

THOMAS J. McCORMICK,
Plaintiff-Appellant,

-vs-

THE COUNTY OF SUSSEX; and
RON TAPPAN, the COUNTY
ADMINISTRATOR OF THE
COUNTY OF SUSSEX, in his official
capacity,

Defendants-Respondents

SUPERIOR COURT
OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-002391-24
DOCKET NO.: PAS-L-2507-24

CIVIL ACTION
BRIEF IN SUPPORT OF APPEAL

SAT BELOW:

HON. Rudolph A. Filko, A.J.S.C.

BRIEF OF PLAINTIFF-APPELLANT

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Date submitted: 6/24/25

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PROCEDURAL HISTORY

The action before the Court concerns a dispute over the carry over of vacation days approved by the then acting Sussex County Prosecutor on behalf of the plaintiff-appellant, Thomas J. McCormick, the Chief of Detectives of the Sussex County Prosecutor's Office, and the later unilateral deletion of those days from the Sussex County payroll system by the Sussex County Administrator. The Sussex County Administrator was informed of the approval of the carry over on November 30, 2023 and the carried over days were put into the system by the Sussex County Administrator. By January 9, 2024, 19 of those days had been unilaterally removed from the system by the Sussex County Administrator.

When the Sussex County Administrator refused to return the deleted days, the plaintiff-appellant filed the Verified Complaint in Action in Lieu of Prerogative Writ on April 8, 2024 in the Superior Court of New Jersey, Law Division Sussex County, docket number SSX-L-000175-24 (Pa24). The defendant-respondents, County of Sussex and Ron Tappan, Sussex County Administrator, filed their Answer on May 22, 2024 (Pa36).

By Order filed on August 1, 2024, the Hon. Stuart A. Minkowitz, A.J.S.C. Sussex County transferred the matter sua sponte to the Superior Court of New Jersey, Passaic County where it was assigned docket number PAS-L-2507-24 (Pa50).

Plaintiff-appellant moved for summary judgment on September 4, 2024 (Pa51) and the defendant-respondents cross moved for summary judgment on October 15, 2024 (Pa111). Both motions were heard before the Hon. Rudolph A. Filko, A.J.S.C. on December 6, 2024. Judge Filko entered an Order granting Defendants' motion for summary judgment on January 6, 2025 (Pa1) and an Opinion setting forth his decision the same day (Pa3).

Plaintiff-appellant filed a motion for reconsideration on January 21, 2025 (Pa374) and defendant-respondents filed a brief in opposition on February 6, 2025. The motion for reconsideration was heard by Judge Filko on March 5, 2025. That same day Judge Filko entered an Order denying the reconsideration and putting his reasons for the denial on the record (Pa9).

The Notice of Appeal was filed on April 10, 2025 and the transcript was simultaneously ordered (Pa11).

STATEMENT OF FACTS

The plaintiff-appellant, Thomas J. McCormick (hereinafter referred to as "Chief McCormick" or "plaintiff-appellant"), is a resident of Sussex County, New Jersey, and at all relevant times was the Chief of Detectives of the Sussex County Prosecutor's Office. He had worked at the Prosecutor's Office since 2005 (Pa63, Pa69). The plaintiff retired from his position as Chief of Detectives of the Sussex

County Prosecutor's Office with his last day being December 31, 2024 (Pa368, Pa371).

The Sussex County Prosecutor (hereinafter referred to as the "Prosecutor") is a Constitutional Officer whose office is created pursuant to *N.J.Const., Art.VII, Sec.11, Par 1.* (Pa63, Pa69).

The Prosecutor, as a Constitutional Officer appointed by the Governor, controls her own office and budget and is not subject to the authority of the County Administrator, nor answerable to him. (Pa63, Pa66, Pa70).

Annemarie Taggart (hereinafter referred to as the "acting Prosecutor") served as the acting Sussex County Prosecutor from July 1, 2022 until December 1, 2023 (Pa62).

The office of Chief of Detectives is the position of county investigator and is in the unclassified service of the civil service. The Chief of Detectives serves at the pleasure of the Prosecutor, can be removed by the Prosecutor without cause, and is not subject to or governed by the provisions of *N.J.S.A. 11A-1 et seq.* and is not covered by any collective bargaining agreement. (Pa63, Pa70).

Chief McCormick was employed by the Sussex County Prosecutor, which is entirely different from being an employee of the County itself (Pa366), although his paychecks were issued through the County as are the paychecks of everyone working at the Prosecutor's Office, Chief McCormick reported exclusively to the Prosecutor and not to Ron Tappan, the County Administrator. (Pa63, Pa66, Pa70, Pa359, Pa360)

The administration of the payroll system by the County Administrator is a ministerial function only as the Sussex County Prosecutor controls her own budget which is not under the jurisdiction or authority of the Sussex County Administrator (Pa64, Pa70)

Ron Tappan was never Chief McCormick's supervisor. Chief McCormick reported to the Prosecutor and only to the Prosecutor (Pa357, Pa358, Pa359, Pa360). How Mr. Tappan implemented policies with regard to workers covered by the Agreement Between Board of County Commissioners of Sussex County and the Communication Worker's of America, AFL-CIO (hereinafter referred to as the "Communication Workers of America Agreement") and under his actual supervision had no impact or relevance to Chief McCormick in his position as Chief of Detectives for the Sussex County Prosecutor (Pa358).

Chief McCormick was not subject to or covered by any collective bargaining agreement whatsoever as he served at the pleasure of the Prosecutor and had none of the benefits conferred by any collective bargaining agreement (Pa70, Pa358). If Chief McCormick was subject to such an agreement it would certainly not be with the Communications Workers of America of the AFL-CIO (Pa358). The detectives who are subject to a collective bargaining agreement, which excludes Chief McCormick, are part of the Policeman's Benevolent Association. No law enforcement officers are ever members of the Communications Workers of America (Pa63, Pa358).

The Communication Workers of America Agreement expressly excludes all unclassified employees and police employees (Pa212).

The fact that Chief McCormick's vacation was similar to that outlined in the Communication Workers of America Agreement was merely coincidental and has no bearing on this matter. He was not subject to that agreement. Chief McCormick's vacation was not set by the Communication Workers of America Agreement. Nothing about his employment was subject to anything contained in the Communication Workers of America Agreement (Pa358)

The Sussex County Handbook (Pa271) states that **“the Sussex County Prosecutor's Office and the Sussex County Sheriff's Office determine and set certain operational policies for their respective departments. In the event that such other operational policies exist, and the terms of those policies conflict with those set forth in this manual, the departmental operational policies shall control.”** (Pa277).

The Sussex County Handbook further states **“Unclassified Employees- means those positions and job titles outside of the senior executive service, not subject to the tenure provisions of Title 11A, New Jersey Statutes or these rules unless otherwise specified.”** (Pa281)

The defendants provided no evidence or authority to overcome these provisions of the handbook or the Communications Workers of America Agreement. The Sussex County Handbook was clearly drafted in a manner cognizant of the independence of the Prosecutor's office. It expressly does not attempt to apply to the Prosecutor's ability to make operational decisions with regard to unclassified

employees and does not impede the Prosecutor's ability to make operational decisions as to those employees, such the Chief McCormick. (Pa277)

At all times hereinafter mentioned Ron Tappan (hereinafter referred to variously as "Tappan" or the "County Administrator") was and is the County of Sussex County Administrator, whose duties include supervising County Administrative Departments but not Constitutional Offices (Pa63, Pa70). The official County of Sussex Table of Organization delineates the authority of the County Administrator and the departments over which he has authority. Constitutional Officers, including the Prosecutor, rank above the County Administrator and do not report to the County Administrator (Pa66).

The Sussex County Prosecutor's Office does not administer its own payroll system. The payroll system for the entire County government, including the Constitutional Offices, is administered by the Office of the Sussex County Administrator and is known as the Primepoint system. This is a ministerial function only as the Sussex County Prosecutor controls her own budget, which is not under the jurisdiction, authority or discretion of the Sussex County Administrator (Pa64, Pa70).

In or about October and November 2023, Annmarie Taggart, the acting Prosecutor at the time, and Chief McCormick began discussing his canceling his planned vacation due to exigent circumstances surrounding the transition to a new

acting Prosecutor, Carolyn Murray, and the necessity that Chief McCormick remain at work during the transition period (Pa63, Pa64, Pa70, Pa71).

In response to said discussions Chief McCormick cancelled his vacation plans and put in a written request to Prosecutor Taggart to carry 40 vacation days over to 2024 (Pa63, Pa71, Pa79). On November 29, 2023 this request was approved by the then acting Prosecutor, Annmarie Taggart, who signed off on Chief McCormick's written request (Pa68).

By email dated November 30, 2023 the written approval of the acting Prosecutor for Chief McCormick to carry over 40 vacation days was forwarded by Tina Jacobs, the Office Manager of the Sussex County Prosecutor's Office, to six (6) appropriate members of the County Administrator's staff so the vacation day carryover could be added to the Primepoint system (Pa64, Pa71).

Thereafter acting Prosecutor Taggart was never contacted by the Sussex County Administrator or anyone else from his office with regard to her approval of Chief McCormick's request (Pa64).

The necessity of carrying more than 21 days was due to the extenuating circumstances in the Prosecutor's Office and the further extenuating circumstances from 2022 when Chief McCormick was unable to use all of his vacation due to a serious medical condition. The acting Prosecutor was familiar with all of this when she requested that Chief McCormick cancel his planned vacation and then approved the carry over of the 40 days on November 29, 2024 (Pa63, Pa71).

Chief McCormick heard nothing further from Tappan's office about the carried vacation days through December 31, 2023. He did check the Primepoint system at the end of the year 2023 and saw that the carried over days had indeed been put into the Primepoint system (Pa71).

Between June and December, 2023 a dispute arose between Tappan and the Prosecutor's Office over the promotion of two (2) detectives. Tappan objected that the salaries of the detectives would be too high, with Tappan viewing the new salaries as pay raises rather than increases in salary based on promotions. Chief McCormick was involved in this dispute and advised Tappan that he did not have any authority over the promotions or the salaries (Pa71, Pa72).

Tappan has no authority in this area as the Prosecutor's budget and office are in no way under his administration or authority and he had no authority to set the salaries, which came out of the Prosecutor's independent budget and were fully covered in the existing budget (Pa63, Pa66, Pa72).

Tappan was therefore unable to block the promotions or the salaries, which became effective January 1, 2024 (Pa72).

On or about January 9, 2024, Chief McCormick noticed that 19 of his carried over vacation days had been removed from the Primepoint system, with no advance notice to him. Chief McCormick asked Tina Jacobs, the Office Manager of the Prosecutor's Office, to follow up with the County Administrator's office to restore the deleted days as the inputting of these carried over days was merely a

ministerial function over which the County Administrator had no discretion or authority. In fact the hours had already been inputted and were then improperly removed after the beginning of 2024 (Pa72).

By email dated January 9, 2024 Tina Jacobs contacted Employee Services and advised that the acting Prosecutor had approved the requested carry over of vacation days, provided the written approval previously forwarded on November 30, 2023 and requested that Chief McCormick's 152 vacation hours (19 days) carried over be added back to the vacation bank for 2024 (Pa72, Pa83).

By email dated January 12, 2024 Debbie Pfunke of the County Administrator's Office office responded that she had spoken to Tappan and asked "What are the circumstances for this request." A true copy of said email is annexed hereto and made a part hereof as Exhibit E (Pa 72, Pa73, Pa85).

Although it was none of Tappan's business what the circumstances were because he had no authority over the decision, which belonged solely to the acting Prosecutor, the path of least resistance was to provide the requested information. Therefore Tina Jacobs responded that same day providing the circumstances (Pa73).

On January 19, 2024 Tina Jacobs then followed up with another email to Debbie Pfunke asking when the vacation hours would be returned to Primepoint (Pa73).

Later on January 19, 2024 Tappan sent Tina Jacobs an awkwardly phrased email seemingly stating that there were no emergent circumstances or health issues that prevented Chief McCormick from taking his vacation (Pa73, Pa91)

Chief McCormick then felt it necessary to get involved himself and on January 22, 2024 he sent an email to Tappan requesting that Tappan give him a call to discuss the circumstances (Pa73, Pa93).

Chief McCormick believed Tappan had the 19 days removed from the Primepoint system and was being difficult about returning them because he was angry and resentful about the promotion of the two detectives and his inability to prevent those promotions from going through on January 1, 2024. Chief McCormick thought it might be best to speak with him personally in an attempt to resolve this new dispute (Pa73).

Rather than calling, Tappan emailed Chief McCormick that he “could not approve” rolling over more than one year’s worth of vacation time (Pa74).

Chief McCormick then sent another email on January 22, 2024 expressing surprise and providing additional details (Pa74, Pa97).

By further email on January 22, 2024, Chief McCormick asked Tappan if he could go down to his office and meet with him. There was no further response from Tappan (Pa74, Pa99).

At that point Chief McCormick saw no other way to resolve the dispute than to get his attorneys involved. By letter dated March 20, 2024, counsel for Chief

McCormick wrote to Tappan further explaining the necessity of carrying over the vacation days and pointing out to Tappan that the provisions of *N.J.S.A. 11A:6*, the apparent basis for Tappan's refusal to return the deleted vacation hours, do not apply to Chief McCormick (Pa74, Pa101, Pa102).

That same day, March 20, 2024, Tappan responded to counsel for Chief McCormick that he was forwarding his letter to the Sussex County Counsel and the Labor Attorney (Pa74, Pa104).

Despite Tappan's representation that he was passing Chief McCormick's counsel's letter to the County Counsel, Tappan himself responded by letter dated March 25, 2024 refusing to put the deleted 19 days back into the Primepoint system and claiming that he was proscribed from doing so by *N.J.S.A. 11A:6-3(e)* notwithstanding that he had added a vacation day carryover for Chief McCormick the year before that also would have violated the provisions of said statute if it applied to Chief McCormick (Pa74, Pa106).

Chief McCormick's counsel then sent a follow up letter laying out in detail all of the facts and law supporting his position and requesting that the County Counsel respond setting forth any legal authority contrary to that relied on by Chief McCormick and advising if the decision was not reversed within seven (7) days Chief McCormick would pursue his legal remedies (Pa75, Pa108, Pa109, Pa110). When there was no response to the letter of March 27, 2024 from either Tappan or the County Counsel and the 19 days removed from Primepoint were not re-entered,

the complaint in the above captioned matter was filed on April 8, 2024, fourteen (14) days after Tappan's final letter of March 25, 2024 (Pa75, Pa 108, Pa109, Pa110).

The first carry over of Chief McCormick's vacation approved by the Prosecutor was not in any way related to COVID-19. Governor Phil Murphy lifted the COVID-19 public health emergency on March 4, 2022. Chief McCormick requested to carry over vacation days after the COVID-19 emergency had been lifted due to a health situation of his unrelated to COVID for which he used sick days to which he was entitled. There was nothing improper about this request, which the Prosecutor, in her sole discretion, granted and which with Tappan did not interfere (Pa357, Pa359). The County put no competent evidential material before the Court to support their contention that the vacation day carry over the year before was in any way related to the COVID-19 emergency.

The Prosecutor had also periodically permitted other unclassified employees of her office carry over more than a year's worth of vacation (Pa359). So the prior year that Chief McCormick's vacation was carried over more than a year was not a mere one off.

LEGAL ARGUMENT

POINT I

THE DECISION CONSTITUTES PLAIN ERROR AS IT IS CONTRARY TO THE CONTROLLING STATUTORY AND CASE LAW OF THE STATE OF NEW JERSEY (Pa1, Pa3, Pa9, T24¹)

The statute relied upon by the Court below expressly does not apply to the plaintiff-appellant herein. The Court below ignored the undisputed fact that Chief McCormick's request to carry vacation days was made only after the acting Prosecutor directed that he cancel his planned vacation to use those days because in her determination his presence was necessary in the office during the transition to the new acting Prosecutor. The request to carry the days was not made to accommodate the Chief's own plans but for the operational needs of the Prosecutor's office. The Court also erroneously relied on the Sussex County Handbook (Pa6, Pa7) and the Agreement Between Board of County Commissioners of Sussex County and the Communication Worker's of America, AFL-CIO ("Communication Workers of America") (Pa6, Pa7), neither of which has any application to the plaintiff-appellant.

¹ All references to the Transcript are to the Transcript of March 5, 2025.

A. PLAINTIFF IS IN THE UNCLASSIFIED SERVICE OF THE CIVIL SERVICE, IS EXPRESSLY EXEMPT FROM THE PROVISIONS OF N.J.S.A. 11A:-6 AND THUS IS NOT PROHIBITED FROM CARRYING OVER THE DISPUTED VACATION DAYS (Pa1, Pa3, Pa9)

N.J.S.A. 11A:1-1 et. seq. is known as the “Civil Service Act”. The Civil Service Act is intended, among other things, to promote State employees based on merit and to protect State employees from political coercion and ensure their collective bargaining rights. *N.J.S.A. 11A:102*. However, its provisions are not extended to certain employees including those appointed by the Governor and “[a]ll other titles as provided by law”. *N.J.S.A. 11A:3-4*.

N.J.S.A. 11A:3-4 clearly states “The State unclassified service shall not be subject to the provisions of this title unless otherwise specified and shall include the following: ...1. All other titles as provided by law or as the Civil Service Commission may determine.”

The office of Chief of Detectives is the position of county investigator and is expressly in the unclassified service of the civil service as clearly set forth in *N.J.S.A. 2A:157-10* which reads in pertinent part “In addition to the office of county detective, there is created in the office of the prosecutor, the office or position of county investigator which shall be in the unclassified service of the civil service.”

County investigators, including the chief investigator, are employees of the prosecutor and not the county. In re Application of Ruvoldt, 187 N.J.Super. 81, 91 (App. Div. 1982). This is further acknowledged in *N.J.S.A. 2A:157-10.1* which expressly references that investigators “employed by the county prosecutor” cannot be removed for political reasons or without cause, except for the chief and deputy chief, who can be removed or demoted by the prosecutor for any reason. The Court below erroneously held that Chief McCormick was an unclassified employee of the County of Sussex (T20-21 to T20-22, Pa368). He was not, but rather was an unclassified employee of the Prosecutor.

The plaintiff-appellant never claimed that Chief McCormick was a constitutional officer just that he was expressly not subject to *N.J.S.A. 11A:1-1 et. seq.* by its clear terms and as expressly set forth in *N.J.S.A. 2A:157-10* (T20-22 to T20-25).

The Courts of this State have found that the prosecutors have the authority to appoint a chief investigator who is not in the classified civil service. “*N.J.S.A. 2A:157-10* empowers the county prosecutor to appoint a chief investigator whose statutory functions are identical with those of the detectives. However, investigators, including the chief investigator are not in the classified civil service. Rather, they serve at the prosecutor's pleasure and ‘are subject to removal by him’ for any reason and at any time. *N.J.S.A. 2A:157-10.*” Zamboni v. Stamler, 199 N.J.Super. 378, 379 (App. Div. 1985); Brennan v. Byrne, 31 N.J. 333, 336 (1960).

Further “the broad parameters of prosecutorial discretion pertaining to the composition of the unclassified service of investigators have been firmly established in an unbroken line of judicial decisions.” Zamboni, Supra. at 383. The Prosecutor also has the authority to create superior officer positions within the unclassified investigative service,. Id. at 385-386. Hence, Chief McCormick held the title of Chief of Detectives of the Sussex County Prosecutor's Office but was in fact the the chief county investigator.

The County Administrator removed 19 of the approved carry over vacation days claiming that on the basis of *N.J.S.A. 11A:6-3(e)* he was proscribed from carrying over more than 21 days, despite having done so the year before and being advised by counsel for plaintiff that Chief McCormick is clearly not subject to said statute (Pa101, Pa102, Pa106).

The unclassified civil service, including the position held by Chief McCormick, is not subject to the provisions of the Civil Service Act. “The State unclassified service shall not be subject to the provisions of this title unless otherwise provided”. *N.J.S.A. 11A:3-4*. There is no provision to include the position held by Chief McCormick in the Civil Service Act. Chief McCormick served at the pleasure of the prosecutor, was not covered by any collective bargaining agreement (Pa70, Pa358) was not subject to the Sussex County Employee Handbook (Pa272, Pa281) and could be removed by the prosecutor

without cause pursuant to *N.J.S.A. 2A:157-10.1*. The protections of the provisions of *N.J.S.A. 11A-1 et seq.* also did not apply to Chief McCormick.

N.J.A.C. 4A:1-1.2 states that the rules set forth therein pursuant to *N.J.S.A. 11A-1 et seq.* “shall only apply to the career service”. *N.J.S.A. 2A:157-10* expressly provides that the office of prosecutor and the position of county investigator “shall be in the unclassified service of the civil service.”

The Communication Workers of America Agreement, the Sussex County Employee Handbook and the provisions of *N.J.S.A. 11A:6-3(e)* with regard to vacation days are, as a matter of law, inapplicable to the plaintiff, as those instruments themselves clearly acknowledge. (Pa272, Pa277, Pa281, Pa212).

Chief McCormick’s carry over of vacation the year before was not due to the COVID emergency, which had ended by then (Pa361). By failing to question the Prosecutor’s approval of a carry over of Chief McCormick’s vacation days the year before that also clearly would have violated *N.J.S.A. 11A:6-3(e)*, if it applied, the defendant, Tappan, has admitted this provision does not apply to Chief McCormick. The state of emergency he later attempted to rely on to excuse or justify his failure to object the year before must fail as the state of emergency had already ended when the carry over request was submitted. It is a desperate attempt to create a legal basis for his actions where none exists.

It is patently clear, as a matter of law, that *N.J.S.A. 11A:6* does not apply to Chief McCormick or to the County Prosecutor and cannot be used by the County

Administrator to justify the removal by him of the carry over of the 19 vacation days approved by the acting Prosecutor.

B. THE COUNTY PROSECUTOR IS A CONSTITUTIONAL OFFICER WHO CONTROLS HER OWN OFFICE AND BUDGET AND IS NOT ANSWERABLE TO THE COUNTY ADMINISTRATOR OR UNDER THE AUTHORITY OF THE COUNTY ADMINISTRATOR (Pa1, Pa3, Pa9, T20-21to T20-25)

The office of County Prosecutor is a Constitutional Office created pursuant to *N.J.Const., Art.VII, Sec.II, Par 1*. It is well settled law in this State that the Prosecutor, as a Constitutional Officer appointed by the Governor, controls her own office and budget and is not subject to the authority of the County Administrator nor answerable to him.

In Cetrulo v. Byrne, 31 N.J. 320, 325 the Supreme Court of this State reiterated that “the prosecutor’s dominant position and primary responsibility for the enforcement of criminal laws” give the prosecutor authority, both expressly by statute and impliedly, “powers to appoint personnel needed for the proper discharge of his duties[,]” citing State v. Winne, 12 N.J. 152, 167 (1953).

N.J.S.A. 2A:157-19 states: “Nothing in this chapter shall be construed to limit the power of any prosecutor, duly conferred upon him by law, to incur expenses in the detection, arrest, indictment and conviction of offenders against the criminal laws of this state.

The Courts of this State have also recognized that the Prosecutor controls her own budget and has the ability to control her own expenses in a way which is unique as she is empowered to go directly to the Freeholders (now known as County Commissioners) and if need be the Court to obtain all necessary funding. “The statutes reflect a ‘fixed legislative policy to cast on the county prosecutor responsibility for the detection, apprehension, arrest and conviction of criminals in his county.’ **The Legislature has conferred upon him a power unparalleled in the county to incur expenses in the performance of his official duties and has provided special budgetary techniques designed to insure his financial ability to execute his constitutional powers.**” Zamboni, supra. at 384 citing State v. Winne, supra. at 12 N.J. at 167 (emphasis supplied).

“It is made the duty of the prosecutor 'to use all reasonable and lawful diligence for the detection, indictment, and conviction of offenders,' and the payment of 'all necessary expenses incurred thereby' is enjoined upon the board of freeholders. A construction of the statute which would restrict its provisions to the personal efforts of the prosecutor and his personal expenses, without authority to employ other means and instrumentalities to aid him in the discharge of his duty, and to incur expense thereby, would be too narrow to effect the legislative purpose.” Centrulo, supra. at 325, 326 citing Lindabury v. Board of Chosen Freeholders of Ocean, 47 N.J.L. 417 (Sup. Ct. 1885). The Court continued “The plain intent of the statute was to confer upon the prosecutor authority to provide

reasonable means to aid him in the performance of his official duties, with a guaranty that the necessary expenses incurred should be paid”. Id. at 326.

The Prosecutor, who has complete discretion over her own budget, required Chief McCormick to cancel his planned vacation because he was needed in the office to ensure the proper discharge of the Prosecutor’s duties during the transition to a new acting Prosecutor(Pa63). She then authorized that the unused 40 days all be carried over into the next year. It is clear from both the statutory and case law that she had the full authority to do so. Ron Tappan had no authority to interfere with this decision by the Prosecutor, whose position is quite clearly superior to his in all regards.

The Prosecutor, as a Constitutional Officer appointed by the Governor, controls her own office and budget and is not subject to the authority of the County Administrator nor answerable to him. If the County Administrator was in any doubt about this it is also clearly set forth in the County of Sussex Table of Organization.

In furtherance of the Constitutional, statutory and administrative code provisions set forth above, the *Sussex County Administrative Code*, §3.3, gives the County Administrator authority over County administrative departments but not Constitutional officers.

Once the then acting County Prosecutor approved the carry over of Chief McCormick’s vacation time, the County Administrator had no authority to remove

any portion of the approved time from the Primepoint payroll system. Neither Chief McCormick nor the Prosecutor are employees of the county or subject to the authority of the County Administrator. As a Constitutional Officer appointed by the Governor, the Prosecutor outranks the County Administrator. The Prosecutor is not answerable to the County Administrator with regard to how she manages her office or budget. As stated above the statutes and regulations which apply to Civil Service employees as to the carry over of vacation days **do not** apply to Chief McCormick.

The Prosecutor had the sole authority to deny or approve the carry over of Chief McCormick's vacation days. She approved the carry over of the 40 vacation days in November, 2023. The carry over of those days were then properly put into the payroll system by employees of the County Administrator's office. The County Administrator had no authority to remove 19 of those days in early 2024 for any reason and he clearly exceeded his authority by doing so. He must be ordered to return those 19 days to the payroll system.

C. THE COURT ERRED IN FINDING THAT THE ACTING PROSECUTOR WAS PERFORMING ADMINISTRATIVE DUTIES WHEN SHE APPROVED OF THE VACATION CARRYOVER AS SHE EXPRESSLY DID SO DUE TO THE OPERATIONAL NEEDS OF HER OFFICE (Pa1, Pa3, Pa9, T24-22 to T24-25, T26-2 to T25-6)

The finding that the approval of the carry over of vacation days was merely an administrative task unrelated to the Prosecutor's sworn duties is incorrect as a matter of law based on the uncontested facts. The Prosecutor's direction to cancel a planned vacation was made due to exigent circumstances surrounding the retiring of the then acting Prosecutor and the transition to a new acting Prosecutor. This direction made by the Prosecutor was based on her determination that it was necessary for Chief McCormick to remain at work during the transition period. She therefore made the extraordinary decision that Chief McCormick should cancel and forgo his planned vacation. It was not Chief McCormick's idea, nor was it done to accommodate him. It was instead based on the determination by the then acting Prosecutor that it was necessary for Chief McCormick to remain at work during the transition period. The acting Prosecutor herself characterized these facts as "exigent circumstances". These facts are uncontested by the defendants-respondents. They have put forth no evidential material to contradict the plain statements made by the acting Prosecutor that her decision was based on the operational needs of her office. They put forth nothing whatsoever, other than

argument, to support a factual finding that she was merely performing administrative duties when her decision was made (Pa, 63, Pa3, T24-21to T25-25).

This falls squarely within the Prosecutor's well established "authority to provide reasonable means to aid him in the performance of his official duties, with a guaranty that the necessary expenses incurred should be paid". Centrulo, supra. at 326.

Had Chief McCormick requested the vacation carryover for his own purposes the approval by the acting Prosecutor that might arguably have been an administrative act. However it was removed from the realm of an administrative personnel decision because it was the Prosecutor who initiated the need for the carryover by directing Chief McCormick to cancel his previously planned vacation to attend to what she considered to be the important operational needs of the office. He did so because he served at the pleasure of the Prosecutor and took his instructions from the Prosecutor.

"The plain intent of the statute was to confer upon the prosecutor authority to provide reasonable means to aid him in the performance of his official duties, with a guaranty that the necessary expenses incurred should be paid". Centrulo, supra. at 326 citing Lindabury v. Board of Chosen Freeholders of Ocean, 47 N.J.L. 417 (Sup. Ct. 1885).

In finding the decision to be merely administrative, the court below relied on the case of Coleman v. Kaye, 87 F.3d 1401, 1499 (3d Cir. 1996) (Pa6). Coleman,

supra. is not controlling and is clearly distinguishable from the case at bar.

Coleman involved a verdict in a discrimination case against the Monmouth County Prosecutor under the New Jersey Law Against Discrimination (LAD). The issue in Coleman relevant here is whether the county prosecutor acted as a state or county official when making personnel decisions. The Third Circuit Court of Appeals based its decision on its view of how New Jersey Courts would interpret the LAD and expressly made their decision on the basis of their prediction as to how the New Jersey Supreme Court would interpret the law. The Court concluded that “the application of strict agency principles is inappropriate **in this setting**. As the New Jersey LAD is intended to combat intentional discrimination, and given that intentional discrimination was perpetrated by county officials here, we predict that the New Jersey Supreme Court would hold that Kaye was the Monmouth County policymaker in regard to personnel actions in the prosecutor's office and that the County of Monmouth may be held liable for the acts of intentional discrimination that occurred.” Id. at 1499 (emphasis supplied). The Court in Coleman, supra. was clearly acting to give the plaintiff, who had suffered egregious discrimination, an equitable remedy. The case had nothing whatsoever to do with the Prosecutor’s budget or decisions regarding overtime or vacation pay falling within that budget.

The Third Circuit Court of Appeals in Coleman, supra. repeatedly noted that the prosecutor had significant autonomy from the county and is in a dominant

position in relation to the county and cited Ruvoldt v. Clark, 204 N.J. Super. 438, 499 A.2d 247, 250 (N.J. Super. Ct. Law Div. 1983) holding that the county has no control over a Prosecutor's nonsalary expenditures that do not exceed his budget because "it would be incongruous to permit county government to control the operations and functions of the Prosecutor, a constitutional officer entrusted with awesome duties of 'vast importance to the public'". Id. at 1504. The Court then "imputed" the discriminatory acts of the Prosecutor to the county as the final policy making authority in the county to avoid an unjust result the Court did not think the New Jersey Supreme Court would countenance. That precedent is not one that is applicable here.

The decision made by the acting Prosecutor in this case was unquestionably based upon the operational needs of her office, was not merely administrative in nature and therefore cannot be later second guessed by the County Administrator.

D. THE COURT ERRED IN HOLDING THAT THE SUSSEX COUNTY EMPLOYEE HANDBOOK WAS CONTROLLING OR HAD ANY APPLICATION IN THIS MATTER (Pa6, Pa7, T20-21 to T20-22, T24-2 to T24-10)

The Employee Handbook expressly states that "the Sussex County Prosecutor's Office and the Sussex County Sheriff's Office determine and set certain operational policies for their respective departments. In the event that such other

operational policies exist, and the terms of those policies conflict with those set forth in this manual, the departmental operational policies shall control.” (Pa277).

The Sussex County Handbook further states: “Unclassified Employees- means those positions and job titles outside of the senior executive service, not subject to the tenure provisions of Title 11A, New Jersey Statutes or these rules unless otherwise specified.” (Pa281).

Nothing has been produced to overcome these provisions of the handbook. The Sussex County Handbook was clearly drafted in a manner cognizant of the independence of the Prosecutor’s office. It expressly does not attempt to apply to the Prosecutor’s ability to make operational decisions with regard to unclassified employees and does not impede the Prosecutor’s ability to make operational decisions as to those employees, such as Chief McCormick.

The operational decision made by the acting Prosecutor that Chief McCormick not take his planned vacation and that it instead be carried over to the next year was her decision to make in accordance with the longstanding policies of her office, without interference by the county. There is no requirement that such policies need be reduced to a writing. Policy can be made when the decision maker with final policymaking authority makes a decision, as was the case here with the vacation carryover determined by the Prosecutor to be necessary for the operational needs of the office. Cf. Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir.1990);

Pembaur v. City of Cincinnati, 475 U.S. 469, 481(1986); Bryson v. City of Oklahoma City, 627 F.3d 784 (10th Cir.2010).

In light of the well settled law concerning the authority of the Prosecutor in this area, whatever is contained or not contained in the Sussex County Employee Handbook is immaterial. Plaintiff-Appellant was not employed by the County and it was error to find that he was a County employee (T20-21 to T20-22). Plaintiff-Appellant was employed by, reported to, and served at the pleasure of the Prosecutor, who directed the cancelation of a planned vacation to insure the proper functioning of her office during a transition period. Ron Tappan had no right or authority to step in to override that decision of the Prosecutor.

Chief McCormick is expressly not subject to the provisions of *N.J.S.A. 11A:6* and the Prosecutor was clearly well within her authority to grant the carry over of the 40 vacation days based on the uncontested facts set forth in the Certification of Annemarie Taggart that the vacation had to be cancelled and the days not used due to the operational needs of her office. (Pa63). She clearly expected that Chief McCormick would not lose those days as she authorized them to be carried over. Ron Tappan, the County Administrator, had no authority to interfere with a binding decision by the acting Prosecutor, which was in her sole discretion to make under longstanding statutory and case law.

**E. THE COURT ERRED TO THE EXTENT IT BASED
ITS DECISION ON THE COMMUNICATION
WORKERS OF AMERICA AGREEMENT
(Pa6, Pa7, T24-2 to T24-10)**

It is uncontroverted that Chief McCormick was not in the Communication Workers of America Union or subject to any other collective bargaining agreement (Pa70, Pa367) nor could he be based on the clear dictates of *N.J.S.A. 2A:157-10* and *N.J.S.A. 2A:157-10.1*. If Chief McCormick was subject to a collective bargaining agreement it would certainly not be with the Communications Workers of America of the AFL-CIO. The detectives who are subject to a collective bargaining agreement, which excludes Chief McCormick, are part of the Policeman's Benevolent Association. No law enforcement officers are ever members of the Communications Workers of America. (Pa 63, Pa358).

That the Communication Workers of America Agreement was applicable to this matter was specifically denied at the time of the summary judgment motion by plaintiff-appellant's Certification in Support of his Motion for Summary Judgement, in his Reply Certification and in his Response to Defendants Counter Statement of Additional Undisputed Material Facts, where plaintiff expressly denied that he was subject to any collective bargaining agreement or in any way to the Communication Workers of America Agreement (Pa70, Pa358, Pa361, Pa362, Pa363). This was vigorously contested and there was no competent evidential

material whatsoever submitted by the defendants to contradict that plaintiff-appellant was not subject to that Agreement.

Further, the Communication Workers of America Agreement expressly excludes all unclassified employees and police employees (Pa212). The fact that Chief McCormick's allotted vacation is similar to that outlined in the Communication Workers of America Agreement is merely coincidental and has no bearing on this matter nor does it subject him to the terms of the Communication Workers of America Agreement.

It was therefore error to find the Communication Workers of America Agreement had any application in this case or that it could be the basis for or in any way support denying the plaintiff-appellant's motion for summary judgment. It was also clearly not the proper basis on which to grant the cross motion for summary judgment filed by the defendants-respondents.

**F. THE ACTIONS OF THE COUNTY ADMINISTRATOR
IN PUTTING THE CARRIED OVER DAYS INTO THE
SYSTEM WAS A MINISTERIAL FUNCTION AND NOT
DISCRETIONARY**

The plaintiff-appellant's complaint sounds in mandamus. "A writ of mandamus is an order given by a court to a government official "that commands the performance of a specific ministerial act or duty". Vas v. Roberts, 418 N.J. Super. 509, 522 (App. Div. 2011) citing In re Resolution of State Comm'n of

Investigation, 108 N.J. 35, 45 n.7 (1987). Mandamus is an appropriate remedy “to compel *specific* action when the duty is ministerial and wholly free from doubt”.

Id. at 522 citing Loigman v. Twp. Comm. of Middletown, 297 N.J. Super. 287, 299 (App.Div.1997).

A ministerial duty is defined as one which “is absolutely certain and imperative, involving merely the execution of a set task, and when the law which imposes it prescribes and defines the time, mode and occasion of its performance with such certainty that nothing remains for judgment or discretion.” Vas, supra. at 522 citing Ivy Hill Park Apartments v. N.J. Prop. Liab. Ins. Guar. Ass'n, 221 N.J. Super. 131, 140 (App.Div.1987).

The relief sought in the case at bar comports exactly with the definition of a ministerial act. The County Administrator administers the payroll system for the entire county, even the departments not directly under his authority, control and supervision. Chief McCormick, is in the unclassified service as clearly set forth in *N.J.S.A. 2A:157-10* and is expressly exempt from the provisions of *N.J.S.A. 11A:1-1 et. seq.* by virtue of the clear provisions of *N.J.S.A. 11A:3-4*.

Further, the County Administrator has no authority or control over the County Prosecutor, her budget, or her operational decisions with regard to the unclassified civil service members working in her office. The only legitimate function the County Administrator had in this matter was to input into the payroll system the carried over vacation days approved by the acting Prosecutor.

Previously the County Administrator apparently recognized his ministerial duty of inputting vacation carry over days into the payroll system as the prior year he made no objection to the rollover of vacation days in excess of those that can be carried over by classified civil service employees and input that carry over into the payroll system at the instruction of the acting Prosecutor. The excuse that he did so due to the state of emergency is pre-textual since the Covid state of emergency had ended by the time the approval for the roll over was submitted (Pa359).

POINT II

THE DECISION IS AGAINST THE WEIGHT OF THE EVIDENCE (Pa1, Pa3, Pa63, Pa70, Pa71, T21-2 to T21-6, T24-21 to T24-25, T25-2 to T26-6)

It is uncontested that the plaintiff-appellant only cancelled his vacation at the express request of the acting Prosecutor, Annmarie Taggart, based on her determination that it was necessary for him to remain in the office from November through her retirement and the transition to the new acting Prosecutor, Carolyn Murray, thereafter. In the opinion of the acting Prosecutor it was necessary for Chief McCormick to remain at work during the transition period at the end of 2023 (Pa63, Pa70, Pa71). Based on that determination the acting Prosecutor deemed it appropriate for the unused vacation days to be carried over to the next year.

Thus, the decision to approve the carry over of vacation days was clearly based on the operational needs of the office as set forth more fully in Point I C above. The written opinion of the Court below ignores this undisputed fact and treats the carryover as a merely administrative decision not entitled to any deference (Pa6, Pa7, T24-21 to T24-25).

There was nothing before the court to suggest or demonstrate that the acting Prosecutor made the decision to approve the carry over of the vacation days for mere administrative purposes. The approval of the carry over was clearly based on the operational needs of the Prosecutor's office. There was nothing before the court to support that the carry over was approved for the convenience of Chief McCormick. Indeed, it would have been more convenient for Chief McCormick to take his planned vacation as scheduled (Pa63, Pa70, Pa71).

Because there was nothing before the court to support that the decision was merely administrative in nature, finding that the decision was administrative and therefore improper was against the weight of the evidence submitted. The only and uncontroverted evidence before the court clearly indicated that the decision was based on the operational needs of the office. Thus based on the clear and long standing case and statutory law of this State as set forth above, it was error to permit the County Administrator to over rule the decision of the acting Prosecutor on the basis that the decision was merely administrative in nature.

POINT III

**IT WAS ERROR NOT TO INVOKE
THE DOCTRINE OF ESTOPPEL (Pa1, Pa3, Pa72, T25)**

It is uncontroverted that when the acting Prosecutor approved the carryover, all of the days were added to the Primepont System and remained in the system through the end of 2023, indicating they had been carried over. Neither Chief McCormick nor the acting Prosecutor was ever advised that 19 of the vacation days could not or would not be carried over (Pa71, Pa72). The approval was in accordance with the established procedures of the Prosecutor's office as had been previously done for Chief McCormick the prior year and periodically done for other unclassified employees of the Prosecutor (Pa368). The failure to promptly notify Chief McCormick of any objection deprived him of the opportunity to make alternate arrangements for the operations of the office so he could utilize his remaining vacation days.

When he checked at the end of December 2023 all 40 of the carried over days were still in the system. Chief McCormick only discovered that the 19 days had been deleted on January 9, 2024 when he again checked the Primepoint System (Pa72).

While equitable estoppel is rarely invoked against a public entity it may be invoked, but not "particularly when estoppel would 'interfere with essential governmental functions.'" Vogt v. Borough of Belmar, 14 N.J. 195, 205 (1954).

Nonetheless, equitable considerations are relevant to assessing governmental conduct, Skulski v. Nolan, 68 N.J. 179, 198 (1975), and may be invoked to prevent manifest injustice, Vogt v. Borough of Belmar, supra, 14 N.J. at 205.

As the Court held in Skulski, supra. at 198 “even with respect to public entities, equitable considerations are relevant in evaluating the propriety of conduct taken after substantial reliance by those whose interests are affected by subsequent actions.”

There was no essential government function impaired by carrying over the additional 19 vacation days. In fact that carry over was authorized by the acting Prosecutor to serve essential government functions as determined by her. There was however detrimental reliance by Chief McCormick, who could have utilized his 19 vacation days in December had he been promptly notified that the County Administrator would reject them. He was never notified that 19 of the carried over days would be rejected. Instead those carried over days were accepted and put into the system. The undue delay by the County Administrator’s office in waiting until mid-January, 2024, when the 19 days could no longer be used, to delete them from the system and the failure to notify either Chief McCormick or the acting Prosecutor that they would not be carried over, justifies equitable estoppel in this case.

Chief McCormick has now retired. Therefore the allowance of the 19 carried over days will not in any way interfere with essential government functions as it will have no impact on the operation of the Prosecutor's office whatsoever. Chief McCormick certainly relied to his detriment on the acceptance by the county of the carried over days, which he was prevented from taking solely by the duplicitous actions of the County Administrator in failing to immediately make his objection known. The county added the days to the system, thereby affirmatively communicating that the carry over had been accepted.

This behavior by the county cries out for equitable correction by invoking estoppel to make Chief McCormick whole and prevent a manifest injustice.

CONCLUSION

For the reasons set forth above, the plaintiff-appellant respectfully submits that court below erred in finding that the acting Prosecutor did not have the authority to approve the carry over of the 19 days and the judgment of the trial court should be reversed and the defendant-respondents ordered to return the 19 deleted days to the system and thereafter pay out the value of those days to the plaintiff- appellant forthwith.

Respectfully submitted,

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Dated: June 24, 2025

THOMAS J. McCORMICK

Plaintiff-Appellant,

v.

THE COUNTY OF SUSSEX; and
RON TAPPAN, the COUNTY
ADMINISTRATOR OF THE
COUNTY OF SUSSEX, in his official
capacity,

Defendants-Respondents.

SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION
DOCKET NO. A-002391-24

CIVIL ACTION

On Appeal from a Final Judgment of the
Superior Court of New Jersey,
Law Division, Passaic County

Docket No. PAS-L-2507-24

Sat Below:
Hon. Rudolph A. Filko, A.J.S.C

**BRIEF ON BEHALF OF DEFENDANTS-RESPONDENTS
THE COUNTY OF SUSSEX AND RON TAPPAN, COUNTY
ADMINISTRATOR OF THE COUNTY OF SUSSEX**

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PRELIMINARY STATEMENT

This appeal arises from Plaintiff-Appellant Thomas J. McCormick's (hereinafter referred to as "Plaintiff") attempt to compel Defendants-Respondents the County of Sussex and Ron Tappan, the County Administrator for the County of Sussex (hereinafter collectively referred to as "Defendants") to approve a request to carry over 40 unused vacation days into a subsequent calendar year, despite clear statutory and policy limitations prohibiting such a rollover to no more than one year's allotment.

Plaintiff fails to identify any statute, rule, regulation, or written policy that authorizes his request. Nor does he clearly articulate the legal framework that governs his employment relationship with Sussex County. While he asserts that he served as Chief of Detectives for Sussex County, he simultaneously claims to be exempt from the authority of Sussex County, a position that is inconsistent with the structure of County government and unsupported by law. Throughout nearly two (2) decades of service, Plaintiff has consistently followed the same rules and policies that apply to all County employees. At all relevant times, he has complied with the vacation leave limitations established by N.J.S.A. 11A:6 and further outlined in the Sussex County Administrative Code, the Sussex County Employee Handbook, and the

applicable CWA Agreement. Each of these authorities limits the accrual and carryover of vacation time to one year's allotment.

Plaintiff advances the argument that he is accountable solely to the County Prosecutor and is therefore not bound by applicable statutes, regulations, or County policies. According to Plaintiff, his employment should be governed instead by informal, unwritten directives issued based on individual circumstances. This is without basis in the law: no public employee in the State of New Jersey, regardless of their title or reporting structure, is exempt from the rules and policies that govern public service.

In addition to lacking merit, Plaintiff's position presents serious policy concerns: a ruling in his favor would erode the consistent application of employment policies within Sussex County and open the door to similar claims by other employees statewide. Accordingly, the trial Court correctly denied Plaintiff's application, and for the reasons set forth at length herein, its decision should be affirmed in its entirety.

PROCEDURAL HISTORY

The action before the Court concerns a dispute over the carryover of vacation days in excess of those allowed by applicable law and County policy. The rollover of these days was “approved” by the then-acting Sussex County Prosecutor on behalf of Plaintiff.

At the start of the new year, Plaintiff discovered that his vacation days in excess of his one-year allotment had been removed from the Primepoint system, the program used to track vacation time. (Pa64, Pa71, Pa124). He brought this issue to the attention of Sussex County Administrator, Ron Tappan. In response, Tappan stated via email that carrying over 40 vacation days exceeded the allowable limit by 19 days, and that, pursuant to applicable law and County policy, the Administrator was not authorized to approve such an overage. (Pa74, Pa95). Plaintiff then filed the Verified Complaint in Action in Lieu of Prerogative Writ on April 8, 2024, in the Superior Court of New Jersey, Law Division, Sussex County, docket number SSX-L-000175-24 (Pa24).

The Defendants filed their Answer on May 22, 2024 (Pa36). By Order filed on August 1, 2024, The Honorable Stuart A. Minkowitz, A.J.S.C., Sussex County, transferred the matter *sua sponte* to the Superior Court of New Jersey, Passaic County, where it was assigned docket number PAS-L-2507-24 (Pa50).

Plaintiff moved for summary judgment on September 4, 2024 (Pa51), and Defendants cross-moved for summary judgment on October 15, 2024 (Pa111). Both motions were heard before The Honorable Rudolph A. Filko, A.J.S.C., on December 6, 2024. Judge Filko entered an Order granting Defendants' motion for summary judgment on January 6, 2025 (Pa1), and an Opinion setting forth his decision the same day (Pa3). Plaintiff filed a motion for reconsideration on January 21, 2025 (Pa374), and Defendants filed a brief in opposition on February 6, 2025. The motion for reconsideration was heard by Judge Filko on March 5, 2025. That same day, Judge Filko entered an Order denying reconsideration and putting his reasons for the denial on the record (Pa9). The Notice of Appeal was filed on April 10, 2025, and the transcript was simultaneously ordered (Pa11).

STATEMENT OF FACTS

The Sussex County Administrator, Ron Tappan, is duly appointed by the Sussex County Board of County Commissioners and serves the County pursuant to the Sussex County Administrative Code. The Administrator is responsible for implementing County policies, including those set forth in the Administrative Code, the Sussex County Employee Handbook, as well as those in the Preliminary Final Memorandum of Agreement Pending Ratification Between the Sussex County Board of County Commissioners and Communication Workers of America, AFL-CIO Local 1032 Non-Supervisory Unit (the “CWA Agreement”). (Pa122).

The Sussex County Employee Handbook, adopted by the Sussex County Board of County Commissioners, outlines policies applicable to all County employees, including Plaintiff. (Pa271). According to the Handbook (Pa271), the Sussex County Prosecutor’s Office may establish operational policies specific to the Department. (Pa277). In the event of a conflict between departmental policies and those in the County Handbook, the departmental policies shall control. (Pa277). However, the Sussex County Prosecutor’s Office does not have a dedicated employee handbook or formally documented departmental policies for its staff. (Pa124).

Pursuant to N.J.S.A. 11A:3-5(1), Plaintiff is an unclassified full-time employee of a political subdivision and not a Constitutional Officer, and there is no past practice suggesting that he, or others similarly situated, are subject to policies applicable to Constitutional Officers. (Pa123, Pa124). Plaintiff has been employed by Sussex County since April 18, 2005, and, for nearly two (2) decades, has consistently adhered to the policies set forth in the Sussex County Employee Handbook and has relied upon the vacation leave schedule outlined in the CWA Agreement. (Pa123).

Pursuant to the CWA Agreement, the Employee Handbook, and N.J.S.A. 11A:6, employees are prohibited from carrying over more than one year's worth of accrued vacation leave into the subsequent year. (Pa124, Pa229, Pa334). Plaintiff has consistently relied on the vacation leave provisions outlined in the CWA Agreement, which provide for 21 working days of vacation annually. (Pa123, Pa228). As such, Plaintiff may carry forward no more than 21 unused vacation days into the next calendar year. (Pa228, Pa229, Pa334). Accordingly, under the applicable provisions of the Employee Handbook, the CWA Agreement, and N.J.S.A. 11A:6, the Sussex County Administrator, as well as the then-acting Prosecutor, lacked the authority to approve any carryover of vacation leave in excess of this limit. (Pa123, Pa228, Pa229, Pa334).

Throughout his employment, Plaintiff has complied with the vacation accrual limitations imposed by the applicable law and County policies. (Pa 123). He was permitted to carry over more than one year's worth of vacation leave on a single occasion in 2022, due to the COVID-19 State of Emergency in New Jersey, which was terminated in March of 2022. (Pa123). Nevertheless, by the time he requested the carryover of the excess vacation days in 2023, which are the subject of this dispute, the State of Emergency had ended. (Pa123). No other unclassified or non-represented employee has been allowed to carry over more than one year's worth of vacation leave, and all employees are aware that both County policy and state law prohibit such a practice. (Pa123).

In or around October and November 2023, Annmarie Taggart, then-acting Prosecutor, and Plaintiff began purportedly discussing the cancellation of his planned vacation due to exigent circumstances surrounding the transition to a new Acting Prosecutor. (Pa63, Pa64, Pa70, Pa71). On November 30, 2023, Tina Jacobs, Office Manager for the Prosecutor's Office, forwarded an email on behalf of Acting Prosecutor Taggart "approving" Plaintiff's request to carry over 40 vacation days. That communication was sent to six (6) members of the County Administrator's staff for processing in the Primepoint system. (Pa64, Pa71).

On or about January 9, 2024, Plaintiff discovered that 19 of the 40 carried over vacation days had been removed from the Primepoint system and inquired about same. (Pa72). Primepoint automatically updates in January each year to incorporate newly accrued benefit time while phasing out vacation leave that exceeds the allowable combined total of the current and prior year's allotments. (Pa124). County employees do not manually remove vacation leave, and in this instance, the excess days were automatically removed by the system, not by the County Administrator, Ron Tappan, or his staff. (Pa124).

Following Plaintiff's inquiry, Tappan notified him via email that carrying over 40 vacation days exceeded the allowable limit by 19 days and that, under applicable law and County policy, the County Administrator is prohibited from authorizing such an overage. (Pa74, Pa95).

LEGAL ARGUMENT

POINT I

THE LOWER COURT’S RULING DOES NOT CONSTITUTE PLAIN ERROR, AS IT PROPERLY APPLIED THE CONTROLLING STATUTORY AND CASE LAW OF THE STATE OF NEW JERSEY. (Pa1, Pa3, Pa9, T24).

The lower Court properly relied upon the controlling statute that unequivocally governs Plaintiff’s employment. (Pa1, Pa4, Pa4). Plaintiff has failed to identify a single statute that supersedes or otherwise governs his public employment, thereby affirming the Court’s correct application of N.J.S.A. 11A:3-5(l), which classifies Plaintiff as an unclassified full-time political subdivision employee. Consequently, the Court properly determined that Plaintiff is subject to the vacation leave limitations set forth in N.J.S.A. 11A:6-3(e), which governs unclassified full-time political subdivision employees and explicitly restricts the rollover of unused vacation days to no more than the employee’s annual allotment.

Moreover, it is irrelevant whether the request to carry over vacation days originated from the Acting Prosecutor’s directive or from Plaintiff’s personal plans. The Court did not disregard the circumstances surrounding the request, Rather, it correctly held that approval of such vacation carryovers must comply with statutory and policy limitations. (Pa1, Pa3, Pa7). Simply put, and as the

lower Court agreed, the Acting Prosecutor lacked the authority to approve any rollover exceeding the statutory maximum or the limits established by applicable County employee policies, as she does not possess the power to override the clear legal caps on vacation accrual set forth under same. (Pa1, Pa7).

Additionally, the Court below correctly ruled that the Sussex County Employee Handbook is binding on Plaintiff's terms of employment and properly determined that Plaintiff's annual vacation allotment was guided by the CWA Agreement, as he had relied upon same throughout his nearly two (2) decades of employment with the County. (Pa1, Pa3, Pa6, Pa7, Pa9). Accordingly, the Court appropriately deemed these documents relevant to the Plaintiff's vacation leave limitations.

A. PLAINTIFF, AN UNCLASSIFIED FULL-TIME POLITICAL SUBDIVISION EMPLOYEE, WAS NOT ENTITLED TO THE ROLLOVER OF VACATION DAYS EXCEEDING HIS ONE YEAR ALLOTMENT. (Pa1, Pa3, Pa9).

Plaintiff emphasizes the unclassified nature of his employment and contends that he is not bound by any vacation schedule nor the limitations set forth in N.J.S.A. 11A:6-3; however, Plaintiff is not eligible for the rollover of vacation days in excess of those prescribed under N.J.S.A. 11A:6-3, as he is a

Sussex County employee, or in other words, an unclassified full-time political subdivision employee.

Unclassified service can encompass employment within either the State or its political subdivisions. N.J.S.A. 11A:3-4; N.J.S.A. 11A:3-5. Among the employment groups characterized as State unclassified service under the Civil Service Act are:

- a. Appointments of the Governor;
- b. Department heads and members of boards and commissions authorized by law;...
- d. Heads of institutions;...
 1. All other titles as provided by law or as the Civil Service Commission may determine.

N.J.S.A. 11A:3-4 (omissions made).

In contrast to a State unclassified employee, is the political subdivision unclassified employee. N.J.S.A. 11A:3-5. Courts generally associate the term “political subdivision” as either a “county, city, town, or municipality.” Headen v. Jersey City Bd. of Educ., 420 N.J. Super. 105, 115 (App. Div. 2011). The political subdivision unclassified service encompasses the following areas of employment:

- i. One secretary, clerk or executive director to each department, board and commission authorized by law to make the appointment;
- j. One secretary or clerk to each county constitutional officer, principal executive officer, and judge; ...

l. No more than 12 county department heads, and the heads of divisions within such departments; provided that the total number of unclassified positions by the county administrative code pursuant to this subsection shall not exceed 20; ...

t. The sheriff's investigators of any county appointed pursuant to section 2 of P.L.1987, c. 113...

N.J.S.A. 11A:3-5 (omissions made).

The Court must interpret statutory provisions by initially considering the plain language of the statute in question. Presbyterian Home at Pennington, Inc., 409 N.J.Super 166, 180 (App. Div 2009). Plaintiff clearly does not fit any classification under N.J.S.A. 11A:3-4, as he is neither a State employee, nor appointed by the Governor, nor a head of a State department or institution. The only relevant provision related to Plaintiff's employment is N.J.S.A. 11A:3-5(l), which specifies that **“county department heads, and the heads of divisions within such departments...”** are in the political subdivision of the unclassified service. N.J.S.A. 11A:3-5(l) (omissions made) (emphasis added).

As a Constitutional Officer, the County Prosecutor fulfills a dual role: she is a State employee appointed by the Governor while also serving as the head of a County department. (Pa197). Consequently, if the County Prosecutor is deemed a County Department Head, it follows that Plaintiff, who asserts that he works under the Prosecutor as Chief of Detectives, must be recognized as **“the head of a division within a county department.”** N.J.S.A. 11A:3-5(l)

(emphasis added). This designation clearly classifies Plaintiff as an unclassified full-time employee of a political subdivision; thus, N.J.S.A. 11A:6-3 controls with respect to vacation leave.

N.J.S.A. 11A:6-3 provides that Plaintiff, as a full-time political subdivision employee, is entitled to no less than 15 working days of vacation leave after completing between 10 and 20 years of continuous service. N.J.S.A. 11A:6-3(c). Hence, Plaintiff's nearly 20 years of service as an unclassified full-time political subdivision employee has afforded him 21 annual working days of vacation leave per year under the CWA Agreement, which Plaintiff has always relied upon for his vacation schedule. (Pa123, Pa228). Importantly, N.J.S.A. 11A:6-3(e) provides that:

Vacation not taken in a given year because of business demands **shall accumulate and be granted during the next succeeding year only**; except that vacation leave not taken in a given year because of duties directly related to a state of emergency declared by the Governor may accumulate at the discretion of the appointing authority until, pursuant to a plan established by the employee's appointing authority and approved by the commission, the leave is used or the employee is compensated for that leave, which shall not be subject to collective negotiation or collective bargaining.

N.J.S.A. 11A:6-3(e) (emphasis added).

First, it is essential to emphasize that New Jersey was not in a State of Emergency at any point in 2023, nor does Plaintiff assert otherwise. (Pa123).

Second, as an employee of an unclassified political subdivision, the provisions of N.J.S.A. 11A:6-3(e) are explicit: Plaintiff is permitted to rollover **only** the unused vacation days allocated for the year 2023 into 2024. N.J.S.A. 11A:6-3(e) (emphasis added). At the time of Plaintiff's request, he had accrued a total of 40 unused vacation days; however, since he was allotted 21 vacation days for the year 2023, he is only entitled to rollover those 21 days. (Pa63) Therefore, in accordance with N.J.S.A. 11A:6-3, Plaintiff, as an unclassified full-time employee of a political subdivision, is legally prohibited from rolling over the additional 19 unused vacation days.

B. THE SUSSEX COUNTY PROSECUTOR LACKED THE AUTHORITY TO APPROVE THE ROLLING OVER OF VACATION DAYS IN EXCESS OF PLAINTIFF'S YEARLY ALLOTMENT. (Pa1, Pa3, Pa9, T20-21to T20-25).

As Plaintiff acknowledges, the primary function of the Prosecutor is the enforcement of criminal laws. Cetrulo v. Byrne, 31 N.J. 320, 325. However, the approval of vacation leave accrual is clearly an administrative duty, despite Plaintiff's efforts to characterize it as a prosecutorial function, as this duty is clearly unrelated to the Sussex County Prosecutor's sworn duty to enforce the law.

Plaintiff attempts to reframe the present dispute as a budgetary issue, claiming that because the Prosecutor controls her own budget, she is thereby

entitled to bypass applicable law governing the accrual of vacation leave. While Defendants do not dispute that the Prosecutor controls her own budget, with the oversight of the Commissioners, the matter at hand is not related to budgetary concerns; rather, it pertains solely to an administrative County personnel matter, specifically, the carryover of vacation days in excess of those permitted under County policy and applicable law.

Moreover, the Sussex County Board of Commissioners, which exercises oversight over the Prosecutor's Office, has adopted the Sussex County Employee Handbook. (Pa271). This handbook limits the carryover of vacation days to no more than one year's allotment. (Pa229). Therefore, the policies at issue have been properly established by the entity responsible for overseeing the administrative operations of the Prosecutor's Office.

C. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE ACTING PROSECUTOR WAS PERFORMING ADMINISTRATIVE DUTIES WHEN SHE "APPROVED" OF THE VACATION CARRYOVER. (Pa1, Pa3, Pa9, T24-22 to T24-25, T26-2 to T25-6).

As previously mentioned, the County Prosecutor operates a dual role—she is a Constitutional Officer and, therefore, a State employee—as well as a Department Head and, thus, a County employee. (Pa197). Importantly, when a County Prosecutor performs an administrative task unrelated to his/her

strictly prosecutorial functions, then the County Prosecutor is acting on behalf of the County. Coleman v. Kaye, 87 F.3d 1491, 1499 (3d Cir. 1996).

The dispute in Coleman arose when a County investigator filed a sex discrimination action against the County Prosecutor, alleging failure to promote her to the position of sergeant or lieutenant. Id. at 1496. The Court was tasked with determining whether a County Prosecutor in New Jersey functions as a State or County official when making personnel decisions. Id. The Court ultimately concluded that County Prosecutors in New Jersey possess a dual status as both State and County employees. Id. at 1499. The Court clarified this distinction by stating that when County Prosecutors fulfill their sworn duties to enforce the law by making use of all the tools that are available to combat crime, they are acting as State agents; however, when a County Prosecutor performs administrative tasks unrelated to their strictly prosecutorial functions, such as the promotion of an investigator, then the County Prosecutors are acting on behalf of the County. Id.

In the present case, the dispute over the accrual of vacation days is clearly an administrative task as it is unrelated to the Sussex County Prosecutor's sworn duties to enforce the law. If promoting an investigator is deemed an administrative function, as established in Coleman, then clearly the approval or denial of vacation rollover days is a County action, typically

reserved for the County Administrator who is, in turn, legally prohibited from rolling over more than one year's worth of unused vacation days pursuant to N.J.S.A. 11A:6-3(e) and applicable County policies. (Pa229, Pa334). Nevertheless, even if this administrative function, classified as a County action, was reserved for the County Prosecutor, she still lacked the authority to approve Plaintiff's request to roll over 40 vacation days, as both applicable law and County policy prohibit the carryover of more than one year's vacation allotment. (Pa228, Pa229, Pa334).

D. THE TRIAL COURT CORRECTLY CONCLUDED THAT THE SUSSEX COUNTY EMPLOYEE HANDBOOK WAS APPLICABLE IN THIS MATTER AND THAT THE COMMUNICATION WORKERS OF AMERICA AGREEMENT ESTABLISHED THE NUMBER OF VACATION DAYS ALLOTTED TO PLAINTIFF. (Pa6, Pa7, T20-21 to T20-22, T24-2 to T24-10).²

Plaintiff contends that neither the CWA Agreement nor the Sussex County Employee Handbook, both of which limit vacation leave accrual to one year's allotment, govern his employment, while simultaneously, asserting that the Sussex County Employee Handbook grants the Prosecutor the authority to establish departmental operational policies, including those related to vacation

² This heading corresponds to Points I(D) and I(E) of Plaintiff-Appellant's brief. These sections have been consolidated to clarify the interplay among the relevant documents governing Plaintiff-Appellant's vacation leave limits under the applicable county policies.

leave. (Pa229, Pa277, Pa334). Essentially, what Plaintiff is attempting to argue is that the Prosecutor has absolute unchecked authority and that there is no requirement for the Prosecutor's policies to be documented in writing; thus, the Office's operational policy may be establish arbitrarily, on a whim, and through verbal decree.

If we take Plaintiff's argument to its logical conclusion, it would imply that if he were to request six (6) months of paid vacation leave and the Prosecutor were to verbally approve of same, such approval would be permissible because it is an exercise of her authority to set operational policy. This is an untenable argument, and establishing such a precedent would lead to significant chaos with profound consequences across the State.

Notably, Plaintiff has failed to identify a single governing authority, aside from the purported absolute discretion of the Prosecutor, which is applicable to his employment and/or he is subject to, let alone provide a basis for his 21 vacation days he is entitled to per year. Despite Plaintiff's feigned uncertainty surrounding the origin of his vacation leave schedule, the fact remains that there is not a single rule, regulation, statute, agreement, policy, or handbook that permits the carryover of more than one year's worth of vacation days. (Pa229, Pa334).

As the trial Court correctly determined, the Sussex County Employee Handbook is unequivocally applicable to the instant matter. (Pa1, Pa6, Pa7). Moreover, as previously noted, the Sussex County Board of Commissioners, which exercises oversight over the Prosecutor's Office, has adopted the Sussex County Employee Handbook, which explicitly states that the Prosecutor's Office can determine and set operational policies for its respective department. (Pa271, Pa277). If the operational policies for the Prosecutor's Office conflict with the policies in the general Sussex County Handbook, then the departmental operational policies control. (Pa277). However, as previously noted, the Sussex County Prosecutor's Office does not have its own employee handbook nor formally documented departmental policies for its staff. (Pa124). Consequently, in the absence of a formal handbook or written policies issued by the Prosecutor's Office, it is clear that the Sussex County Employee Handbook is applicable.

The Handbook distinguishes between non-union and union employees, specifically that:

Full time non-represented employees are granted vacation leave from the date of last hire of at least one day per month or 12 days in a full calendar year. **Represented employees shall be granted vacation leave in accordance and/or if relevant, under the terms of the applicable collective bargaining agreement... employees should consult with the Office of Employee Services and/or their relevant**

collective bargaining agreement for confirmation of the precise number of days. (Pa333) (emphasis added).

Defendants do not claim that Plaintiff is a member of the Communication Workers of America; however, it is undisputed that the CWA Agreement includes provisions for vacation leave that Plaintiff has relied upon for nearly two decades. (Pa123, Pa124, Pa228). It states that “all employees shall be granted vacation leave based upon the following from date of last hire...upon completion of **16 through 20 years = 21 days per year.**” (Pa228) (emphasis added). As previously noted, Plaintiff, having been employed by Sussex County for nearly 20 years, was entitled to 21 vacation days. Furthermore, the Handbook specifies that vacation allowances must be taken during the current calendar year, and only one year’s allotment may be carried into the subsequent year:

Vacation allowances are to be taken during the current calendar year. If it cannot be taken, **a maximum of one year's allotment may be automatically carried into the new year only in certain circumstances and with required pre-approval.** (Pa334) (emphasis added).

Moreover, the CWA Agreement has similar language which delineates that:

Vacation allowance must be taken during the current calendar year at such time as permitted or directed by the Department Administrator/agency head **unless the Department Administrator/agency head determines that it cannot be taken because of**

pressure of work. A maximum of one year's allotment may be automatically carried forward into the New Year. (Pa229) (emphasis added).

Indeed, the above is in lockstep with N.J.S.A. 11A:6-3: these provisions unequivocally state the rollover of vacation days requires explicit preapproval and limits rollover requests to a maximum of one year's allotment. Consequently, even if the Prosecutor, rather than the County Administrator, had the sole authority to approve the rollover of vacation days, which she did not, Plaintiff would be restricted to a maximum of 21 days and would still need to secure preapproval for those 21 days. Therefore, neither the Sussex County Prosecutor nor anyone else possessed the authority to approve the rollover of the additional 19 vacation days that are central to this dispute.

Furthermore, even if we were to disregard the fact that Plaintiff has consistently relied, throughout his tenure, upon the vacation leave schedule and accrual limits set by the Sussex County Employee Handbook and the CWA Agreement, then we are still left with N.J.S.A. 11A:6-3. (Pa124). Pursuant to N.J.S.A. 11A:6-3, Plaintiff, as a full-time political subdivision employee, is entitled to no less than 15 working days of vacation leave per year. N.J.S.A. 11A:6-3(c). Therefore, if no rule, regulation, policy, handbook or agreement applies, then clearly he is only entitled to the statutory minimum prescribed by N.J.S.A. 11A:6-3(c): 15 days.

Additionally, County Prosecutors are not supervised by the County, but rather are supervised by the New Jersey Attorney General. The County Prosecutors are obligated to cooperate with and aid the Attorney General in the performance of their duties. N.J.S.A. 52:17B-112(a). The New Jersey Attorney General's Office provides, in accordance with State employment policies, 12 paid holidays annually, along with vacation and sick leave contingent upon position and seniority. (Pa355). Moreover, full-time employees are only entitled to three (3) personal/administrative days per year. (Pa355).

It is noteworthy that Plaintiff has never sought vacation days through the Office of the Attorney General. (Pa124). Again, for nearly 20 years, Plaintiff has consistently relied on the County vacation schedule and has always submitted leave requests through the County Administrator, as he did in 2022. Therefore, Plaintiff has not demonstrated any prior behavior that would support the assertion that the County Administrator is not the appropriate authority for processing vacation rollover requests, or the like. (Pa123, Pa124). Essentially, Plaintiff argues that he is exempt from applicable law as well County policies and entitled to individually tailored rules, with the Acting Prosecutor serving as the conduit for these customized provisions, despite

Plaintiff having adhered to the same policies as all other County employees for nearly 20 years. (Pa123, Pa124). Such a claim must fail.

E. THE COUNTY ADMINISTRATOR HAD A MINISTERIAL DUTY *NOT* TO CARRY OVER MORE THAN ONE YEAR'S ALLOTMENT OF PLAINTIFF'S UNUSED VACATION DAYS.³

The Court below correctly ruled that Plaintiff was not entitled to *Mandamus* relief. *Mandamus* is a proper remedy (i) to compel specific action when a duty is ministerial and wholly free from doubt, and (ii) to compel the exercise of discretion, but not in a specific manner. Loigman v. Tp. Com. of Middletown, 297 N.J. Super. 287, 299-300 (App. Div. 1996). A ministerial duty is one that “is absolutely certain and imperative, involving merely the execution of a said task, and when the law which imposes it prescribes and defines the time, mode and occasion of its performance with such certainty that nothing remains for judgment or discretion.” Vas v. Roberts, 418 N.J. Super. 509, 522 (App. Div. 2011) (citing Ivy Hill Park Apartments v. N.J. Prop. Liab. Ins. Guar. Ass’n., 221 N.J. Super. 131, 140 (App. Div. 1987)). Furthermore, “a judgment in the nature of *mandamus* is available only where there is a clear and definite right to the performance of a ministerial duty, in essence mandatory and final.” Borough of Eatontown v. Danskin, 121 N.J. Super 68, 73 (App. Div. 1972).

³ This heading corresponds to Points I(F) of Plaintiff-Appellant’s brief.

Here, Plaintiff has not shown any clear and definite right to the performance of a ministerial duty under any law. On the contrary, it is clear and definite that **the County Administrator had a ministerial duty not to carry over more than one year's worth of Plaintiff's unused vacation days**, as mandated by N.J.S.A. 11A:6-3(e), the Sussex County Employees Handbook, and the CWA Agreement. (Pa124, Pa229, Pa334) (emphasis added). N.J.S.A. 11A:6-3(d), along with the aforementioned controlling documents, explicitly state that the accumulation of unused vacation days is limited to one years' worth of allotted vacation time; therefore, Plaintiff's claim to 19 additional days lacks any foundation.

Curiously, Plaintiff asserts that the provisions of N.J.S.A. 11A:6 are inapplicable to his circumstances, rather than identifying relevant legal authority that would substantiate his claim for the days in question, aside from the purported absolute and unquestionable authority of the Prosecutor to promulgate *ad hoc* policy on a whim and by verbal decree. The Court's ability to grant a *writ of mandamus* is contingent upon the existence of a **clear and indisputable right** supported by specific legal authority and Plaintiff has demonstrably failed to establish the applicability of *mandamus*, let alone entitlement to such relief. Borough of Eatontown, supra at 121 (emphasis added).

POINT II

THE TRIAL COURT'S DECISION WAS IN ACCORDANCE WITH THE WEIGHT OF THE EVIDENCE. (Pa1, Pa3, Pa63, Pa70, Pa71, T21-2 to T21-6, T24-21 to T24-25, T25-2 to T26-6).

As previously discussed at length, approval of vacation leave accrual is unequivocally an administrative duty, notwithstanding Plaintiff's best efforts to recategorize same as a prosecutorial function, as it is unrelated to the Sussex County Prosecutor's sworn duties to enforce the law. For nearly 20 years, Plaintiff has always submitted vacation leave requests through the County Administrator. (Pa123, Pa124). Plaintiff contends that the directive to cancel a planned vacation was due to the exigent circumstances arising from the retirement of the then-Acting Prosecutor and the transition to a new Acting Prosecutor. (Pa63, Pa64, Pa70, Pa71). Ultimately, Plaintiff has not presented compelling circumstances beyond vague assertions of being needed by the Prosecutor due to "exigent circumstances." (Pa63, Pa64, Pa70, Pa71). According to the Plaintiff, this determination was based on the purported operational necessity of his presence during the transitional period; however, this overlooks that the management of vacation days is fundamentally an administrative function. The approval or denial of excess carryover constitutes an administrative act focused on personnel management and policy

compliance, rather than a substantive operational decision. Moreover, such administrative decisions remain subject to applicable laws, regulations, and County policies. (Pa123. Pa229, Pa334). Utilizing Plaintiff's reasoning, a moratorium on office birthday parties could be classified as a prosecutorial function if the Prosecutor determined it necessary for the operational needs of the office during such a transitional period. If the Court were to entertain this argument, it could effectively categorize virtually any action or directive issued by a Prosecutor, no matter how unrelated to the enforcement of the law, as a prosecutorial function.

Most importantly, what the Plaintiff fails to consider is that allowing employees to accrue excessive vacation leave could ultimately hinder the operational efficiency of the Prosecutor's Office. Allowing unchecked accumulation of leave risks staffing shortages at critical times, which may disrupt case management and impede essential operational functions. For example, if Plaintiff had been permitted to carry over 40 vacation days into the following year, he could have taken approximately eight (8) weeks, or two (2) full months, off consecutively. Such a disruption could impair the Prosecutor's ability to fulfill her sworn duty to enforce the law. Therefore, managing vacation accruals within established limits is necessary to balance employee benefits with the office's overarching operational responsibilities.

Accordingly, the decision of the Court below was clearly supported by the weight of the evidence. (Pa1, Pa3, Pa9, T24).

POINT III

THE TRIAL COURT DID NOT ERR IN DECLINING TO INVOKE THE DOCTRINE OF ESTOPPEL. (Pa1, Pa3, T25).

In the present situation, equitable estoppel is not a proper remedy. First, equitable estoppel is rarely invoked against a governmental entity, and primarily when estoppel would “interfere with essential governmental functions.” Vogt v. Borough of Belmar, 14 N.J. 195, 205 (1954). Permitting Plaintiff to accrue a total of 40 days of unused vacation days and carry it forward would impede the efficient delivery of public services and disrupt the stability and continuity of operations within Sussex County. Moreover, allowing such rollovers could set a troubling precedent for future cases, potentially resulting in unregulated accumulations of paid leave among public officials.

The doctrine of equitable estoppel is “hesitantly applied against public entities but it will be invoked against them where interests of justice, morality and common fairness dictate; however, the doctrine is applied “only in very compelling circumstances.” Maltese v. Twp. of North Brunswick, 353 N.J.Super. 226, 244-245 (App.Div. 2002). The Civil Service Act emphasizes

the critical importance of efficient public service and the necessity for employment stability; consequently, Courts provide the widest possible interpretation of the Act. In re Johnson, 215 N.J. 366, 376 (2013). Therefore, any consideration of equitable estoppel must assess whether its application, and the future reliance on such application, would disrupt the efficient functioning of public service.

If Plaintiff was permitted to rollover extensive vacation time, it would have resulted in considerable absences that undermine the effectiveness of his division, ultimately detracting from the quality of public service. Plaintiff claims that he is now retired, thus, a ruling in his favor would not interfere with any essential government functions; nevertheless, he was not at the time, and this could establish a concerning precedent for future cases, potentially leading to unregulated accrual of vacation time among other public officials. (Pa368, Pa371). Such a scenario could destabilize the structured environment established by the Civil Service and create inequities regarding vacation entitlements among employees.

The application of equitable estoppel in this situation does not align with the interests of justice or public policy. The potential disruption to essential governmental functions indicates that equitable considerations do not favor permitting the rollover of vacation days on a case-by-case basis. Thus, the

rationale for not applying equitable estoppel remains compelling, despite the inherently fact-specific nature of equitable estoppel claims against an agency. In re Johnson, 215 N.J. at 386. Nonetheless, a fact-sensitive inquiry is unnecessary in the present case as the action is *ultra vires* in the primary sense, and thus, *void ab initio*. Middletown Twp. Policemen's Benev, Ass'n Local No. 124 v. Twp. Of Middletown., 162 N.J. 361, 368 (2000).

There is distinction between an act utterly beyond jurisdiction of a political subdivision and irregular exercise of basic power under the legislative grant in matters not in themselves jurisdictional; the former are *ultra vires* in the primary sense and void, while the latter are *ultra vires* only in a secondary sense which does not preclude ratification or application of the doctrine of estoppel in the interest of equity and essential justice. Id. As previously discussed, the Sussex County Prosecutor utterly exceeded her authority when granting the rollover of 40 days of vacation leave, 19 more than what is permitted by N.J.S.A. 11A:6-3(d), the Sussex County Employees Handbook, and the CWA Agreement. (Pa229, Pa334). Consequently, Plaintiff's claim for equitable relief is without merit.

CONCLUSION

For the foregoing reasons, Plaintiff's appeal should be denied, affirming the trial court's dismissal of the Verified Complaint with prejudice.

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By: /s/ Joseph D. Greer
Joseph D. Greer

DATED: September 5, 2025

THOMAS J. McCORMICK,

Plaintiff-Appellant,

-vs-

THE COUNTY OF SUSSEX; and
RON TAPPAN, the COUNTY
ADMINISTRATOR OF THE
COUNTY OF SUSSEX, in his official
capacity,

Defendants-Respondents

SUPERIOR COURT
OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-002391-24
DOCKET NO.: PAS-L-2507-24

CIVIL ACTION
BRIEF IN SUPPORT OF APPEAL

SAT BELOW:

HON. Rudolph A. Filko, A.J.S.C.

REPLY BRIEF OF PLAINTIFF-APPELLANT

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Date submitted: 10/2/25

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PROCEDURAL HISTORY

The Procedural History is set forth in the Brief of the Plaintiff-Appellant, Thomas J. McCormick, filed on June 24, 2025.

COUNTER STATEMENT OF FACTS

In addition to the Facts set forth in the plaintiff's Brief filed on June 24, 2025, the plaintiff will stress the following facts in response to those set forth in Defendants-Respondents Brief. To the extent that the defendants purport to dispute these facts, they have not submitted any competent evidential material to support their contrary positions.

Chief McCormick was employed by the Sussex County Prosecutor, which is entirely different from being an employee of the County itself (Pa359). Chief McCormick reported exclusively to the Prosecutor and not to the County Administrator. (Pa63, Pa66, Pa70, Pa359, Pa360).

Chief McCormick has never claimed to be a Constitutional Officer. The Prosecutor is the Constitutional Officer. (Pa63, Pa69). He was an unclassified employee of the Sussex County Prosecutor not subject to or governed by the provisions of *N.J.S.A. 11A-1 et seq.*, the "Civil Service Act", and was not covered by any collective bargaining agreement. (Pa63, Pa70).

Ron Tappan was never Chief McCormick's supervisor. Chief McCormick reported to the Prosecutor and only to the Prosecutor (Pa357, Pa358, Pa359, Pa360). How Mr. Tappan implemented policies with regard to workers covered by

the Agreement Between Board of County Commissioners of Sussex County and the Communication Worker's of America, AFL-CIO and under his actual supervision had no impact or relevance to Chief McCormick in his position as Chief of Detectives for the Sussex County Prosecutor (Pa358).

The Communication Workers of America Agreement expressly excludes all unclassified employees and police employees (Pa212), which included Chief McCormick.

The fact that Chief McCormick's vacation was similar to that outlined in the Communication Workers of America Agreement was merely coincidental and has no bearing on this matter. He was not subject to that agreement. Chief McCormick's vacation was not set by the Communication Workers of America Agreement. Nothing about his employment was subject to anything contained in the Communication Workers of America Agreement (Pa358).

The Sussex County Handbook (Pa271) states that **“the Sussex County Prosecutor's Office and the Sussex County Sheriff's Office determine and set certain operational policies for their respective departments. In the event that such other operational policies exist, and the terms of those policies conflict with those set forth in this manual, the departmental operational policies shall control.”** (Pa277).

The Sussex County Handbook further states “Unclassified Employees- means those positions and job titles outside of the senior executive service, not subject to the

tenure provisions of Title 11A, New Jersey Statutes or these rules unless otherwise specified.” (Pa281)

The defendants provided no evidence or authority to overcome these provisions of the handbook or the Communications Workers of America Agreement. The Sussex County Handbook was clearly drafted in a manner cognizant of the independence of the Prosecutor’s office. It expressly does not attempt to apply to the Prosecutor’s ability to make operational decisions with regard to unclassified employees and does not impede the Prosecutor’s ability to make operational decisions concerning what the Prosecutor considers operationally necessary vacation carry over.

LEGAL ARGUMENT

POINT I

PLAINTIFF WAS IN THE UNCLASSIFIED SERVICE OF THE CIVIL SERVICE AND WAS EXPRESSLY EXEMPT FROM THE PROVISIONS OF N.J.S.A. 11A:6-3 (Pa1, Pa3, Pa9, T24¹) THUS THE DECISION BELOW CONSTITUTES PLAIN ERROR

The Defendants-Respondents want the Court to ignore the plain language of the controlling statutes and case law and instead base its decision on a blatant misreading of the statutes and one clearly distinguishable case relied upon by them.

N.J.S.A. 11A:3-4 clearly states “The State unclassified service shall not be subject to the provisions of this title unless otherwise specified and shall include

¹ All references to the Transcript are to the Transcript of March 5, 2025.

the following: ...1. All other titles as provided by law or as the Civil Service Commission may determine.”

The office of Chief of Detectives is the position of county investigator and is expressly in the unclassified service of the civil service as clearly set forth in *N.J.S.A. 2A:157-10* which reads in pertinent part “In addition to the office of county detective, there is created **in the office of the prosecutor, the office or position of county investigator which shall be in the unclassified service of the civil service.**” (emphasis supplied).

The defendants then rely on *N.J.S.A. 11A:3-5* in a futile attempt to create confusion between unclassified employees and “the political subdivision unclassified employee”. *N.J.S.A. 11A:3-5* does not apply to plaintiff. But it also plainly states that the “political subdivision unclassified service shall not be subject to the provisions of this title unless otherwise specified” Plaintiff does not fall under this statute but rather under *N.J.S.A. 11A:3-4 l.* “All other titles as provided by law”. Plaintiff’s title of county investigator is plainly provided for by law as set forth in *N.J.S.A. 2A:157-10* and he is expressly exempt from the provisions of *N.J.S.A. 11A:6-3* with regard to the carry over of vacation days as the position of county investigator is by statute “**in the unclassified service of the civil service**”. Thus it is plainly a title provided for by law.

The Courts of this State have found that the prosecutors have the authority to appoint investigators who are not in the classified civil service as more fully set

forth in Point I A of the Brief of Plaintiff-Appellant.. *Cf. Zamboni v. Stamler*, 199 N.J.Super. 378, 379 (App. Div. 1985).

Nowhere in the record is there any support whatsoever for the assertion of Defendants-Respondents that Plaintiff at any time during his employment relied upon the terms of the CWA Agreement or was subject to them. The discussion in defendant's brief as to the CWA Agreement, the Sussex County Employee Handbook and the provisions of *N.J.S.A. 11A:6-3(e)* with regard to vacation days are, as a matter of law, inapplicable to the plaintiff.

**A. PLAINTIFF-APPELLANT WAS NOT AN EMPLOYEE
OF SUSSEX COUNTY (PaPa63, Pa66, Pa70, Pa359, Pa357, Pa358, Pa359,
Pa360)**

Plaintiff-Appellant **was not** a Sussex County employee and **was expressly not** subject to the provisions of *N.J.S.A. 11A:6-3(e)* with regard to vacation days. He was employed by the Sussex County Prosecutor, which is entirely different from being an employee of the County itself (Pa357, Pa358). His paychecks were issued through the County as are the paychecks of everyone working at the Prosecutor's Office but this does not turn him into a County employee. Chief McCormick reported exclusively to the Prosecutor and not to Ron Tappan, the County Administrator. (Pa63, Pa66, Pa70, Pa359, Pa360). The administration of the payroll system by the County Administrator is a ministerial function only as the Sussex County Prosecutor controls her own budget which is not under the jurisdiction or authority of the Sussex County Administrator (Pa64, Pa70).

The Respondents have put forth no evidential material or cited any law to support their claim that Chief McCormick was an employee of the County of Sussex.

The Defendants-Respondents completely ignore the provisions of *N.J.S.A. 2A:157-10 et seq.*, which is the statute that specifically applies to Chief McCormick and the issues in controversy before the Court, and instead rely on *N.J.S.A. 11A:3-5* and *N.J.S.A. 11A:6-3(e)* from which he was expressly exempt.

The authority of the Prosecutor as to the operations of her office are set forth fully in Brief of Plaintiff-Appellant filed on June 24, 2025 and need not be repeated here. However the argument that Chief McCormick was an employee of the County of Sussex and thus subject to statutes from which his position was expressly excluded must fail.

By failing to question the Prosecutor's approval of a carry over of Chief McCormick's vacation days the year before that also clearly would have violated *N.J.S.A. 11A:6-3(e)*, the County has admitted this provision does not apply to Chief McCormick.

B. THE SUSSEX COUNTY PROSECUTOR HAD THE AUTHORITY TO APPROVE THE ROLLING OVER OF VACATION DAYS, WHICH WAS NOT DONE FOR ADMINISTRATIVE PURPOSES BUT FOR OPERATIONAL PURPOSES AND HAD BEEN DONE PREVIOUSLY (Pa63, Pa64, Pa66, Pa70, Pa71 Pa277, Pa281, Pa357, Pa359)

The Sussex County Prosecutor had the authority to approve the roll over of vacation days for her unclassified employees and had unquestionably done so in the past both for plaintiff-appellant and others.

The Acting Prosecutor unequivocally stated that she directed that Chief McCormick forgo his planned vacation for the operational needs of her office during the transition period to a new acting Prosecutor (Pa63, Pa64, Pa70, Pa71). These representations by the Acting Prosecutor have not been refuted or contradicted by the Defendants-Respondents, who have put forward no evidential material whatsoever to contradict her statements. They have merely concluded that her decision was administrative not operational despite having no contrary facts to support this position. The controlling law is more fully set forth in the Plaintiff-Appellant's Brief. *Cf. Centurlo*, supra. at 325, 326 citing Lindabury v. Board of Chosen Freeholders of Ocean, 47 N.J.L. 417 (Sup. Ct. 1885). There was therefore no factual basis for the trial court to conclude that the Prosecutor was performing mere administrative duties in approving the vacation carryover and thus this finding was in error and against the weight of the evidence.

The assertion by Defendants-Respondents that the Sussex County Board of Commissioners (formerly the Board of Chosen Freeholders) exercises oversight over the Prosecutor's Office is false. The Sussex County Table of Organization (Pa66) clearly shows the opposite and they cite no authority whatsoever for this assertion. The conclusion that Sussex County Handbook controls because the County Board of Commissioners has oversight authority over the Prosecutor is therefore blatantly erroneous.

C. THE COURT ERRED IN HOLDING THAT THE SUSSEX COUNTY EMPLOYEE HANDBOOK WAS CONTROLLING OR HAD ANY APPLICATION IN THIS MATTER (Pa6, Pa7, T20-21 to T20-22, T24-2 to T24-10)

The Employee Handbook expressly states that “the Sussex County Prosecutor’s Office and the Sussex County Sheriff’s Office determine and set certain operational policies for their respective departments. In the event that such other operational policies exist, and the terms of those policies conflict with those set forth in this manual, the departmental operational policies shall control.” (Pa277). The Plaintiff-Appellant will rely on the legal argument set forth in Point 1D of his Brief.

Although the Defendants-Respondents have erroneously stated several times in their Brief that the Sussex County Board of Commissioners exercises oversight over the Prosecutor’s Office this is false. They also contradict themselves by acknowledging on page 22 of their Brief that “County Prosecutors are not supervised by the County, but rather are supervised by the New Jersey Attorney General.” They then go on to claim that Plaintiff never sought vacation days through the Office of the Attorney General without putting forth any evidential material as to why this should have been done or how the failure to do so therefore subjects plaintiff to the terms of the Sussex County Handbook. Again this argument has no relevance to the issues before the court.

The operational decision made by the acting Prosecutor that Chief McCormick not take his planned vacation and that it instead be carried over to the next year was

her decision to make in accordance with the longstanding policies of her office, without interference by the county. There is no requirement that such policies need be reduced to a writing. Policy can be made when the decision maker with final policymaking authority makes a decision, as was the case here with the vacation carryover determined by the Prosecutor to be necessary for the operational needs of the office. Cf. Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir.1990); Pembaur v. City of Cincinnati, 475 U.S. 469, 481(1986); Bryson v. City of Oklahoma City, 627 F.3d 784 (10th Cir.2010).

In light of the well settled law concerning the authority of the Prosecutor in this area, whatever is contained or not contained in the Sussex County Employee Handbook is immaterial. Plaintiff-Appellant was not employed by the County and it was error to find that he was a County employee (T20-21 to T20-22). Plaintiff-Appellant was employed by, reported to, and served at the pleasure of the Prosecutor, who directed the cancelation of a planned vacation to insure the proper functioning of her office during a transition period. Ron Tappan had no right or authority to step in to override that decision of the Prosecutor.

Chief McCormick is expressly not subject to the provisions of *N.J.S.A. 11A:6* and the Prosecutor was clearly well within her authority to grant the carry over of the 40 vacation days based on the uncontested facts set forth in the Certification of Annemarie Taggart that the vacation had to be cancelled and the days not used due to the operational needs of her office. (Pa63). She clearly

expected that Chief McCormick would not lose those days as she authorized them to be carried over. Ron Tappan, the County Administrator, had no authority to interfere with a binding decision by the acting Prosecutor, which was in her sole discretion to make under longstanding statutory and case law.

**D. THE COURT ERRED TO THE EXTENT IT BASED
ITS DECISION ON THE COMMUNICATION
WORKERS OF AMERICA AGREEMENT
(Pa6, Pa7, T24-2 to T24-10)**

It is uncontroverted that Chief McCormick was not in the Communication Workers of America Union nor subject to any other collective bargaining agreement (Pa70, Pa367) nor could he be based on the clear dictates of *N.J.S.A. 2A:157-10* and *N.J.S.A. 2A:157-10.1*. If Chief McCormick was subject to a collective bargaining agreement it would certainly not be with the Communications Workers of America of the AFL-CIO. The detectives who are subject to a collective bargaining agreement, which excludes Chief McCormick, are part of the Policeman's Benevolent Association. No law enforcement officers are ever members of the Communications Workers of America. (Pa 63, Pa358).

That the Communication Workers of America Agreement was applicable to this matter was specifically denied at the time of the summary judgment motion by plaintiff-appellant's Certification in Support of his Motion for Summary Judgement, in his Reply Certification and in his Response to Defendants Counter Statement of Additional Undisputed Material Facts, where plaintiff expressly

denied that he was subject to any collective bargaining agreement or in any way to the Communication Workers of America Agreement (Pa70, Pa358, Pa361, Pa362, Pa363). This was vigorously contested and there was no competent evidential material whatsoever submitted by the Defendants-Respondents to contradict that Plaintiff-Appellant was not subject to that Agreement.

The statement by Defendants-Respondents that the Plaintiff has relied upon CWA provisions for vacation is completely unsupported by any evidential material and is nothing but coincidence. The CWA Agreement is in no way controlling in this matter as Chief McCormick has repeatedly asserted. The vacation of the plaintiff was set by the Prosecutor's Office, not the County. However the number of vacation days due to the plaintiff is not at issue. The focus on the number of vacation days is a red herring. This case involves carry over of vacation days and there is no dispute as to how many vacation days were due to Chief McCormick.

Further, the Communication Workers of America Agreement expressly excludes all unclassified employees and police employees (Pa212). The fact that Chief McCormick's allotted vacation is similar to that outlined in the Communication Workers of America Agreement is merely coincidental and has no bearing on this matter nor does it subject him to the terms of the Communication Workers of America Agreement.

The Judge below seemed concerned about the number of vacation days allotted to Chief McCormick however that was never an issue in this case. No one

disputes what his vacation entitlement was but it is in no way related to the CWA Agreement or controlled by it. Neither has Chief McCormick ever relied on either the CWA Agreement of the Sussex County Handbook for his vacation leave schedule or anything else. Both of those documents were submitted to the trial court by defendants in an effort to grasp at something, anything, to overcome the clear, controlling statutes. Neither is applicable or controlling in the case at bar. Plaintiff has never submitted anything to the court to support the claim that he ever relied on either of these documents at any time during his employment.

It was therefore error to find the Communication Workers of America Agreement had any application in this case or that it could be the basis for or in any way support denying the plaintiff-appellant's motion for summary judgment. It was also clearly not the proper basis on which to grant the cross motion for summary judgment filed by the defendants-respondents.

F. THE COUNTY ADMINISTRATOR HAD A MINISTERIAL DUTY TO FOLLOW THE WRITTEN INSTRUCTIONS OF THE PROSECUTOR TO CARRY OVER THE VACATION DAYS AS HE HAD DONE PREVIOUSLY FOR PLAINTIFF-APPELLANT AND OTHERS IN THE PROSECUTOR'S OFFICE (Pa68)

The Prosecutor's policy as to the vacation carry over was neither ad hoc on whim nor a verbal decree as she authorized the carry over in writing by signing off on the written request of Plaintiff-Appellant to carry over the days. (Pa68). Once again the reliance on *N.J.S.A.* 11A:6 is misplaced as it expressly did not apply to Chief

McCormick. Chief McCormick's position was created under *N.J.S.A. 2A:157-10* which created the "position of county investigator which shall be in the **unclassified service** of the civil service." (emphasis supplied). This position is clearly not subject to the provisions of *N.J.S.A. 11A:3-4* as expressly set forth in *N.J.S.A. 11A:3-4* which states "The State **unclassified service shall not be subject to the provisions of this title.**" (emphasis supplied). The Defendants-Respondents have not cited any statutory or case law which would exempt Chief McCormick from *N.J.S.A. 11A:3-4* nor is there any such authority available to cite.

Previously the County Administrator recognized his ministerial duty of inputting vacation carry over days into the payroll system as the prior year he made no objection to the rollover of vacation days in excess of those that can be carried over by classified civil service employees under *N.J.S.A. 11A:6-3(e)* and input that carry over into the payroll system at the instruction of the acting Prosecutor. The excuse that he did so due to the state of emergency is pre-textual since the Covid state of emergency had ended by the time the approval for the roll over was submitted (Pa357). He had also routinely done so for other unclassified employees of the Prosecutor. (Pa359).

In the absence of an exception to the exemption from the provisions of *N.J.S.A. 11A:3-4* Plaintiff-Appellant is entitled to Mandamus relief for the reasons set forth in Point I F of Plaintiff-Appellant's Brief filed on June 24, 2025.

POINT II

**THE TRIAL COURT DECISION IS AGAINST
THE WEIGHT OF THE EVIDENCE
(Pa1, Pa3, Pa63, Pa70, Pa71, T21-2 to T21-6, T24-21 to T24-25, T25-2 to
T26-6)**

Plaintiff-Appellant is not required to present “compelling circumstances” beyond the Prosecutor's expressed need for him to cancel his vacation due to the operational needs of her office. Defendants-Respondents discussion of an imagined moratorium on office birthday parties as related to prosecutorial function trivializes the actual issues before the court. There is no issue as to office birthday parties and the use of that irrelevant hypothetical is silly and incomprehensible, as is the argument that allowing the vacation carry over would hinder the efficiency of the Prosecutor’s Office. That is a decision for the Prosecutor alone.

It is uncontested that the plaintiff-appellant only cancelled his vacation at the express direction of the acting Prosecutor. In the opinion of the acting Prosecutor it was necessary for Chief McCormick to remain at work during the transition period at the end of 2023 (Pa63, Pa70, Pa71).

The decision to approve the carry over of vacation days was clearly based on the operational needs of the office and the Court below ignored those undisputed facts to instead treat the carry over as merely administrative (Pa6, Pa7, T24-21 to T24-25) as more fully set forth argued in in Points I and II of Plaintiff-Appellant’s Brief filed on June 24, 2025.

POINT III

**IT WAS ERROR NOT TO INVOKE
THE DOCTRINE OF ESTOPPEL (Pa1, Pa3, Pa72, T25)**

With regard to the issue of estoppel the Plaintiff-Appellant will rely on the arguments set forth in Point III of his Brief filed on June 24, 2025, which need not be restated here.

CONCLUSION

For the reasons set forth above and in the Brief filed on June 24, 2025, the Plaintiff-Appellant respectfully submits that court below erred in finding that the acting Prosecutor did not have the authority to approve the carry over of the 19 days and the judgment of the trial court should be reversed and the Defendant-Respondents ordered to return the 19 deleted days to the system and thereafter pay out the value of those days to the Plaintiff- Appellant forthwith.

Respectfully submitted,

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Dated: October 2, 2025