morris, 100 N.J. at 391. Specifically, New Jersey courts have vacated arbitration awards where arbitrators have added new terms to an agreement or ignored clear language. City of Trenton, 205 N.J. at 429-30. Thus, if an arbitrator exceeds their authority by adding a new term to the contract, the award shall be vacated pursuant to N.J.S.A. 2A:24-8(d). See Cnty. College of Morris, 100 N.J. at 397-98 (declining to sustain arbitration award because arbitrator exceeded his authority); City of Trenton, 205 N.J. at 429 (same); PBA Local No. 258 v. Cnty. of Ocean, 2004 WL 1880779, at *4 (same).

Here, in the discussion of medical benefits, the applicable collective negotiations agreement for the 2007-2014 time period, negotiated and approved years prior to the enactment of Chapter 78, provided for fully paid for health care benefits. Pa113-119; Pa245-251; Pa 369-75.

As recognized by the arbitrator, the provisions referenced above from the 2007-2014 agreements were nullified by Chapter 78, as reflected in the applicable 2015-2018 MOA, which added the following language to Article 15, "[a]ll employees in [the relevant PBA] shall be subject to the contributions outlined in Chapter 78 of Public Law 2011." Pa713.

As discussed in Point II.A.3, below, the elimination or reduction of Chapter 78 contributions was not part of any IA Award. Pa4, Pa7, Pa9-10, Pa67, Pa70, Pa72-73 ¶¶ 16, 29, 40; Pa133-191; Pa259-314; Pa390-460. The arbitrator further recognized that retirees were subject to Chapter 78 despite the existence of pre-Chapter 78 language in the 2007-2014 collective negotiations agreements, and that full Tier IV Chapter 78 contributions were status quo of the parties' agreements by operation of law:

> Significantly, the language obligating the County to provide and fully pay for retirees' health benefits remained in the MOAs, **even though Chapter 78 had nullified those obligations.** Thus by statute and agreement, at the end of the 2018 contractual period, after the PBAs' members had fulfilled their Chapter 78 obligations and could negotiate new health benefit terms **their retirees existing benefit was Chapter 78 contribution rates, or Tier IV. This was so regardless of the wording of provisions that had originated in 2007 and would continue in effect** [.]

Pa713 (emphasis added).

Despite recognizing that full Tier IV contributions were part of the parties' agreements, and despite that the parties did not negotiate the removal or reduction of full Tier IV contributions, the arbitrator – with no basis in fact and contrary to law – removed this provision of the parties' agreements. Pa714-15.

Therefore, the arbitrator clearly exceeded her authority in both removing the full Tier IV contribution term of the parties' agreements and adding nullified

language that was no longer in effect, and by adding terms to the interest arbitration awards that did not exist. For these reasons the Award must be vacated pursuant to N.J.S.A. 2A:24-8(d).

2. The Award Is Contrary To The Plain Language Of The Agreements, Which Requires Retirees To Make Chapter 78 By Operation Of Law (Pa763)

It is a well-established principle of law that a provision of a contract that is contrary to statute is unenforceable. Wolfersberger v. Borough of Point Pleasant Beach, 305 N.J. Super. 446, 453 (App. Div. 1996). In Wolfersberger, plaintiff-retiree claimed he was entitled to have his employer pay his healthcare premiums in accordance with the parties' collective bargaining agreement. The defendant employer refused. In rejecting plaintiff-retiree's interpretation, the Appellate Division held that regardless of the parties' intent of the parties' collective bargaining agreement, since it was contrary to N.J.S.A. 40A:10-23, it was unenforceable. See also City Council of Elizabeth v. Fumero, 143 N.J. Super. 275 (Law Div. 1976) (holding provision of collective bargaining agreement was void and stricken from contract as it was contrary to statute); Saffore v. Atl. Cas. Ins. Co., 21 N.J. 300, 310 (1956) ("A specific provision integrated into the contract by force of a statute, as a matter of public policy, must be interpreted and given effect in accordance with the intention of the legislature, irrespective of how the contractors understood it."); Bryant v. City of Atl. City, 309 N.J. Super. 596, 629 (App. Div.

1998) ("A contract provision that is contrary to the requirements of a statute is void.").

As the arbitrator acknowledged, the provision relied upon by Defendants became void upon the effective date of Chapter 78 and was unenforceable. Pa713. See Wolfersberger, City Council of Elizabeth, Saffore and Bryant, supra. Even where such provisions are carried over into subsequent agreements, that cannot serve as a basis to avoid making the Chapter 78 contributions required by statute. See E. Windsor, 2022 WL 1052230, at *6. Moreover, all the evidence makes clear that the parties did not negotiate the removal of Chapter 78 contributions during negotiations or the interest arbitration process. See Pa461-93; Pa528-74; Pa605-32. Further, the Award recognized that the interest arbitrators did not address Chapter 78 contributions. Pa715. Thus, Chapter 78 contributions are required by the parties' collectively negotiated agreements, and until the obligation to make these contributions is removed through negotiations, and all current and retired members continue to be required to make Chapter 78 contributions. See Hamilton, 2019 WL 5824006, at *3-4; W. Essex PBA Local 81, 2021 WL 2550536, at *6.

Based on the foregoing, the plain language of the parties' agreements includes the requirement to make Chapter 78 contributions by all members. The pre-Chapter 78 language which was incorporated into the current agreements had been nullified (as the arbitrator recognized). Pa713. Therefore, until negotiated back into the

parties' agreements. Thus, the Award's interpretation of the plain language of the parties' agreements is not "reasonably debatable", and the Award should have been vacated pursuant to N.J.S.A. 2A:24-8.

3. Retirees Obligation To Make Chapter 78 Contributions Was Not Negotiated Out Of The Parties' Collective Negotiations Agreements During The Interest Arbitration Process (Pa763)

The arbitrator ignored (1) undisputed evidence of the parties' negotiations process; (2) relevant, probative, uncontradicted testimony regarding the effect that removal of Chapter 78 contributions would have on Plaintiffs' financial health; and (3) governing law, in entering the Award and determining that the parties had negotiated the elimination of Chapter 78 contributions.

The uncontradicted evidence in the record confirmed that no proposals were made by Plaintiffs to reduce or eliminate Chapter 78 contributions for any member of Defendants – active or retired. However, the Award relies on a "plain language" analysis of pre-Chapter 78 contract language in Article 15 (or Article 16) which was never the subject of negotiations or the interest arbitration at all – reasoning that was soundly rejected by the Appellate Division in E. Windsor, 2022 WL 1052230, at *6. See also W. Essex, 2021 WL 2550536, at *6; City of Plainfield v. PBA Local 19, 2022 WL 151624, at *4 (N.J. Super. App. Div. Jan. 18, 2022) (noting that carryover language in agreement stating that health premiums of non-exempt employees would be at employer's sole expense could not be binding because such term was not

negotiated by the parties after Tier IV contributions were in effect).

Here, it was not disputed and was noted by the arbitrator that all members of Defendants (current and retired) were making full Chapter 78 contributions at the time of negotiations. Pa73, Pa75, Pa77, at ¶¶ 42, 60 and 78; Ex. Pa713. For 4 years after Chapter 78 became effective, the level of Chapter 78 contributions was not negotiable. However, when Defendants and Plaintiffs participated in negotiations and the interest arbitration process in 2019-2020, Chapter 78 contributions had become negotiable. Pa73, Pa75, Pa77, at ¶¶ 43, 61 and 79; Pa713.

During the 2019-2020 negotiations, Defendants proposed to eliminate Chapter 78 contributions. Pa73, Pa75, Pa78, at ¶¶ 43, 61 and 79; Pa468-71; Pa535-38; Pa613-14. These proposals were rejected by Plaintiffs. Therefore, Tier IV contributions remained a part of the agreements between Plaintiffs and Defendants. Pa73, Pa75, Pa78, at ¶¶ 45, 63 and 81.

As part of the interest arbitration process, Plaintiffs and Defendants were directed to submit last and final offers. Plaintiffs' last and final offer to Defendants did not contain any offer or proposal to reduce or eliminate Chapter 78 contributions. Pa73, Pa76, Pa78, at ¶¶ 46, 64 and 82; Pa494-520; Pa575-98; Pa633-73. The only language regarding medical insurance benefits was the proposal to remove medical benefits (not contributions) for retirees in Article 14.A.5. This proposal was for the purpose of cleanup of inoperable language that was void upon implementation of the

Chapter 78 mandates. Pa73, Pa76, Pa78, at ¶¶ 47, 65 and 83. There was also language which incorporated the terms of the 2015-2018 Local 197 MOA into a successor collective negotiations agreement, to which the parties had already agreed. Pa74-78, at ¶¶ 48, 66 and 83; Pa128-32; Pa515-17; Pa593-95; Pa665-67. Defendants made no last and final offers regarding the elimination or reduction of Chapter 78 contributions. Pa74-78, at ¶¶ 49, 67 and 84; Pa521-27; Pa599-604; Pa674-81.

Chapter 78 contributions were not at issue during the interest arbitration process. Chapter 78 had been fully implemented at that time with regard to Chapter 78 contributions and Defendants did not seek any reduction in Chapter 78 contributions. Pa74-78, at ¶¶ 50, 68 and 85. Thus, it is indisputable that neither Plaintiffs nor Defendants sought to reduce or eliminate Chapter 78 contributions during the interest arbitration process. Pa75-79, at ¶¶ 59, 77, 94.

However, in the face of this undisputed evidence and despite recognizing that full Tier IV contributions were part of the parties' agreements, and that the parties did not negotiate the removal or reduction of full Tier IV contributions, the arbitrator unreasonably concluded that Plaintiffs' final offer in interest arbitration to remove nullified pre-Chapter 78 language constituted a negotiation of the removal of full Tier IV contributions from the parties' agreements. Pa714-15. Even more illogical was that the arbitrator recognized that "[n]either Interest Arbitrator specifically awarded changes to Chapter 78 contributions by retirees." Pa715. The reason for

this is readily apparent – there was never a negotiation of the removal of Chapter 78 contributions by retirees.

The trial court improperly approved of the arbitrator's confusion regarding what the terms of the parties' agreements were. Pa770-71. The decisions of the Superior Court have uniformly determined, in accordance with N.J.S.A. 40A:10-21.1 and -21.2, that retired employees are subject to Chapter 78, and that the requirement to make Chapter 78 contributions is an explicit term of the parties' agreements by operation of law. The arbitrator's and trial court's recognition that the parties here went through the interest arbitration process is a distinction without a difference. As set forth to both the arbitrator and trial court in detail (and uncontradicted in the record), Chapter 78 contributions WERE NOT at issue during the interest arbitration process and the County's last and final offer regarding the elimination of health benefits was wholly unrelated and had no effect on the requirement (per N.J.S.A. 40A:10-21.1 and -21.2) that all of Defendants' employees (active and retired) were obligated to make full Tier IV Chapter 78 contributions. Mutual assent is required to remove full Tier IV Chapter 78 contributions, and reliance on pre-Chapter 78 contract language, like the arbitrator did here, does not satisfy that requirement.[4] See E. Windsor, 2022 WL 10522330, at *5-6 (holding that

[4] A "meeting of the minds" or "mutual assent" is a bedrock requirement of contract formation. State v. Ernst & Young, LLP, 388 N.J. Super. 600, 612 (App. Div. 2006) (citing Johnson & Johnson v. Charmley Drug Co., 11 N.J. 526, 538-39 (1953));

where there was no meeting of the minds to remove Chapter 78 benefits, Tier IV rates remained in effect). See also Ridgefield Pk. PBA Local 86 v. Village of Ridgefield Park, 2024 WL 901060, at *4 (N.J. Super. App. Div. Mar. 4, 2024) (in stark contrast to this case, noting that arbitrator correctly read pre-Chapter 78 contract language requiring payment of insurance benefits of retired employees in conjunction with Chapter 78's requirements, requiring retired employees to receive the same benefits as active officers).

For these reasons, the trial court erred in failing to vacate the award pursuant to N.J.S.A. 2A:24-8, and this decision should be reversed.

B. The Award Violates The Public Policy Embodied In Chapter 78 (Pa763)

The trial court erred in failing to vacate the Award as contrary to public policy. Not only does the Award directly violate the fail to account for the uncontradicted testimony offered by Plaintiffs that removing Chapter 78 contributions from retired employees would adversely impact the County's budget, potentially causing layoffs and/or reductions in service. Pa715-16, Pa721. More importantly, the Award is directly contrary to the public policy embodied in Chapter 78 and its interpretative caselaw. Further, it must be recognized that this Court's review of whether an arbitration award conflicts with public policy is de novo and the Court must

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Knight v. New England Mut. Life. Ins. Co., 220 N.J. Super. 560, 565 (App. Div. 1987) (citations omitted).

determine the Legislature's intent, unconstrained by the arbitrator's decision. Ridgefield, 244 N.J. at 18 (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)).

The Award's exemption of retirees from the obligation to make Chapter 78 contributions is a blatant mistake of law directly contrary to the Legislature's intent in enacting Chapter 78, as well as the statute's explicit language. N.J.S.A. 40A:10-21.1; N.J.S.A. 40A:10-21.2. As referenced above, Chapter 78 was enacted in the face of "serious fiscal issues" confronting the State of New Jersey, specifically, the underfunding of the pension system and escalating health care costs. Brick Twp. PBA Local 230 v. Twp. of Brick, 446 N.J. Super. 61, 69 (App. Div. 2016) (citing DePascale v. State, 211 N.J. 40, 63 (2012)). "The sources of public policy include federal and state legislation and judicial decision. Statutes defining and declaring public and private rights develop over time and public policy often changes as the law changes; therefore, new applications of old principles are required." Chiesa v. D. Lobi Enterprises, Inc., 2012 WL 4464382, at *6 (N.J. Super. App. Div. Sept. 28, 2012) (internal and external citations omitted).

Additionally, "[p]ublic policy, with respect to contract provisions, is a principle of law whereby a contract provision will not be enforced if it has a tendency to be injurious to the public or against the public good. Whether a particular provision is against public policy is generally provided for by statute or by the State Constitution." Saxton Const. & Mgmt. Corp. v. Masterclean of N. Carolina Inc.,

273 N.J. Super. 374, 377 (Law Div. 1992), aff'd 273 N.J. Super. 641 (citations omitted). When a matter of public policy is brought into question, "a balancing test should be employed to determine whether a contractual provision is void as against public policy. In that balancing test, the 'public policy' is weighed against the enforcement of the contractual provision." Id. (citations omitted).

Here, considerable weight must be placed on the public policy behind the implementation of Chapter 78: the Legislature's intent to address serious fiscal issues faced by the State and the underfunding of the pension system. See Ridgefield Park, 244 N.J. at 23. This substantially outweighs any pre-Chapter 78 provision within the agreements which provides for payment of an employee's health benefit upon retirement. Permitting Defendants to circumvent the Legislature's clear expression of its intent would violate the public policy embodied in Chapter 78.

As the New Jersey Supreme Court made clear in N.J. Turnpike Auth., arbitration awards that implicate a "clear mandate" of public policy are subject to "heightened judicial scrutiny". N.J. Turnpike Auth., 190 N.J. at 294. "[F]or the purposes of judicial review of labor arbitration awards, public policy sufficient to vacate an award must be embodied in legislative enactments, administrative regulations, or legal precedents, rather than amorphous considerations of the common weal." Id. at 295. Consequently, the public policy sufficient to warrant the vacation of arbitration awards are embodied in "legislative enactments" and "legal

precedents", both of which the Award directly contradicts. As Chapter 78 explicitly provides that full contributions became the status quo of collective negotiations agreements. N.J.S.A. 40A:10-21.2 (emphasis added). Thus, by its plain terms, the goal of Chapter 78 was to provide more than temporary respite from spiraling healthcare costs, which would be accomplished by making full Tier IV contributions a term of the parties' contract by operation of law – which would have to be negotiated OUT of a contract, not INTO a contract. In fact, the New Jersey Supreme Court in Ridgefield expounded upon the public policy embodied in Chapter 78:

> [t]he Legislature did not enact Chapter 78 to achieve only a transient increase in employees' health insurance premium contributions, followed by an immediate reversion to pre-statute contribution rates as soon as employees had contributed at the Tier 4 level for a year. Instead, it envisioned that Chapter 78 would increase employee health insurance contributions over the long term.

244 N.J. at 23.

As recognized by the New Jersey Supreme Court in Ridgefield, Chapter 78 was enacted in the face of "serious fiscal issues" confronting the State of New Jersey, specifically, the underfunding of the pension system and escalating health care costs. Brick Twp. PBA Local 230, 446 N.J. Super. at 69 (citing DePascale, 211 N.J. at 63). The arbitrator's scant discussion fails to address in any meaningful manner how the Award is consistent with the foregoing principles. Under the standard set forth in N.J. Turnpike Auth., courts should not permit an arbitration award to circumvent the

Legislature's clear expression of its intent, such as here, where the Award plainly violates the public policy embodied in Chapter 78.

Moreover, the trial court failed to appreciate that the arbitrator refused to consider the relevant, competent and unrebutted testimony offered by Plaintiffs that removing Chapter 78 contributions from retirees would adversely impact Plaintiffs' budget, potentially causing layoffs and/or reductions in service. Pa715-16, Pa721.

Thus, as defined in N.J. Turnpike Auth., the Award plainly violates the public policy embodied in Chapter 78, and in the decisions interpreting same – Ridgefield, Hamilton, E. Windsor and W. Essex – which make clear beyond a doubt (let alone a reasonable debate) that the Award is contrary to existing public policy. For this reason, the trial court should have vacated the Award pursuant to N.J.S.A. 2A:24-8, and its failure to do so must be reversed.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the October 24, 2024 order be reversed and the April 29, 2024 arbitration opinion and award be vacated and reversed pursuant to N.J.S.A. 2A:24-8.

Respectfully submitted,

TAYLOR LAW GROUP, LLC
Attorneys for Plaintiffs

Dated: January 27, 2025

By: /s/ Christopher J. Buggy
Christopher J. Buggy

COUNTY OF PASSAIC & PASSAIC COUNTY SHERIFF, **Appellant,** **v.** **POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL 197, POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL 197A, & POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL 286,** **Respondent.**	**SUPERIOR COURT OF NEW JERSEY** **APPELLATE DIVISION** **DOCKET NO: A-938-24** **ON APPEAL FROM AN ORDER ENTERED BY THE SUPERIOR COURT OF NEW JERSEY, MORRIS COUNTY, LAW DIVISION, CIVIL PART** **SAT BELOW: HON. DAVID H. IRONSON, J.S.C.**

BRIEF OF THE RESPONDENTS, POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL 197, POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL 197A, AND, POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL 286 IN OPPOSITION TO APPELLANT'S NOTICE OF APPEAL

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I. PRELIMINARY STATEMENT

In the instant matter, the Appellant, County of Passaic/ Passaic County Sheriff's Office ("the County") appeals an Order entered by Morris County Superior Court rejecting the County's request to vacate the arbitration award rendered by Elizabeth McGoldrick, Esq., on or about April 29, 2024, in favor the Respondents, Policemen's Benevolent Association Local #197 ("PBA 197"), the Policemen's Benevolent Association Local #197A ("PBA 197A"), and the Policemen's Benevolent Association Local #286 ("PBA 286") (collectively referred to as "the Unions"), which held that retired members of the Unions are entitled to healthcare in retirement paid for by the County and are not required to made Tier 4 level contributions previously mandated by P.L. 2011, c. 78 or "Chapter 78." Simply put, the appeal filed by the County must be rejected in its entirety and the Trial Court's Order must be affirmed.

As will be fully explained below, the instant matter is distinguishable from each and every Chapter 78 case the County relies upon in support of its application. In each of those cases relied upon by the County, the employer and the union reached an agreement on the terms of their respective collective negotiations agreements. In other words, in those cases, the agreements were the product of the parties' negotiations. In this matter, the County and the Unions indeed were at an impasse and they thus availed themselves to the

binding interest arbitration process. The respective interest arbitrators were tasked with resolving disputes that could not be resolved by the parties and were likewise tasked with writing the parties' agreements accordingly.

In each of the interest arbitration proceedings involving the County and the Unions at issue in this matter, the County sought to remove language from the respective contracts that called for the County to fully pay for the retirement benefits of retired Union members eligible for such benefits. In each proceeding, the Unions vigorously opposed the removal of the language at issue. Ultimately, in each proceeding, the interest arbitrators rejected the County's respective proposals. Because the interest arbitrators rejected the County's proposals, and because those interest arbitration awards were not appealed, the unambiguous language contained in each of the Unions' contracts regarding County-paid healthcare in retirement is part and parcel of each agreement and must be strictly interpreted.

Arbitrator McGoldrick's award was not just reasonably debatable, it was the correct decision. She recognized that healthcare contributions were negotiable during the Unions' most recent contract negotiations with the County and during the interest arbitration process. She recognized that the parties reached an impasse and turned the "fate" of their ultimate contracts over to an interest arbitrator. Arbitrator McGoldrick recognized that the

County had the burden of convincing the interest arbitrators to grant its proposals as contained in its last and final offers, to include the proposals to delete relevant County-paid healthcare in retirement language from the Unions' respective contracts, and she rightfully acknowledged that the interest arbitrators did not grant those proposals. Because of that, Arbitrator McGoldrick correctly held that the language was part of each Union contract and had to be interpreted strictly and in accordance with its plain meaning. She also fully considered and properly rejected the County's public policy argument, contrary to the County's assertions in its appeal.

The Trial Court recognized that Arbitrator McGoldrick's award was, in fact, reasonably debatable, and not procured by undue means. The Trial Court therefore determined that the County was unable to satisfy the substantial burden of demonstrating that the Award should be vacated under the relevant statutory requirements. Both Arbitrator McGoldrick's award and the subsequent Trial Court decision were entirely proper. For these reasons and the reasons set forth below, the County's appeal must be rejected.

II. STATEMENT OF FACTS

The consolidated grievances in this matter are quite similar in terms of their procedural history and factual underpinnings. In that regard, each Union was in the midst of a collective negotiations agreement ("CNA") with the

County for a seven (7) year term (2007-2014) when Chapter 78 went into effect in 2011. (Pa88-127; Pa221-258; & Pa342-383). Each Union then entered into a memorandum of agreement with the County for the next CNA which covered the years 2015 through 2018. (Pa128-132 & Pa384-389).[1] It was during this period of time that members, both active employees and retirees, began making Chapter 78 contributions and by the end of 2018 these Unions became "fully-phased in" under the statute having made all the statutorily mandated Chapter 78 contributions required under the law. (Pa10, ¶43; Pa12, ¶61; and Pa14-15, ¶79). Thus, healthcare contributions once again became negotiable following the expiration of each Union's respective 2015-2018 MOA with the County. Id.

Each Union is currently subject to separate CNAs with the County covering the years 2019 to 2023. (Pa192-220 & Pa315-341).[2] Each of these CNAs were the product of interest arbitration. (Pa133-191; Pa259-314; & Pa390-460). In other words, each Union bargained with the County until impasse, submitted their last, best, and final offers to the Interest Arbitrator, then went to full interest arbitration which ultimately led to interest arbitration awards for their current agreements. Id. In each of these matters, the County

[1] PBA 197 & PBA 197A were subject to the same MOA for 2015-2018.
[2] PBA 286 and the County are still in the process of codifying their 2019-2023 agreement, however, the parties have agreed to abide by the terms of the IA Award and all relevant provisions within predecessor agreements.

proposed eliminating language in the contract that provided healthcare in retirement, paid for by the County, to members of the three (3) Unions. (Pa515-517; Pa593-595; & Pa665-667). In each matter, the Unions opposed the elimination of such language. (Pa745-762, specifically, Pa748-754 & Pa756-762). Ultimately, the respectively assigned interest arbitrators rejected the County's proposed elimination of the retiree healthcare language at issue and said language is included as a term contained in each Unions' CNA. (Pa133-191, specifically, Pa146-147 & Pa186-191); (Pa 259-314, specifically, Pa271-272 & Pa309-314); and (Pa390-460, specifically, Pa408-409 & Pa455-458).

While each of these pending grievances are substantially similar, we will address each Union's individual grievance for sake of the record.

PBA 197's Grievance

PBA 197 is the sole and exclusive authorized negotiating representative for all rank-and-file correctional police officers employed by the Passaic County Sheriff's Office. (Pa195). By way of background, Article XIV of PBA 197's current collective negotiations agreement with the County governs "Medical Benefits." Article XIV(1)(e) of that section states:

> Upon retirement, the Employer will continue to provide and pay for the above programs. The Employer reserves the right to select the Insurance

> carrier who shall provide such benefits, as long as the benefits are equivalent to or better that those provide by the policies in effect on the date of this agreement.
>
> (Pa210)

This language was also contained in the parties 2007-2014 CNA (Pa113) and survived the 2015-2018 MOA (Pa129-132). PBA 197 alleged that the County has violated this provision by failing to pay for the healthcare benefits of retired Officer Christopher Diamond and those similarly situated in accordance with this language. (Pa682-686).

In addition to Article XIV of the collective negotiations agreement, PBA 197 asserted that the County also violated Article XV, of the CNA (which likewise contains language that was included in the 2007-2014 CNA and survived, the 2015-2018 MOA). The relevant language of Article XV of the CNA is found at paragraph 9(d) of that section and ***expressly*** states, in part:

> The County of Passaic shall pay in full, all medical and prescription premiums for all members who retire with twenty-five (25) years of service or more.
>
> (Pa213).

Article XIV(1)(f) of the CNA states that "[a]ll ***employees*** in the union shall be subject to the contributions outlined in Chapter 78 of Public Law

2011." (Pa210). (emphasis added). Notably, Officer Diamond is not an active employee but a retiree and no active employee sought to modify their current healthcare contribution rate in the underlying matter. (Pa682-686).

As noted above, the County proposed eliminating the retiree healthcare language contained in Article XIV during the interest arbitration proceeding that preceded the current 2019 to 2023 CNA. (Pa515-517). PBA 197 opposed the elimination of the language and the interest arbitrator ultimately rejected the County's proposal. (Pa748-754 & Pa186-191). Thus, the language the PBA 197 relies is unequivocally part of the parties' successor agreement.

PBA 197A's Grievance

PBA 197A is the sole and exclusive authorized negotiating representative for all correctional police supervisors employed by the Passaic County Sheriff's Office. (Pa318). Article XIV of PBA 197A's current agreement with the County governs "Medical Benefits." Article XIV(1)(e) of PBA 197A's CNA with the County states:

> Upon retirement, the Employer will continue to provide and pay for the above programs. The Employer reserves the right to select the Insurance carrier who shall provide such benefits, as long as the benefits are equivalent to or better that those provide by the policies in effect on the date of this agreement.
>
> (Pa332).

This language was also contained in the parties 2007-2014 CNA (Pa245). PBA 197A alleged that the County violated this provision by failing to pay for the healthcare benefits of retired Lieutenant William Panzardo (and those similarly situated). (Pa687-691). In addition to Article XIV(1)(e) of the CNA, the County has also violated Article XV of the CNA (which likewise contains language that was included in the 2007-2014 CNA). The relevant language of Article XV of the CNA, found at section 9(d) ***expressly*** states:

> The County of Passaic shall pay in full, all medical and prescription premiums for all members who retire with twenty five (25) years of service or more.
>
> (Pa335).

As likewise pointed out by the County, Article XIV(1)(f) of the CNA further states that "[a]ll ***employees*** in the union shall be subject to the contributions outlined in Chapter 78 of Public Law 2011." (Pa332). (emphasis added). Notably, retired Lt. Panzardo is not an active employee but a retiree and no active employee of PBA 197A sought to modify their current healthcare contribution rate in the underlying matter. (Pa687-691).

As noted above, the County proposed eliminating the retiree healthcare language contained in Article XIV during the interest arbitration proceeding that preceded the current 2019 to 2023 CNA. (Pa593-595). PBA 197A opposed the elimination of the language and the interest arbitrator ultimately

rejected the County's proposal. (Pa748-754 & Pa309-314). Thus, the language the PBA 197A relies upon is unequivocally part of the parties' current agreement.

PBA 286's Grievance

PBA 286 is the sole and exclusive authorized negotiating representative for all rank-and-file and supervisory sheriff's officers employed by the Passaic County Sheriff's Office. (Pa346). PBA 286 and the County are still in the process of codifying their 2019-2023 CNA after having gone to Interest Arbitration and following the issuance of the Interest Arbitration Award bearing Docket No.: IA-2021-04. (Pa390-460). Nonetheless, Article XV of PBA 286's agreement with the County governs "Medical Benefits." Section (A)(5) of Article XV provides:

> Upon retirement, the Employer will continue to provide and pay for the above programs. The Employer reserves the right to select the Insurance carrier who shall provide such benefits, as long as the benefits are equivalent to or better that those provide by the policies in effect on the date of this agreement.
>
> (Pa369); (Pa384-389, Pa408-409, & Pa455-458).[3]

[3] Pa384-389 consists of the PBA 286 MOA for 2015-2018 which did not change nor eliminate the language set forth in Pa369 while Pa408-409 and Pa455-458 are relevant excerpts from the 2021 PBA 286 Interest Arbitration Award wherein the Arbitrator rejected the County's proposal to eliminate the language set forth in Pa369.

PBA 286 alleged that the County violated this provision by failing to pay for the healthcare benefits of retired Officer Kenneth MacNish (and those similarly situated). (Pa692-695). In addition to Article XV(A)(5) of the CNA, the County has also violated Article XVI(J), of its agreement with PBA 286. The relevant language of Article XVI(J) of the CNA ***expressly*** states:

> The County of Passaic shall pay in full, all medical and prescription premiums (see 15 A&C). For all members who retire with twenty five (25) years of service or more.
>
> (Pa375).

This provision was modified slightly for PBA 286's 2015-2018 MOA with the County, and states:

> All employees hired after the ratification of this agreement shall be entitled to health insurance upon retirement paid for by the Employer, through the County so long as they are employed for twenty-five (25) years with the County of Passaic in any capacity and must have at least twenty-five (25) years of credited service in a State approved retirement system.
>
> (Pa387).

PBA 286's 2015-2018 MOA with the County further states that "[a]ll ***employees*** in the union shall be subject to the contributions outlined in Chapter 78 of Public Law 2011" and the same will be incorporated into their current CNA once it is finalized. (emphasis added). (Pa386). Notably, retired

Officer MacNish is not an active employee but a retiree and no active employee in PBA 286 is seeking to modify their current healthcare contribution rate within the instant grievance. (Pa692-695).

As noted above, the County proposed eliminating the retiree healthcare language contained in Article XV during the interest arbitration proceeding that preceded the current 2019 to 2023 CNA. (Pa665-667). PBA 286 opposed the elimination of the language and the interest arbitrator ultimately rejected the County's proposal. (Pa756-762 & Pa455-459). Thus, the language the PBA 286 relies upon is part of the parties' successor agreement. Id.

As previously noted, each Union represented in this grievance became "fully phased-in" or paid their statutorily mandated healthcare contributions under Chapter 78 over the period of time covered by their respective 2015-2018 MOAs. (Pa10, ¶43; Pa12, ¶61; and Pa14-15, ¶79). Each Union subsequently negotiated terms and conditions of a successor agreement with the County to impasse and then went to Interest Arbitration. (Pa 133; Pa259; & Pa390). In each Interest Arbitration proceeding, the County proposed the removal of the language relied upon by the Unions in the underlying grievances. (Pa515-517; Pa593-595; & Pa665-667). In each instance, the Interest Arbitrator rejected the County's proposal. (Pa133-191, specifically,

Pa146-147 & Pa186-191); (Pa 259-314, specifically, Pa271-272 & Pa309-314); and (Pa390-460, specifically, Pa408-409 & Pa455-458).

III. PROCEDURAL HISTORY

After failing to resolve the matter at the initial stages, the Unions filed separate requests for arbitration with PERC in or around early 2022. (Pa19). The parties agreed that the three (3) grievances should be consolidated with this Arbitrator and on June 6, 2022, PERC formally consolidated these matters. Id.

On or about October 3, 2022, the County filed a Motion to Dismiss alleging that the instant grievances were preempted by Chapter 78. Id. Thereafter, on or about February 20, 2023, this Arbitrator issued an interim award denying the County's Motion to Dismiss. Id.

After the County's Motion was denied, the matter proceeded to grievance arbitration on May 16, 2023, and June 21, 2023. Id. PBA 197 President John Welsh and PBA 286 President Ferdinand Fernandez testified Unions. Id. County Administrator Matthew Jordan testified for the County. Id. On or about April 29, 2024, Arbitrator McGoldrick rendered her award sustaining the grievances and ordering that the County halt Chapter 78 contributions from retirees of the Unions and to refund contributions accordingly. (Pa699-722).

On July 24, 2024, the County filed an application to vacate the award rendered by Arbitrator McGoldrick. (Pa1-24). The action was then transferred to Morris County Superior Court and the County's application was refiled under the Morris County docket. (Pa63 and Pa64-87). An Order to Show Cause was executed by the Hon. David H. Ironson, J.S.C. on August 2, 2024. (Pa723-726). Respondents filed an Answer opposing the County's application on August 23, 2024. (Pa727-762).

Oral argument was held before Judge Ironson on September 27, 2024. (Pa765). Thereafter, on October 24, 2024, Judge Ironson issued his decision and Order denying the County's application. (Pa763-772). On or about December 4, 2024, the County filed a Notice of Appeal with this Honorable Court seeking a reversal of Judge Ironson's decision and Order. (Pa773-779).

IV. STANDARD OF REVIEW

Because the decision to vacate an arbitration award is a matter of law, appellate review of a trial judge's decision to order vacation of any such award is de novo. See Yarborough v. State Operated Sch. Dist. of City of Newark, 455 N.J. Super. 136, 139 (App. Div. 2018) (citing Minkowitz v. Israeli, 433 N.J. Super. 111, 136 (App. Div. 2013)).

New Jersey law encourages the use of arbitration to resolve labor-management disputes. See, e.g., N.J.S.A. 34:13A-2 (declaring State's "best

interests…are served by the prevention or prompt settlement of labor disputes" in the public sector); Scotch Plains-Fanwood Bd. of Educ. v. Scotch Plains-Fanwood Educ. Ass'n, 139 N.J. 141, 149 (1995) ("Our courts view favorably the settlement of labor-management disputes through arbitration."). Arbitration is "an integral part of our economic life and welcomed as a practical and expeditious means of disposition of industrial disputes." Jersey Cent. Power & Light Co. v. Local Union No. 1289 of the Int'l Bhd. of Elec. Workers, 38 N.J. 95, 103-04 (1962). Moreover, arbitration is "meant to be a substitute for and not a springboard for litigation." Local No. 153, Office & Prof'l Employees Int'l Union v. The Trust Co. of N.J., 105 N.J. 442, 449 (1987). Arbitration should spell litigation's conclusion, rather than its beginning. County Coll. Of Morris Staff Ass'n v. County Coll. Of Morris, 100 N.J. 383, 390 (1985).

To ensure that finality, as well as to secure arbitration's "speedy[ ] and inexpensive" nature, Scotch-Plains Fanwood Bd. of Educ., supra, 139 N.J. at 149, there exists a "strong preference for judicial confirmation of arbitration awards," Weiss v. Carpenter, Bennett & Morrissey, 143 N.J. 420, 442 (1996). Indeed, "the role of the courts in reviewing arbitration awards is extremely limited and an arbitrator's award is not to be set aside lightly." State, Dept. of

Corrections v. Int'l Fed'n of Prof'l & Technical Eng'rs, Local 195, 169 N.J. 505, 513 (2001).

Thus, in public sector arbitration, courts will accept an arbitrator's award so long as the award is "reasonably debatable." See, e.g., Bd. of Educ. of Alpha v. Alpha Educ. Ass'n, 188 N.J. 595, 603 (2006). In brief, statutory and decisional law make clear that policy considerations favor finality and circumscribed judicial involvement in respect of arbitration proceedings. New Jersey Turnpike Authority v. Local 196, I.F.P.T.E., 190 N.J. 283, 292 (2007).

The substantial deference New Jersey courts provide arbitral decisions corresponds with federal jurisprudence. See, e.g., Int'l Fed'n of Prof'l & Technical Eng'rs, supra, 169 N.J. at 513-14. Nearly a half-century ago, the United States Supreme Court, in the "Steelworkers Trilogy," established two time-honored principles: (1) policy favors efficient settlement of labor disputes through arbitration; and (2) judicial involvement in such disputes should be limited. New Jersey Turnpike Authority, supra, 190 N.J. at 292-93. Well-settled rules therefore command that a "court may not overrule an arbitrator's decision simply because the court believes its own interpretation of the contract would be the better one." W.R. Grace & Co. v. Local Union 759, Int'l Union of the United Rubber, Cork, Linoleum & Plastic Workers of Am., 461 U.S. 757, 764 (1983) (quoting Steelworkers v. Enterprise Wheel &

Car Corp., 363 U.S. 593, 596 (1960)). When the parties include an arbitration clause in their collective bargaining agreement, they choose to have disputes…resolved by an arbitrator." Id.

New Jersey legislation underscores the limited judicial review of arbitration awards. The New Jersey Arbitration Act, N.J.S.A. 2A:24-1 to -11, which applies to arbitration and disputes "arising from a collective bargaining agreement," N.J.S.A. 2A:24-1.1, permits Courts to vacate an arbitration award in the following circumstances:

> 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 in refusing to postpone the hearing, upon sufficient cause being shown therefore, or in refusing to hear evidence, pertinent and material to the controversy, or of any other misbehaviors prejudicial to the rights of any party;
>
> 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.]

Additionally, the United States Supreme Court articulated a public policy exception in W.R. Grace & Co., supra, holding that Courts may not

enforce collective bargaining agreements that are contrary to "well defined and dominant" public policy. 461 U.S. at 766. The New Jersey Supreme Court also has recognized a public policy exception that permits the vacation of an arbitration award. Specifically, the New Jersey Supreme Court held that a Court "may vacate an award if it is contrary to existing law or public policy." Bd. of Educ. of Alpha, supra, 188 N.J. at 603. The New Jersey public policy exception requires "heightened judicial scrutiny when an arbitration award implicates a clear mandate of public policy." Weiss, supra, 143 N.J. at 443. A Court may vacate such an award provided that the "resolution of the public-policy question" plainly violates a clear mandate of public policy. Ibid. Reflecting the narrowness of the public policy exception, that standard for vacation will be met only in "rare circumstances." Trentina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349, 364 (1994).

CHAPTER 78 BACKGROUND

To put this dispute into an intelligible context, a review of the applicable law, specifically Chapter 78, is appropriate. When enacted in 2011, Chapter 78, codified at N.J.S.A. 40A:10-21.1, "change[d] the manner in which the State-administered retirement systems[ ] operate[d] and…the benefit provisions of those systems." Div. of Pensions & Benefits, Pension and Health Benefits Reform, N.J. Dep't of Treasury,

https://www.state.nj.us/treasury/pensions/reform-2011.shtml. Prior to the passage of Chapter 78, the issue of contributions for healthcare coverage for active and retired employees was a negotiable subject for unionized employees. Chapter 78 removed the issue from the negotiations table and implemented mandatory contribution levels on a percentage-of-premium basis, with the percentage varying depending upon the employee's income level and the type of coverage selected.

To this end, the statute required all active public employees to contribute to the cost of their healthcare coverage. The healthcare contributions mandated by Chapter 78 commenced on June 28, 2011, or upon the expiration of any collective negotiations agreement in effect on that date (June 28, 2011). The mandatory contributions were subject to a four-year phase-in period beginning either on the statute's effective date or, again, upon the expiration of any collective negotiations agreement in effect on that date. N.J.S.A. 40A:10-21.1(a), (d). The four-year phase in period required: (1) one-fourth of full contribution to be made in the first year; (2) one-half of full contribution to be made in the second year; (3) three-fourths of full contribution to be made in the third year; and (4) full contribution to be made in the fourth year. N.J.S.A. 40A:10-21.1(a). The contribution level for each year of the four-year phase-in is referred to as a "Tier." In simple terms, the

first year of the phase-in, wherein one-fourth of the full contribution is required, is referred to as the "Tier 1 contribution" level, and so on and so forth until the full or "Tier 4 contribution" level is reached.

However, the law specifically stated that, in no case, could the employee's contribution rate be less than one and one-half percent (1.5%) of their base salary. N.J.S.A. 40A:10-21.1(a). In other words, one and one-half percent (1.5%) of an employee's base salary is the minimum contribution amount permissible under Chapter 78. The financial impact of Chapter 78 was that employees were required "to contribute from three to thirty-five percent of their health care premium costs, rising with salary." In re New Brunswick Mun. Emps. Ass'n, 453 N.J. Super. 408, 416 (App. Div. 2018).

"[F]ull implementation" occurred upon completion of the four-year phase-in period. N.J.S.A. 40A:10-21.1(d). While Chapter 78 included a sunset provision, meaning the sections of the law that mandate employee healthcare contributions had a designated expiration date, employees under a collective negotiations agreement remained subject to the four-year phase-in period until full implementation was reached. See Ibid.; see also Ridgefield Park Bd. of Educ. v. Ridgefield Park Educ. Ass'n, 459 N.J. Super. 57, 63 (App. Div. 2019). Importantly, section 79 of Chapter 78 provides, "[a]fter full implementation, those contribution levels shall become part of the parties'

collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties." N.J.S.A. 40A:10-21.2. In other words, the law mandated that before being eligible to pay the lowest amount permissible under the law, or re-negotiate healthcare contribution levels, the employees and/or bargaining unit must have made contributions at the Tier 4 contribution level for a full year prior thereto.

Lastly, an employer may assume all or a portion of the cost of healthcare coverage for eligible retirees who have served twenty-five (25) years or more of credit in a state retirement system. See N.J.S.A. § 40A:10-23(a). Pursuant to N.J.S.A. § 40A:10-23(b), all employees hired after May 21, 2010 must pay at least 1.5% of the cost of healthcare coverage in retirement under this provision. Thus, there is nothing, in Chapter 78 or otherwise, preempting or precluding the relief sought by the Unions in this matter.

V. LEGAL ARGUMENT

I. THE COUNTY'S APPEAL MUST BE REJECTED BECAUSE ARBITRATOR MCGOLDRICK PROPERLY RELIED UPON THE PLAIN LANGUAGE OF THE CONTRACTS AND SUCH A RULING WAS, AT THE VERY LEAST, REASONABLY DEBATABLE, AS CORRECTLY RECOGNIZED BY JUDGE IRONSON (Pa699-722 & Pa763-772)

Here, Arbitrator McGoldrick properly found that the plain language contained in the agreements at issue controlled and she amply supported that conclusion. The language at issue, which is identical in each of their respective

agreements, is clear and unambiguous, and calls for the County to pay for, in full, healthcare coverage for eligible retirees. There are two (2) plainly worded and unambiguous provisions in each Unions' contract providing for County-paid healthcare in retirement that must be enforced accordingly. Judge Ironson correctly recognized this:

> "Arbitrator McGoldrick considered the relevant contractual provisions and then applied the plain language of the provisions. The Arbitrator's ultimate conclusion was not an unreasonable interpretation and application of the Agreements given their language. The Arbitrator interpreted the Agreements within the bounds set by law, which does not lead to an "absurd result." Regardless of whether this court would have arrived at the same conclusion, the Award survives scrutiny under the reasonably debatable standard."
>
> (See Pa771).

The Court thus considered the County's arguments, recognized that the decision of the Arbitrator was not an "unreasonable interpretation and application" of the contract language in question, and rejected the County's request to vacate. We submit that the Court's decision was entirely proper and should not be disturbed.

Unlike the cases relied upon the by the County (e.g., Hamilton, West Essex, Ridgefield Park, PBA 191), in this matter, the Arbitrator's decision and the Unions' "plain wording argument" is fully supported by the fact that each

Unions' contract was the product of interest arbitration whereby the County sought to remove a provision in each of the subject-contracts that provided for County-paid healthcare in retirement. Simply stated, the County sought to remove the provision, either because it sought to eliminate that benefit entirely or otherwise sought to have retirees continue making Tier 4 contributions toward their retiree healthcare. Nonetheless, the language was "put on the table" during interest arbitration, survived and continues to be part and parcel of each Union's CNA as codified following the interest arbitrations awards. Thus, it must be strictly interpreted and enforced based on its plain meaning.

Specifically, each agreement contains the following language:

> Upon retirement, the Employer will continue to provide and pay for the above programs. The Employer reserves the right to select the Insurance carrier who shall provide such benefits, as long as the benefits are equivalent to or better that those provide by the policies in effect on the date of this agreement.

Each agreement also includes the following additional language:

> The County of Passaic shall pay in full, all medical and prescription premiums for all members who retire with twenty-five (25) years of service or more.

Notably, when contract language is clear and unambiguous, an arbitrator must simply look at the language of the agreement itself, i.e. the "four corners" of the agreement, to determine if a violation has occurred. This

principle of contract interpretation is widely known and accepted as the "plain meaning rule." Elkouri & Elkouri, How Arbitration Works, Ch. 9.2.A, 9-8 (8th Ed. 2016). In such a case, an arbitrator does not need to resort to interpretation of the agreement or consider extrinsic evidence of any kind. Ibid. (emphasis added).

However, in cases where the contract is completely silent with respect to a given activity, the presence of a well-established practice, accepted or condoned by the parties, may constitute, in effect, an unwritten principle on how a certain situation should be treated. Elkouri & Elkouri, How Arbitration Works, Ch. 12.1, 12-2 (8th Ed. 2016). When a party claims that a past practice exists, strong proof is required for an arbitrator to rule in a party's favor. In other words, the party asserting the practice must show it to be unequivocal; clearly enunciated and acted upon; and readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both the parties. Elkouri & Elkouri, How Arbitration Works, Ch. 12.2, 12-4 (8th Ed. 2016).

Significantly, an arbitrator's refusal to apply the "plain meaning" rule is one of the few instances in which a Court **is required** to vacate the resulting award. See, e.g., PBA Local 160 v. Twp. of North Brunswick, 272 N.J. Super. 467, 474 (App. Div. 1994) (reversing arbitration award that ignored the plain language of the contract and noting that "[t]he scope of the arbitrator's

authority depends on the terms and conditions contained within the agreement between the parties and, properly, **the arbitrator can neither disregard those terms nor rewrite the agreement for the parties**." (emphasis added)); Cty. Coll. of Morris Staff Asso. v. Cty. Coll. of Morris, 100 N.J. 383, 391-392 (1985) ("[A]n arbitrator **may not disregard the terms of the parties' agreement, nor may he rewrite the contract for the parties**." (emphasis added)); Communications Workers of America, Local 1087 v. Monmouth County Bd. of Social Services, 96 N.J. 442, 448-49 (1984) ("[T]he jurisdiction and authority of the arbitrator are circumscribed by and limited to the powers delegated to him…Moreover, '[a]ny action taken beyond that authority is impeachable,'…and may be vacated on statutory grounds…[under] N.J.S.A. 2A:24-8d.'") (internal citations omitted); Anheuser-Busch, Inc. v. Teamsters Local 744, 280 F.3d 1133, 1138-39 (7th Cir. 2002) (vacating arbitration award where arbitrator relied upon evidence of custom and past practice that conflicted with the unambiguous language of the contract); Beacon Journal Publishing Co. v. Akron Newspaper Guild, Local No. 7, 114 F.3d 596, 601 (6th Cir. 1997) ("[P]ast practice or custom should not be used to interpret or give meaning to a provision or clause of the collective bargaining agreement that is clear and unambiguous.").

In the instant matter, the plain language of the collective negotiations agreements must control. Here, the provisions in question, common to all CNAs, unequivocally provide that the County will fully pay for the healthcare coverage for eligible retirees of the respective Unions. The language provides that the County will "pay for the above programs" and that the County "shall pay in full, all medical and prescription premiums for all members who retire with twenty-five (25) years of service or more." The only way to interpret this is to conclude that the County is contractually obligated to pay for the health care of retirees who meet the eligibility requirement, namely, retiring after twenty-five (25) years of service or more.

Here, the County's argument is that the language at issue should not be afforded any weight. Once again this is language the County unsuccessfully sought to strike from the respective contracts during the underlying interest arbitration matters. The County's argument is, in a word, absurd, and contradicts the "plain meaning" rule cited above. It also belies well-settled principles of contract construction:

> It is axiomatic that in contract construction that an interpretation that tends to nullify or render meaningless any part of the contract should be avoided because of the general presumption that the parties do not carefully write into a solemnly negotiated agreement words intended to have no effect.

> [Elkouri & Elkouri, How Arbitration Works, Ch. 9.3.A.viii.a, 9-36 (8th Ed. 2016).]

If the County's argument - that retirees with twenty-five (25) years of service must continue to make payments under Chapter 78 – is adopted in this matter, it would effectively render the provisions relied upon by the Unions entirely meaningless. Such an outcome would violate the well-established principles outlined above, that provisions contained in CNA's must be afforded their plain meaning and contracts should not be construed in a manner that would render language meaningless.

Arbitrator McGoldrick's award was entirely proper because she recognized the fact that the issue was put before interest arbitrators who refused to remove the retiree healthcare language as sought by the County and as opposed by the Unions. (See Pa515-517; Pa593-595; & Pa665-667). (See also Pa748-754 & Pa756-762). The argument by the County that Arbitrator McGoldrick "rewrote" the parties' agreements or otherwise improperly removed terms from the parties' agreements is absurd. Conversely, the County and the Unions both participated in the interest arbitration process where it was the interest arbitrators that were lawfully tasked with "writing" the parties' agreements, as will be more fully explained below. Arbitrator McGoldrick appropriately accepted this fact and was tasked with interpreting contracts that resulted from interest arbitration. She was not tasked with

"second guessing" why the interest arbitrators refused to strike the language at issue as proposed by the County as that would have been a task of a given tribunal in an appeal of the interest arbitrators' respective decisions. No such appeal took place and the contracts stand as written. As she succinctly stated in her award, "Removing the fully paid paragraphs was the County's proposal and it had the burden of proving removal was warranted to the Interest Arbitrators." (Pa721). For these reasons, Arbitrator McGoldrick's ruling was exceedingly proper and at the very least, a reasonably debatable decision and thus, the County's appeal must be rejected in accordance with the decision rendered by Judge Ironson.

II. THE COUNTY'S ARGUMENT THAT ARBITRATOR MCGOLDRICK IMPROPERLY ALTERED THE PARTIES' CONTRACTS IS ENTIRELY WITHOUT MERIT AS SHE RIGHTFULLY DEFERRED TO THE INTEREST ARBITRATORS THAT ULTIMATELY RULED ON THE CONTRACTS AND THUS, HER DECISION WAS PROPER AS WAS JUDGE IRONSONS'S DECISION TO REJECT THE COUNTY'S APPLICATION FOR VACATUR (Pa699-722 & Pa763-772)

From the onset, it must be noted that healthcare contributions were negotiable during negotiations for the Unions' current contracts that were the product of interest arbitration. The County does not contest this fact. (Pa10, ¶43; Pa12, ¶61; and Pa14-15, ¶79).). That said, the County contends that retiree healthcare contributions were not negotiated with the Unions in their

respective CNAs and that Arbitrator McGoldrick "clearly exceeded her authority in both removing the full Tier IV contribution terms of the parties' agreements and adding nullified language that was no longer in effect, and by adding terms to the interest arbitration awards that did not exist." (County Appellate brief p. 39-40). Such an assertion is entirely baseless.

During the Unions' 2015-2018 MOA's, they were subject to the mandatory contribution requirements of Chapter 78. Thus, by the time of the 2019-2023 agreements became negotiable, healthcare contributions were also negotiable under the law. However, the County and the each of the Unions in this matter were unable to reach agreements and instead, negotiated to an impasse and submitted their disputes to interest arbitration. During interest arbitration, the County proposed removing the free retiree healthcare language contained in Article XIV (for PBA 197 and PBA 197A) and Article XV (for PBA 286). Each Union opposed that removal during the interest arbitration proceedings and argued that such language should remain in the respective contracts. The interest arbitrators did not award the County its respective proposals and thus, the retiree healthcare language is part of the current contracts. These interest arbitration decisions were not appealed as they could have been and the County could have presented the arguments its currently making during the interest arbitration process and during any further appeal

of that award. It elected not to do so and are now attempting to have a "second bite of the apple." Arbitrator McGoldrick correctly recognized this fact and rightfully deferred to the interest arbitrators' decisions to not remove the free healthcare language from the contracts. Arbitrator McGoldrick's decision, as explained below, is not only reasonably debatable but the absolute correct one.

In its appeal, the County relies, in part, on the findings in the Matter of Ridgefield Park Bd. of Educ., 244 N.J. 1 (2020), namely, that after full implementation under Chapter 78, employees' contribution levels become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties. Id. at 20. Thus, the County argues, in essence, that the clear and unambiguous contract provisions calling for County-paid healthcare in retirement should be disregarded or otherwise interpreted to mean that retirees should still be making Tier 4 contributions. However, this contention lacks merit and should be rejected.

The instant matter is unique in that each Union negotiated with the County to impasse and subsequently submitted to interest arbitration. In essence, each Union and the County could not reach an agreement on various issues and thus, turned the negotiations process over to an interest arbitrator to render a decision on these disputed issues and contract proposals. By

proposing that the interest arbitrator remove the section in each Union contract providing for County-paid health care in retirement, the County placed the topic of retiree healthcare coverage directly at issue. Each Union vigorously opposed the proposal and, all told, the interest arbitrators rejected said proposals. As a result, the plain and unambiguous language providing for County-paid health care in retirement is unequivocally part of each contract and thus must be afforded its plain meaning.

The primary purpose of the fire and police arbitration act, N.J.S.A. 34:13A-14 to -21, is to provide an expeditious means to resolve labor disputes to the maximum benefit of the parties and the public. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 179 (App. Div. 1993) (quoting Newark Firemen's Mutual Benevolent Ass'n v. Newark, 90 N.J. 44, 52 (1982)). Interest arbitration "involves the submission of a dispute concerning the terms of a new contract to an arbitrator, who selects those terms ***and thus in effect writes the parties' collective agreement***." Hillsdale PBA Local 207, 263 N.J. Super at 179 (quoting New Jersey State P.B.A., Local 29 v. Town of Irvington, 80 N.J. 271, 284 (1979) (emphasis added).

Again, this case is unique because the parties negotiated to impasse and subsequently turned the negotiation process to an interest arbitrator who, as provided above, was tasked with “effectively writing the parties’ collective

agreement." Hillsdale PBA Local 207, *supra*, at 179 (citation omitted). The topic of retiree healthcare coverage was in contention during the interest arbitration proceedings and in each proceeding the interest arbitrator rejected the County's proposal to delete the retiree healthcare language. These facts distinguish the instant matter from the other Chapter 78 decisions the County relies upon, none of which involve a contract that was the product of interest arbitration, and which all failed because the unions in those matters mutually entered into an agreement with their employer without negotiating off of the contributions.

First, we submit that Ridgefield Park is only pertinent to the extent that it held that Tier 4 contributions rates become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties. In Ridgefield Park, the teachers' union reached a deal with the Board of Education that provided for a contract covering the years 2014 to 2018. Because the teachers had already made three (3) years of Chapter 78 contributions in their predecessor agreement, the 2014 to 2018 contract called for the union to make Tier 4 Chapter 78 contributions in the 2014-2015 school year and then to make contributions of 1.5% each year thereafter. Matter of Ridgefield Park Bd. of Educ., 244 N.J. at 9.

The Board of Education, however, subsequently required the teachers to continue to make Tier 4 contributions for the remainder of the 2014 to 2018 agreement, based on PERC's ruling in Clementon Board of Education v. Clementon Education Ass'n, P.E.R.C. No. 2016-10, 42 N.J.P.E.R. ¶ 34, 2015 N.J. PERC LEXIS 76 (2015). In Clementon, the Board of Education petitioned for a scope-of-negotiations determination that the health benefits provision of its CNA was preempted by Chapter 78. Id. at 118. PERC agreed with the Clementon Board of Education, and ruled that the statute "expressly, specifically and comprehensively sets forth that health benefit contribution levels become negotiable in the 'next collective negotiations agreement after... full implementation' of the four-tiered level of employee contributions is achieved." Id. at 118-19 (ellipsis in original) (quoting N.J.S.A. 18A:16-17.2).

In Ridgefield Park, the Supreme Court agreed with PERC's reasoning in Clementon, effectively finding that because the union reached full implementation in the 2014 to 2018 contract, regardless of whether it was in the first year or not, Tier 4 remained the mandated contribution level for the remainder of that contract given that levels only become negotiable in the 'next collective negotiations agreement after… full implementation… is achieved." Matter of Ridgefield Park Bd. of Educ., 244 N.J. at 20-21.

The instant matter is distinguishable from Ridgefield Park. In fact, we submit that its relevance is questionable as it tells us more about the impact of reaching full implementation in the early years of a CNA than it does about the successor agreement following full implementation. It does, however, tell us that Tier 4 contribution levels are the starting point for *negotiating* the post-Chapter 78 agreement. Based on that, the County contends that contribution level was never negotiated despite its proposal to eliminate the County paid for retiree healthcare language from each Union contract. We firmly submit that such an argument is disingenuous and contradicted by the record evidence in this matter.

By seeking to eliminate the County-paid healthcare in retirement language from each Union contract, the County was not only placing the topic of retiree healthcare contributions at issue, but it was also placing contribution *levels* at issue. In other words, the County sought to eliminate the language so retirees would continue making Tier 4 level contributions for the contracts subject to interest arbitration. The Unions argued against the proposal and sought to keep the County-paid healthcare in retirement language in the successor agreement. The arbitrators assigned to these proceedings rejected the County's proposal, thereby keeping the provision at issue in each of the Unions' agreements. By now stating that the retiree healthcare rate was not

negotiated and should remain at Tier 4, the County is simply trying to "have its cake and eat it too."

The instant matter is also distinguishable from Hamilton Twp. Superior Officers Ass'n v. Twp. of Hamilton, No. A-0016-18T1, 2019 N.J. Super. Unpub. LEXIS 2282 (App. Div. 2019), and W. Essex Pba Local 81 v. Fairfield Twp., No. A-2853-19, 2021 N.J. Super. Unpub. LEXIS 1209 (App. Div. 2021), two (2) cases the County cites in support of its appeal. (Pa40-44 and Pa56-62). Both of these cases are distinguishable from the instant matter in that neither of the contracts at issue in Hamilton, *supra*, or W. Essex, *supra*, were the product of interest arbitration. In Hamilton, the Court ruled, in part, that the grievant was subject to Chapter 78 contributions in retirement because he retired *prior* to the point in time healthcare contributions became negotiable for union members. Id. at * 8. This has no application to this appeal because the retirees at issue in this matter retired after the commencement of their Unions' current agreements with the County and after the interest arbitration awards were rendered.

Moreover, the contract language at issue in Hamilton stated, "[t]he Employer shall continue to provide medical insurance, including prescription, dental and vision… [p]ursuant to [Chapter 78], though, employees are now required to contribute a portion of their salaries toward the costs of health

insurance at a rate set forth in Chapter 78" and "[t]he Township shall provide full medical and drug plans for retired employees and their families in accordance as set forth in this Agreement." Id. at 4. The Court ruled that because it included the language "as set forth in this Agreement" that it incorporated Chapter 78 contributions into the retiree healthcare language. Id. at 10. The language at issue in this matter is far clearer than the language in Hamilton and, as will be discussed below, adequately distinguishes between "employees" and "retirees."

West Essex is likewise distinguishable, principally because it involved active employee contributions and the contract resulted from a settlement following negotiations. Unlike the language at issue in this matter, the contract language at issue in West Essex was ambiguous because it contained conflicting provisions, namely:

> The Employer shall provide to members and their families the following insurance protection to the members: Additionally, **all members shall contribute to health benefits pursuant to State Law**.
>
> 1. The Horizon Blue Cross/Blue Shield Direct Access 8, or equivalent, **at no cost to the members of the PBA Local #81**.
>
> Id. at 3-4.

The language set forth above is contradictory as the provision, in essence, states that "members" shall make Chapter 78 contributions while also stating that the employer will provide healthcare at "no cost" to the "members." Thus, unlike in the instant matter, the language is ambiguous or, at the very least, in direct conflict. More importantly, the Court ruled against the PBA in in W. Essex because it submitted a proposal to lower contributions, subsequently retracted it, and entered into an MOA that provided, "[a]ll proposals which are not included in this Memorandum of Agreement shall be deemed withdrawn by both parties." Id. at 4, 13. As such, the Court ruled that the employer never agreed to a reduction in healthcare contributions for active employees. Id. at 13. Once again, W. Essex is distinguishable in this matter by the very fact that the Unions in this matter went to interest arbitration where the County unsuccessfully sought to remove a provision in the respective CNAs providing for County-paid healthcare coverage for eligible retirees. W. Essex therefore does not support the County's arguments in this matter.

Simply stated, the Unions' grievance and the award rendered by Arbitrator McGoldrick are distinguishable from these cases the County relies upon in this action because: (1) the parties did not negotiate a final agreement and instead went to interest arbitration; (2) during interest arbitration, the County proposed removing language providing for County-paid healthcare

for eligible retirees; (3) the Unions opposed the proposal and the interest arbitrators rejected it; and (4) the language was included in the final agreements for the respective Unions and said language unambiguously provides for County-paid healthcare coverage, specifically, for eligible retirees.

Accordingly, it was proper for Arbitrator McGoldrick to defer to the interest arbitration awards. To that end, she stated, "[e]ven considering extrinsic factors to the agreements, like the effect of Chapter 78 on these contract terms, I am bound, as are the parties, by the decisions by the Interest Arbitrators who in their 2020 and 2021 awards, left in place all three provisions." (Pa720). Once again, those decisions could have been appealed based on the Interest Arbitrators refusal to grant the County's proposals to remove the language at issue. No such appeal was filed, the County-paid retiree healthcare language is unequivocally part of the parties' agreements, and the issue comes down to plain language, as both Arbitrator McGoldrick and Judge Ironson recognized. For these reasons, the County's appeal must be rejected.

III. THE CHAPTER 78 LANGUAGE IN THE CONTRACTS SUPPORTS THE CONTENTION THAT SUCH LANGAUGE EXPRESSLY APPLIES TO EMPLOYEES – NOT RETIREES, AND ARBITRATOR MCGOLDRICK CORRECTLY RECOGNIZED THIS DISTINCTION (Pa699-722 & Pa763-772)

The Chapter 78 language contained in the parties' respective collective negotiations agreement is contained in Article XIV (for PBA 197 & PBA 197A) and Article XV (for PBA 286). Notably, there is no Chapter 78 language in the "Miscellaneous" section of the contracts. That said, the Chapter 78 language contained in the contract does not conflict with the language relied upon by the Unions in this matter. In particular, the Chapter 78 language is common to each Union's CNA. For both PBA 197 and 197A, the provision is contained in Article XIV, paragraph (f) of their current CNA. (Pa210 & Pa332). For PBA 286, the language is contained in the 2015-2018 MOA and is being incorporated into Article XV of its current CNA which has yet to be codified. (Pa386). The language is identical amongst the three (3) agreements and states: "All employees in the Union shall be subject to the contributions outlined in Chapter 78 of Public Law 2011."

As demonstrated above, the Chapter 78 language common to all contracts only speaks to "employee" contributions. The provision does not mention "retired members" at all. The conclusion, that the Chapter 78

language applies to active employees, is inescapable based on the plain language of the provisions at issue.

For instance, the provision relied upon by the Unions in Article XIV (Article XV for PBA 286) states that, "upon retirement, the Employer will continue to provide and pay for the above programs." The provision relied upon by the Unions contained in their respective "Miscellaneous" sections states, "the County of Passaic shall pay in full, all medical and prescription premiums for all members who retire with twenty-five (25) years of service or more." Neither of these provisions mentions employees and said provisions clearly *only* apply to retired members of the Unions. Conversely, the Chapter 78 language, referenced above, only mentions that "employees" will be subject to Chapter 78 contributions. The only way to give meaning to each of these provisions is to apply the interpretation that was posited by the Unions and accepted by Arbitrator McGoldrick, that is, that the Chapter 78 language only applies to active employees and the County-paid healthcare coverage provisions only applies to retirees. After all, this is indeed precisely what these provisions state and thus, constitutes their plain meaning.

In other words, a plain reading of the Chapter 78 language clearly shows that it only includes the term "employees." Once again, active employees of the Unions continue to make Chapter 78 contributions and the

Unions did not challenge that in the underlying matter. Second, if the County's argument is accepted, it would render the retiree healthcare provisions completely meaningless. Thus, the argument posited by the County in this regard is severely problematic and goes against the plain meaning of the respective provisions. Conversely, the Unions are merely contending that each provision should be afforded its plain meaning, that the retiree healthcare language applies to "retirees" and the Chapter 78 language applies to active "employees." This conclusion is not only supported by a simple reading of the provisions but it is equally supported by the undisputed fact that active employees of the Unions are not challenging the healthcare contributions they are currently making.

It is also irrelevant that the Unions submitted proposals to reduce Chapter 78 contributions for employees in negotiations preceding interest arbitration. To that end, each Union submitted contract proposals to reduce Chapter 78 contributions, but only for "employees." (See Pa468, Pa536, & Pa613). The Unions did not include these proposals in its final offers during the respective interest arbitration proceedings. (See Pa521-527, Pa599-604, & Pa674-681). But again, these proposals spoke only of contributions for active "employees" and did not reference retiree contributions. On that front, the *County* sought to eliminate the retiree healthcare language in the Medical

Benefits sections of the respective contracts and the Unions fought it "to the end." Thus, the fact that the Unions did not include its earlier proposals to lower active employee contributions in their final offers during interest arbitration, the fact that active employees of the Unions are currently paying, without objection, Chapter 78 contributions, along with the fact the Unions all opposed the elimination of the County-paid healthcare coverage for eligible retirees provision in their respective contracts as proposed by the County, further supports Unions arguments regarding the interpretation of the Chapter 78 language within each contract, i.e., that it only applies to active employees.

Arbitrator McGoldrick fully recognized this distinction in her award. To that end, she found:

> "Neither Interest Arbitrator specifically awarded changes to Chapter 78 contributions by retirees. They each summarily, without discussion, denied or dismissed the County's proposal to cut the "fully paid" language ***because insufficient evidence supported those changes***… ***By not removing the 'fully paid' language as the County proposed, the (interest) arbitration awards created a distinction between employees and retirees' benefits, reverting to the parties' terms in existence in their 2007-2014 agreements***. I find they each left the requirement that employees contribute toward medical benefits in accordance with Chapter 78 but changed the retirees' contributions."
>
> (Pa715) (emphasis added).

In summary, Arbitrator McGoldrick recognized the distinction in the Unions' contracts between employees and retirees based on the plain language utilized therein. She further recognized that the interest arbitrators rejected the County's proposals to remove the County-paid retiree healthcare language from the agreements because "insufficient evidence supported those changes." She therefore rendered an award consistent with the plain meaning while giving deference to the interest arbitration process and final agreements that resulted therefrom. Conversely, the County's arguments effectively seek a "rewriting" of the contract and would render unambiguous provisions concerning the County's obligation to pay for healthcare coverage for eligible retirees completely meaningless. Such an outcome would violate basic contract principles and must not be countenanced. See Cty. Coll. of Morris Staff Assoc., *supra*, 100 N.J. at 391-392.

IV. THE MODIFICATION MADE IN THE UNIONS' RESPECTIVE MOAs FOR 2015-2018 FURTHER DEMONSTRATES THE COUNTY'S AWARENESS OF THE PLAIN MEANING OF RETIREE HEALTHCARE LANGUAGE AND SUPPORTS THE ARBITRATION AWARD IN THIS MATTER (Pa699-722 & Pa763-772)

As demonstrated by the underlying record, there was an additional provision inserted into each Union's MOA covering 2015 through 2018 that further supports the Award rendered in this matter and demonstrates why the Unions opposed the County's proposal to strike the County-paid retiree

healthcare language from the contracts during interest arbitration. Notably, it was during this period (2015-2018) that health care contributions rates were not negotiable. However, the provision that was set forth in each of these MOAs and is now contained in both the agreements for PBA 197 and PBA 197A (and will be incorporated into the CNA with PBA 286 when finally codified) includes an addition to each agreement's "Miscellaneous" section. That language provides:

> "All employees hired after the ratification of this agreement shall be entitled to health insurance upon retirement paid for by the Employer, through the County so long as they are employed for twenty-five (25) years with the County of Passaic in any capacity and must have at least twenty-five (25) years of credited service in a State approved retirement system."
>
> (See Pa131 and Pa387).

The above-referenced language has already been incorporated into the current CNAs for both PBA 197 and PBA 197A. (Pa213 and Pa335, specifically, Article XV(9)(f) of both agreements). This provision was added to the agreement because previously, retiring members merely needed twenty-five (25) years of service in a state retirement system, to include time served for an employer other than the County, before qualifying for County-paid healthcare in retirement. (See Pa119, Pa251, and Pa375, which merely call for one to "retire with twenty-five (25) years of service or more" without

specifying that it must be "County" service in order to qualify for County paid healthcare in retirement). Thus, the parties agreed to impose stricter standards for those employees hired after ratification of the respective 2015 through 2018 MOAs. We submit that this clearly shows an intention on the part of the County that County-paid healthcare for eligible retirees would continue in future contracts after the 2015 through 2018 MOAs, during which time employees and retirees were making statutorily mandated Chapter 78 contributions. Moreover, this additional language likewise supports the Unions' arguments concerning the Chapter 78 language contained in the contract, namely, that it only applies to active employees. It further demonstrates why the Unions vigorously opposed the County's proposal to eliminate the County-paid retiree healthcare language from the parties' respective contracts during the underlying interest arbitration proceedings, as the Unions had just agreed to impose greater restrictions on retirees ability to obtain fully paid health care in retirement during the 2015-2018 contracts.

In short, the Unions submit that the addition of the above-described language, regarding employees hired after ratification of the 2015 through 2018 MOAs having to serve twenty-five (25) years of County-specific service, further supports the Unions' plain language argument regarding Article XV (Article XVI for PBA 286), that it clearly provides for County-

paid healthcare for eligible retirees and that the Chapter 78 language contained in the respective agreements clearly only applies to active employees. The County's argument otherwise is disingenuous based on the revisions described herein.

V. THE COUNTY'S PUBLIC POLICY ARGUMENTS WERE PROPERLY CONSIDERED BY ARBITRATOR MCGOLDRICK AND, IN TURN, PROPERLY REJECTED, AS RECOGNIZED BY JUDGE IRONSON (Pa699-722 & Pa763-772)

Arbitrator McGoldrick recapped the competing arguments on the issue of public policy in her award. (Pa715-716). Moreover, in her analysis, she stated the following:

> "Removing the fully paid paragraphs was the County's proposal and it had the burden of proving removal was warranted to the Interest Arbitrators. The County explained that in the Interest Arbitration process, it would not have been the proper or logical party to propose reinstating full payment of retirees' medical benefits because that would have represented a loss of revenues and would adversely impact the County's budgeting, potentially causing layoffs and/or reductions in service. It argues that sustaining the grievances herein would incur these costs and it is against public policy… In the record in the instant matters, there is no cost evidence other than the Administrator's testimony proving these negative effects. While I do not discredit the testimony, there was also contrary testimony that the County had been operating with a healthy surplus in recent years. Moreover, it appears that while some cost

> evidence was presented in the Interest Arbitration proceedings it did not convince either arbitrator to grant the County's proposal."
>
> (Pa721).

Based on the foregoing, the County's assertion that Arbitrator McGoldrick failed to consider the public policy/ detrimental financial impact arguments raised by the County is simply not accurate. She also correctly recognized that these arguments should have been made in interest arbitration as a basis for the removal of the language as proposed by the County. As such, any argument made by the County regarding enforcement having a detrimental financial impact on the County must be rejected. Other than Administrator Jordan making that assertion while testifying, there is no corroborating evidence in the record regarding detrimental financial impact. As noted by Arbitrator McGoldrick, Administrator Jordan also acknowledged that the County has a budget surplus, it has not raised tax levies in five (5) years, and that the County saved money by virtue of the Unions moving off the County's "traditional" healthcare plan. (See Pa190, Pa313, and Pa413).

Judge Ironson correctly recognized that Arbitrator McGoldrick aptly addressed the public policy arguments raised by the County. (Pa771-772). He therefore refused to grant the County's application to vacate the arbitration award finding that Arbitrator McGoldrick's decision on the public policy

issue, based on the underlying record, was also reasonably debatable. (Pa772). Accordingly, because the provisions in question are clear and unambiguous, they should be enforced as written.

VI. CONCLUSION

For all the foregoing reasons, it is evident the Trial Court acted appropriately in refusing to vacate the arbitration award rendered by Arbitrator McGoldrick. As such, the Trial Court's determination must be affirmed.

Respectfully Submitted,

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Attorneys for Respondents

By: *Michael P. DeRose*
MICHAEL P. DeROSE, ESQ.

Date: March 14, 2025

COUNTY OF PASSAIC and PASSAIC COUNTY SHERIFF, Plaintiffs-Appellants, v. POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL NO. 197; POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL NO. 197A; POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL NO. 286, Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION APP. DIV. DOCKET NO. A-938-24 On Appeal From: SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY DOCKET NO.: MRS-L-1476-24 Civil Action Sat Below: Hon. David H. Ironson, J.S.C.

PLAINTIFFS-APPELLANTS COUNTY OF PASSAIC'S AND PASSAIC COUNTY SHERIFF'S REPLY BRIEF

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PRELIMINARY STATEMENT

Defendants provide no basis to affirm the trial court's failure to vacate the Award. As explained in Appellants' Brief, it is beyond debate that the Arbitrator vastly exceeded her authority by ignoring the terms of the statutes and parties' agreements, failing to follow binding, governing law and unjustifiably disregarding the uncontradicted evidence in the record. The arbitrator failed to recognize, and Defendants conveniently ignore, that all of Defendants' members, active and retired, were and are required by N.J.S.A. 40A:10-21.2to make full Chapter 78, and this requirement was a status quo term of the parties' collective bargaining agreements. The record clearly demonstrated that despite being negotiable, no negotiation of a reduction or elimination of Chapter 78 contributions ever took place during the interest arbitration process, and no such elimination of Chapter 78 contributions was part of the interest arbitration awards.

Consequently, for the reasons set forth herein and in Appellants' Brief, the trial court's decision denying Appellant's application to vacate the Award should be reversed and the Award vacated pursuant to N.J.S.A. 2A:24-8.

LEGAL ARGUMENT

POINT I

THE AWARD MUST BE VACATED

As stated in the Appellants Brief, pursuant to the N.J.S.A. 2A:24-8, requires

a court to vacate an arbitration award that was "procured by corruption, fraud or undue means" or "[w]here the arbitrator exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter was not made." N.J.S.A. 2A:24-8 (emphasis added). Under the "reasonably debatable" standard, the arbitrator's decision must be "examined to determine whether it was justifiable based on a reasonable interpretation of the contractual language." N.J. Transit Bus Operations, Inc. v. Amalgamated Transit Union, 187 N.J. 546, 554 (2006) (citing Kearny PBA Local 21 v. Town of Kearny, 81 N.J. 208, 220-21 (1979)). Consequently, arbitrators are not permitted to disregard the terms of a collective bargaining agreement or rewrite the agreement to add terms that do not exist. County College of Morris Staff Ass'n v. Cnty. College of Morris, 100 N.J. 383, 391 (1985). New Jersey courts have not hesitated to vacate awards where arbitrators have added new terms to an agreement or ignored clear language. PBA Local 11 v. City of Trenton, 205 N.J. 422, 429-30 (2011). See e.g., County College of Morris, 100 N.J. at 397-98 (declining to sustain arbitration award because arbitrator exceeded his authority); City of Trenton, 205 N.J. at 429 (same); PBA Local 258 v. Cnty. of Ocean, 2024 WL 1880779, at *4 (N.J. Super. App. Div. Apr. 30, 2024) (same).

None of the cases relied upon by Defendants espouse a standard under which the Award survives the requisite scrutiny. First, Local No. 153 v. Trust Co. of New

Jersey, 105 N.J. 442 (1987) involved a private arbitration agreement between a non-public employer and disciplinary action against a non-public employee. In Bd. of Educ. of Borough of Alpha v. Alpha Educ. Ass'n, 188 N.J. 595 (2006), the issue was whether the continuing violation doctrine applied to toll the time to bring a grievance. Likewise, Middletown Twp. PBA Local 124 v. Twp. of Middletown, 193 N.J. 1 (2007), involved reliance on a statute's failure to require an ordinance or resolution. The decision does not declare an award that ignores binding law in altering the parties' agreements to be "reasonably debatable". Finally, New Jersey Turnpike Auth. v. Local 196, 190 N.J. 283 (2007), unlike the situation in this case involving Chapter 78 and case law interpreting same, did not implicate any statutory or precedential embodiment of public policy. Id. at 288. An arbitration award that ignores the clear language of the contract cannot be sustained. State, Office of Empl. Relations v. Comm'n Workers of Am., 154 N.J. 98, 112 (1998).

Defendants rely upon inapposite decisions to support their argument. For instance, State v. IFTPE Local 195, 169 N.J. 505 (2001) is unrelated to the issues on this appeal. Other than a statement regarding review of arbitration awards, the court reversed the vacation of the arbitration award in that matter by abrogating a then-existing common law rule – a task purely within the province of the Supreme Court. Id. at 540. No such extraordinary circumstances are present here, and IFTPE Local 195 recognized that the court may vacate an award if it is contrary to existing law or

public policy. This decision does not mandate the Award remain undisturbed.

Defendants also rely upon a number of decisions outside of the public employment context, based on different standards of review inapplicable to this matter. For instance, Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349 (1994), involved review of a private arbitration award, which that court noted differed from the context of labor disputes. Id. at 362-63. Moreover, that court recognized that "in the public-sector arbitration setting, a court can properly vacate an award because of a mistake of law" because "public policy demands that a public-sector arbitrator, who must consider the effect of a decision on the public interest and welfare, issue a decision in accordance with the law." Id. at 364-65 (quoting Comm'ns Workers v. Monmouth Cnty. Bd. of Social Servs., 96 N.J. 442, 476 (1984); Kearny PBA Local No. 21 v. Town of Kearny, 81 N.J. 208, 217 (1979)). Thus, Tretina Printing supports Plaintiffs' arguments.

Likewise, Weiss v. Carpenter, Bennett & Morrissey, 143 N.J. 420, 422-23 (1996), involved an arbitration provision in a law firm partnership agreement and application of Rule of Professional Conduct 5.6. Weiss relies on the decision in W.R. Grace & Co. v. Local Union 759, 461 U.S. 757 (1983) a case based upon the federal Labor Management Relations Act and whether a conciliation agreement entered into between a private employer and the Equal Employment Opportunity Commission could preempt the terms of a collectively bargained agreement. Weiss

and W.R. Grace this decision has nothing to do with this appeal.

Defendants rely on a number of cases wholly inapposite to review of grievance arbitration between public employers and public employees. Minkowitz v. Israeli, 433 N.J. Super. 111, 120 (App. Div. 2013), involved parties to a matrimonial action agreeing to arbitration, but then resolving their disputes through mediation which resulted in a number of settlement agreements. After discussing the differences between mediation and arbitration, the Appellate Division, the Appellate Division vacated the trial court's decision and ordered a new arbitration to proceed. Id. at 152-53. Minkowitz is irrelevant to this case.

Likewise, Scotch Plains-Fanwood Bd. of Educ. v. Scotch Plains-Fanwood Educ. Ass'n, 139 N.J. 141 (1995), a case focused on the then-recent scope of negotiations amendments (applicable to public school employees) to the involved an appeal of an arbitration of a disciplinary matter, and the distinction between the withholding of an increment for discipline as opposed to based on teaching performance. Id. at 146-48, 154-55. The court expressly recognized "in public-sector arbitration, an arbitration award may not 'have the effect of establishing a provision of a negotiated agreement inconsistent with state statutory policy.'" Id. at 150 (quoting Old Bridge Bd. of Educ. v. Old Bridge Educ. Ass'n, 98 N.J. 523, 528 (1985)). Scotch-Plains has nothing to do with this case.

Lastly, Jersey Cent. Power & Light Co. v. Local No. 1289, 38 N.J. 95 (1962),

a case regarding a suit to compel arbitration is wholly irrelevant here – as arbitration has indisputably occurred, and no party has argued that arbitration of Defendants' grievance was not authorized under the parties' collective negotiations agreements.

Thus, as set forth in the Appellants' Brief, when analyzed under the applicable standard the Award must be vacated.

POINT II

DEFENDANTS' OPPOSITION PROVIDES NO IMPEDIMENT TO VACATION OF THE AWARD (Pa763)

A. The Award Was Not Reasonably Debatable (Pa763)

The Award is not "reasonably debatable", under any definition of the phrase, and Defendants cannot avoid the decisions in Ridgefield, Hamilton, W. Essex and E. Windsor by relying upon cases regarding past practice and custom and the general principle that arbitrators may not rewrite the parties' agreement. See Cnty. College of Morris, 100 N.J. at 391; PBA Local 160 v. Twp. of N. Brunswick, 272 N.J. Super. 467, 474 (App. Div. 1994); Communications Workers of Am. v. Monmouth Cnty. Bd. of Soc. Servs., 96 N.J. 442, 448-51 (1984) (vacating arbitration award and holding arbitrator's powers were circumscribed by law). These decisions do not buttress the Defendants' position. It is clear that in removing the requirement that all members make full Chapter 78 contributions (as codified in N.J.S.A. 2A:40A:10-21.1 and -21.2), the arbitrator wrongly rewrote the parties' agreements.

Defendants' reliance on cases regarding past practice and custom do not carry

the day. Anheuser-Busch, Inc. v. Teamsters Local 744, 280 F.3d 1133, 1138-40 (7th Cir. 2002), where the court vacated an arbitration award that was based on "long-standing practice" and not the law or contractual provisions. Moreover, for the same reasons that Plaintiffs argue that the Award should be vacated, the Seventh Circuit Court of Appeals recognized that an "arbitrator cannot shield himself from judicial correction by merely 'making noises of contract interpretation', and "the arbitrator exceeded the scope of his authority, and his award must be reversed". Id. at 1138 (citations omitted). Further, "[a]rbitrators must not stray from interpretation and application of agreement effectively dispense their own brand of industrial justice." Id. at 1142. Similarly, in Beacon Journal Pub. Co. v. Akron Newspaper Guild, 114 F.3d 596, 600-01 (6th Cir. 1997), the Sixth Circuit Court of Appeals vacated an arbitration award that used custom and practice to add to parties' agreement. These non-binding decisions actually support Plaintiffs' arguments.

Defendants rely heavily on decisions involving review of interest arbitration awards, cases which are inapposite to the case at bar. Newark Firemens' Mut. Benevolent Ass'n Local No. 4 v. City of Newark, 90 N.J. 44 (1982) was focused on the issue of whether an interest arbitrator was permitted to allow revisions to the final offers submitted by the parties under N.J.A.C. 19:16-5.7. Id. at 46. The record is clear that no final offers were submitted by any party to remove the obligation of all members to make Chapter 78 contributions. Similarly, in PBA Local 29 v. Town

of Irvington, 80 N.J. 271, 284 (1979), another case involving review of an interest arbitration award, the court recognized the difference between interest arbitration and grievance arbitration. These cases have no utility in this case.

For the reasons stated above, and in the Appellants' Brief, the assertion that the Award is reasonably debatable ignores the facts and law, and there is no impediment to the vacation of Award pursuant to N.J.S.A. 2A:24-8.

B. The Interest Arbitration Process Did Not Remove Chapter 78 Contributions (Pa763)

The argument that during the interest arbitration process, the parties negotiated and/or the interest arbitrator decided that full Chapter 78 contributions would be removed from the parties' agreements ignores the uncontradicted facts and the law. The decision in Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163 (App. Div. 1993), which offers nothing beyond a general explanation of the interest arbitration process, adds little to the analysis of the issues in this case.

No party disputes that Chapter 78 contributions had reached full implementation at the time of the interest arbitration process in 2020, and at that time full Chapter 78 contributions were negotiable. However, the Defendants conveniently fail to acknowledge two things: (1) full Tier IV Chapter 78 contributions (by all employees, active and retired) was a term of the Parties' collective negotiations agreements by operation of law pursuant to N.J.S.A. 40A:10-21.2; and (2) that there was no negotiation of and agreement to the reduction of

Chapter 78 contributions by Plaintiffs or Defendants. There was no factual dispute that Chapter 78 had been fully implemented at that time with regard to Chapter 78 contributions and the Defendants did not seek any reduction in Chapter 78 contributions. Pa11, Pa 13, Pa 15, Pa735-36 and Pa738.

There was never a meeting of the minds at any time by Plaintiffs and Defendants to reduce or eliminate Chapter 78 contributions. The only proposal ever made regarding the reduction or elimination of Chapter 78 contributions was made by Defendants during negotiations prior to the interest arbitration process, and this proposal was rejected. Pa11, Pa 13, Pa 15, Pa735-36 and Pa738. Defendants did not seek to reduce or eliminate Chapter 78 contributions. Pa11, Pa 13, Pa 15, Pa735-36 and Pa738. Thus, it was uncontradicted that Chapter 78 contributions were not negotiated out of the agreements. Pa11, Pa13, Pa16, Pa735, Pa737 and Pa739. Thus, full Tier IV contributions were the status quo at the time of the interest arbitrations and Plaintiffs never agreed to reduce or eliminate same.

Defendants attempt to distinguish this matter from In the Matter of Ridgefield Park Bd. of Educ., 244 N.J. 1 (2020); West Essex PBA Local 81 v. Fairfield Twp., 2021 WL 2550536, at *1 (N.J. Super. App. Div. June 21, 2022); PBA Local 191 v. Twp. of E. Windsor, 2022 WL 1052230, at *1 (N.J. Super. App. Div. Apr. 8, 2022); Hamilton Twp. Superior Officers Ass'n v. Twp. of Hamilton, 2019 WL 5824006, at *1 (N.J. Super. App. Div. Nov. 7, 2019), cannot save the Award. these decisions

that have uniformly determined, in accordance with N.J.S.A. 40A:10-21.1 and -21.2, that retired employees are subject to Chapter 78. As set forth above, Chapter 78 contributions WERE NOT at issue during the interest arbitration process and the County's last and final offer regarding the elimination of health benefits was wholly unrelated and had no effect on the requirement (per N.J.S.A. 40A:10-21.1 and -21.2) that all Union employees (active and retired) were obligated to make full Tier IV Chapter 78 contributions. Mutual assent is required to remove full Tier IV Chapter 78 contributions, and reliance on pre-Chapter 78 contract language does not satisfy that requirement. See E. Windsor, 2022 WL 10522330, at *5-6 (holding that where there was no meeting of the minds to remove Chapter 78 benefits, Tier IV rates remained in effect). See also Ridgefield Pk. PBA Local 86 v. Village of Ridgefield Park, 2024 WL 901060, at *4 (N.J. Super. App. Div. Mar. 4, 2024) (in stark contrast to this case, noting that arbitrator correctly read pre-Chapter 78 contract language in conjunction with Chapter 78's requirements, requiring retired employees to receive the same benefits as active officers).

Additionally, decision regarding a scope of negotiations petition in Clementon Bd. of Educ. v. Clementon Educ. Ass'n, 42 NJPER ¶ 34, 2015 WL 5604427 (N.J. Adm. Aug. 13, 2015), does not warrant a departure from application of Chapter 78 as set forth in N.J.S.A. 40A:10-21.2; W. Essex; E. Windsor; and Hamilton. Rather, Clementon stands for the unremarkable proposition that Chapter 78 contributions

become negotiable in the next collective negotiations agreement after Tier IV contributions have been achieved. Here, there is no dispute that full Tier IV Chapter 78 contributions had been achieved and such contribution level was the status quo, which could be (but was not) negotiated by the parties. Likewise, it cannot be disputed that neither Plaintiffs nor Defendants sought to eliminate this level of contribution. Consequently, Clementon adds little to this matter.

Defendants also rely on Matter of New Brunswick Mun. Employees Ass'n, 454 N.J. Super. 408 (App. Div. 2018), which wholly supports Plaintiffs' position. There, the Appellate Division affirmed precisely what Plaintiffs have argued – that Chapter 78 sets a floor for contribution rates, not a ceiling. Id. at 418. Based on the language of N.J.S.A. 40A:10-21.1, the court recognized that HIGHER contribution rates were not preempted by Chapter 78. Id. at 418-21. This does not support the argument – which is not supported by the language of the statute – that Chapter 78 permitted, rather than preempted, LOWER contribution rates. New Brunswick does not support the trial court's or arbitrator's decision.

Therefore, any argument that the reduction and/or removal of Chapter 78 contributions was negotiated, agreed to or placed into issue during the interest arbitration process is wholly unsupported by the facts, and must be rejected.

C. The Arbitrator And Defendants Ignore The Plain Language Of The Statute And Agreements (Pa763)

The Arbitrator and Defendants ignore the language that does not support their

position, specifically, that full Chapter 78 contributions were the status quo. See N.J.S.A. 40A:10-21.2. Defendants rely on language from the 2015-2018 MOAs regarding the provision of health insurance to employees, yet is entirely silent as to Chapter 78 contributions. See Pa128-32; Pa384-89. The argument that this language "shows an intention" to eliminate Chapter 78 contributions for retired employees is simply ludicrous.

Further, the argument that only active employees, not retired employees, were required to make Chapter 78 contributions under the 2015-2018 MOAs completely misses the point, misquotes the language in the 2015-2018 MOAs and ignores the term "employees" as used in Chapter 78 itself. The plain language in the 2015-2018 MOAs does not restrict its application to active employees, rather it covers all employees, active and retired: "All employees in the Union shall be subject to the contributions outlined in Chapter 78 of Public Law 2011." Pa130, Pa386. This is in lockstep with the language used in Chapter 78 itself. For example, N.J.S.A. 40A:10-21.1.b states that "public employees of an employer . . . shall contribute, through withholding of the contribution from the monthly retirement allowance, toward the cost of health care benefits coverage for the employee in retirement . . . [.]" There can be no dispute that Chapter 78 applies to active and retired employees, and the use of the term "employee" in the 2015-2018 MOAs applies to same.

Further, all employees (active and retired) were required to make Chapter 78

contributions regardless of whether or not the parties' agreements contained an express written provision because full Tier IV Chapter 78 contributions were mandated by operation of law. See N.J.S.A. 40A:10-21.2; Ridgefield, 244 N.J. at 20-21; West Essex, 2021 WL 2550536, at *6; E. Windsor, 2022 WL 1052230, at *5-6; Hamilton, 2019 WL 5824006, at *3-4.

Moreover, the pre-Chapter 78 language relied upon by both Defendants and the Arbitrator was void as contrary to law and could not serve as a basis for her decision. See Wolfersberger v. Borough of Point Pleasant Beach, 305 N.J. Super. 446, 453 (App. Div. 1996); City Council of Elizabeth v. Fumero, 143 N.J. Super. 275 (Law Div. 1976) (holding provision of collective bargaining agreement was void and stricken from contract as it was contrary to statute); Saffore v. Atl. Cas. Ins. Co., 21 N.J. 300, 310 (1956) ("A specific provision integrated into the contract by force of a statute, as a matter of public policy, must be interpreted and given effect in accordance with the intention of the legislature, irrespective of how the contractors understood it."); Bryant v. City of Atl. City, 309 N.J. Super. 596, 629 (App. Div. 1998) ("A contract provision that is contrary to the requirements of a statute is void."). Defendants' failure to address this argument constitutes a waiver of any opposition to same. C.f. New Jersey Dep't of Envtl. Prot. v. Alloway Twp., 438 N.J. Super. 501, 505-06 n.2 (App. Div. 2016). Therefore, the Award clearly conflicts with the plain language of the agreements.

D. The Award Violates The Public Policy Embodied In Chapter 78 (Pa763)

Defendants cannot credibly argue that the Award is not contrary to public policy. The Award clearly fails to account for the uncontradicted testimony offered by the Plaintiffs that removing Chapter 78 contributions from retired employees would adversely impact Plaintiffs' budget, potentially causing layoffs and/or reductions in service. Pa715-16; Pa721. More importantly, the Award is directly contrary to the public policy embodied in Chapter 78 and its interpretative caselaw. Notably, this Court's review of whether an arbitration award conflicts with public policy is de novo, unconstrained by the arbitrator's or trial court's decision. Ridgefield, 244 N.J. at 18 (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)).

As the New Jersey Supreme Court made clear in N.J. Turnpike Auth., arbitration awards that implicate a "clear mandate" of public policy are subject to "heightened judicial scrutiny". N.J. Turnpike Auth., 190 N.J. at 294. "[F]or the purposes of judicial review of labor arbitration awards, public policy sufficient to vacate an award must be embodied in legislative enactments, administrative regulations, or legal precedents, rather than amorphous considerations of the common weal." Id. at 295. The goal of Chapter 78 was to provide more than temporary respite from spiraling healthcare costs, which would be accomplished by making full Tier IV contributions a term of the parties' contract by operation of law – which would have to be negotiated OUT of a contract, not INTO a contract.

As stated by the Ridgefield court, Chapter 78 was enacted in the face of "serious fiscal issues" confronting the State of New Jersey, specifically, the underfunding of the pension system and escalating health care costs. 244 N.J. at 23; Brick Twp. PBA Local 230 v. Twp. of Brick, 446 N.J. Super. 61, 69 (App. Div. 2016) (citing DePascale v. State, 211 N.J. 40, 63 (2012)). Neither the trial court nor Defendants articulated how the Award could possibly not conflict with the foregoing principles. Permitting the Award to circumvent the Legislature's clear expression of its intent would violate the public policy embodying Chapter 78.

For these reasons, the Award is contrary to established public policy and must be vacated on that basis pursuant to N.J.S.A. 2A:24-8.

CONCLUSION

For the foregoing reasons, and those set forth in the Appellants' Brief Plaintiffs respectfully request that the October 24, 2024 order be reversed and the April 29, 2024 arbitration opinion and award be vacated and reversed pursuant to N.J.S.A. 2A:24-8.

Respectfully submitted,

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Dated: April 11, 2025

By: /s/ Christopher J. Buggy
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