POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL 258, **Appellant,** **v.** **COUNTY OF OCEAN,** **Respondent.**	**SUPERIOR COURT OF NEW JERSEY** **APPELLATE DIVISION** **DOCKET NO: A-002974-23T4** **ON APPEAL FROM AN ORDER ENTERED BY THE SUPERIOR COURT OF NEW JERSEY, OCEAN COUNTY, LAW DIVISION, CIVIL PART** **SAT BELOW: HON, FRANCIS R. HODGSON, JR., A.J.S.C.**

BRIEF OF THE APPELLANT, POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL 258, IN SUPPORT OF APPELLANT'S NOTICE OF APPEAL

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TABLE OF CONTENTS

TABLE OF JUDGMENTS, ORDERS AND RULINGS

TABLE OF AUTHORITIES

STATUTES

REGULATIONS

CASES

I. PRELIMINARY STATEMENT

Appellant, Policemen's Benevolent Association Local 258 (hereinafter "PBA 258," "the Union," or "Appellant") through the filing of the instant brief against, Respondent, County of Ocean (hereinafter "the County" or "Respondent"), seeks a reversal of the Order rendered by the Hon. Francis R. Hodgson, Jr., J.S.C., vacating an arbitration award rendered by James M. Cooney, Esq. (hereinafter "the Arbitrator" or "Arbitrator Cooney") on December 26, 2023. In the arbitration award, the Arbitrator sustained a contractual grievance filed by PBA 258 on behalf of one of its members, Correctional Police Officer Maria Adamopoulos ("CPO Adamopoulos"), against the County. In short, the grievance alleged the County failed to pay CPO Adamopoulos holiday pay for the holidays that occurred while she was on workers' compensation leave, pursuant to Article 12 of the collective negotiations agreement between the Union and the County.

As fully set forth infra, the Order vacating the award must be reversed and the arbitration award should be confirmed in its entirety. To this end, the arbitration award was rooted in the express wording of the collective negotiations agreement at issue and consistent with the underlying record evidence. Moreover, the County's principal argument, that the workers' compensation laws preempt the relief afforded by the arbitration award in

question, was considered and properly rejected by Arbitrator Cooney. To that end, while the exclusivity provisions of the New Jersey Workers' Compensation Act might preclude recovery against an employer for negligent injury incurred at the workplace beyond what is permitted by the statute, there is nothing in the Workers' Compensation Act establishing that the contractual benefit sought by the Union in the underlying grievance and ultimately awarded by the Arbitrator is likewise preempted. Thus, as recognized by Arbitrator Cooney, the plain language of the parties' collective negotiations governs. As such, the County's application should have been denied by Judge Hodgson because the award issued by the arbitrator was, at the very least, reasonably debatable. Accordingly, the Court's Order vacating the arbitration award must be reversed and said award must be confirmed.

II. STATEMENT OF FACTS & PROCEDURAL HISTORY[1]

In order to place this matter in an intelligible context, a review of the relevant background is warranted. PBA 258 is the exclusive representative of all rank-and-file correctional police officers employed by the County. (Aa041). To this end, the County and PBA 258 are parties to a collective negotiations agreement (hereinafter "CNA"), effective from July 1, 2022

[1] The Statement of Facts and Procedural Posture are inextricably intertwined and, thus, combined for purposes of clarity herein.

through June 30, 2025. (Aa038). The CNA includes a grievance procedure that culminates in binding arbitration. (Aa053-056).

The instant matter stems from a dispute between PBA 258 and the County over payment of Holiday Pay with respect to Correctional Police Officer Maria Adamopoulos ("CPO Adamopoulos"). (Aa083-084). CPO Adamopoulos was on workers compensation leave due to a work-related injury from roughly January of 2022 to January of 2023. (Aa004, ¶5).

Upon her return from injury leave in January of 2023, CPO Adamopoulos had anticipated being paid "holiday pay" from the County for the holidays that occurred during the time period she was out on workers compensation leave. (Aa088). This had been the practice in the past when she had been out on other periods of leave as demonstrated by pay stubs representing payment she received upon her return from such leave which compensated her for holidays that occurred during said periods of leave. (Aa122 & Aa124). However, upon her return to work in this matter she was not paid any holiday pay by the County (Aa089). The following holidays transpired during the time period she was out on work-related injury leave:

- 1/17/22 (MLK Day)
- 2/21/22 (President's Day)
- 4/15/22 (Good Friday)
- 4/17/22 (Easter Sunday)

- 7/4/22 (July 4th)
- 9/5/22 (Labor Day)
- 10/10/22 (Columbus Day)
- 11/8/22 (General Election Day)
- 11/11/22 (Veteran's Day)
- 11/24/22 (Thanksgiving Day)
- 12/25/22 (Christmas Day)
- 1/1/23 (New Year's Day)
- 1/16/23 (MLK Day)

(Aa088-089).

On or about February 15, 2023, PBA 258 filed a written departmental grievance seeking payment for the holidays that occurred while CPO Adamopoulos was out on workers compensation leave, pursuant to Article 12 (Holiday Pay) of the PBA's CNA with the County. (Aa068). On February 16, 2023, the Warden for the Ocean County Jail, Joseph M. Valenti, responded to the initial grievance referring it to Level Two given that the grievance involved contractual issues. (Aa070).

Thereafter, on February 23, 2023, the County issued its response at Level Two denying the grievance. (Aa071). In short, Rob Greitz, the Employee Relations Director who issued the denial, contended that "there is no indication that CPO Adamopoulos did not receive payment for any Holiday." Id. Director Greitz further stated that "while she was out on

Worker's compensation, CPO Adamopoulos was fully compensated for all days she was entitled at the appropriate rate," asserting that according to the CNA, she received 70% of her salary beginning on day sixty-one (61) of her workers compensation leave. Id. Director Greitz then stated that "CPO Adamopoulos received the correct amount of pay for which she was entitled, including payment of holidays as part of the workweek at the rate of 70%." Id. Lastly, Greitz stated that said payments were consistent with past practice between the parties "to compensate those on workers compensation for holidays in the same manner as CPO Adamopoulos" as "employees on workers compensation receive 70% of their rate of pay for 40 hours per pay period." Id.

On February 28, 2023, the PBA advanced the grievance to Level Three. (Aa072-073). In particular, the Union contended that under Article 12 of the parties' CNA, CPO Adamopoulos was entitled to 100% of her pay for applicable holidays based on the express language of the provision in question. Id. The Union also contended that its position was consistent with prior arbitration awards involving contractual benefits for employees on medical and/or work-related injury leave. Id. PBA 258 further disputed that the County's assertion that Adamopoulos was, in fact, paid for each holiday that fell during her workers compensation leave at a rate of 70 percent. Id.

On March 17, 2023, the County, through County Administrator Michael J. Fiure, issued its Level Three response, denying the grievance at issue. (Aa074-075). In short, County Administrator Fiure contended that "holidays are a part of the pay week, not an additional payment above the 40 hours for which a full-time employee is paid." (Aa074). He then asserted that there is "nothing in Article 12 requiring an officer to be paid at 100% of their pay while on worker's compensation" and that the provision only says "pay" as opposed to "full pay" or "full rate." Id. He therefore contended that "if an officer is being paid at a lower rate due to being on worker's compensation, that is the rate to be paid for the Holiday." Id. The County Administrator similarly argued that the County's position was consistent with past practice. Id. Lastly, the County Administrator set forth a chart listing the holidays that occurred during CPO Adamopoulos's worker's compensation leave asserting that she was paid for each holiday directly by the County at the rate of 100% during her first sixty (60) days of worker's compensation leave, and then through her periodic worker's compensation payments, or temporary total disability ("TTD") payments, at a rate of 70%, for the remaining time she out on injury leave:

> **1/17/22 (MLK Day)** – This was paid as part of the check dated 2/2/22

2/21/22 (President's Day) - This was paid as part of the check dated 3/16/22

4/15/22 (Good Friday) - This was a part of TTD payment of Check issued 4/22/22

4/17/22 (Easter Sunday) – Not only was this a part of the TTD payment of Check issued 4/22/22, this is not a recognized holiday for which payment could be owed. The contract provides only the rate to be paid if an officer works Easter Sunday, it does not provide this as a paid holiday

7/4/22 (4th of July) - This was a part of TTD payment of Check issued 7/15/22

9/5/22 (Labor Day) - This was a part of TTD payment of Check issued 9/9/22

10/10/22 (Columbus Day) - This was a part of TTD payment of Check issued 10/21/22

11/8/22 (Election Day) - This was a part of TTD payment of Check issued 11/18/22

11/11/22 (Veteran's Day) - This was a part of TTD payment of Check issued 11/18/22

11/24/22 (Thanksgiving) - This was a part of TTD payment of Check issued 12/2/22

12/25/22 (Christmas Day) - This was a part of TTD payment of Check issued 12/30/22

1/1/23 (New Year's Day) - This was a part of TTD payment of Check issued 1/20/23

1/16/23 (MLK Day) - This was paid as part of TTD payment of Check issued 1/20/23"

(Aa074-075).

County Administrator Fiure attached three (3) exhibits to the written denial at Level Three (referred to in the Level Three decision as attachments A through C). (Aa076-078) The first attachment, Attachment A, is CPO Adamopoulos's pay stub for the pay period ending 1/19/22, which included MLK Day of 2022, and the second attachment, Attachment B, is her pay stub for the period ending 3/2/22, which covered President's Day. (Aa076-077). The corresponding pay checks were issued directly by the County as Adamopoulos was still receiving her regular salary directly from the County as they fell within the first 60-days of her worker's compensation leave.[2] (Aa059). Notably, neither of the pay stubs indicate "Holiday" pay in the description of earnings section. (Aa076-077).

The third attachment to the Level Three denial letter, Attachment C, is a list of all the TTD payments CPO Adamopoulos received while out on worker's compensation leave. (Aa078). This period covered from 3/14/22 to 1/19/23. Id. But for the first and last payment on that list, each TTD payment was for an identical amount of $1,936.28. Id.

[2] Article 34 of the Union's CNA with the County provides for 60-days of full pay for an officer who is injured while on duty. (See Plaintiff's Exhibit A, Article 34).

PBA 258 disputed the contentions made by the County Administrator in the Level Three decision, principally, that CPO Adamopoulos received holiday pay for the holidays that occurred while she was out on work-related injury leave. (Aa080-081). Thus, on March 24, 2023, a Request for Submission of a Panel of Arbitrators was filed with PERC. Id. After the arbitration assignment was made, the parties proceeded to a hearing on August 15, 2023 before Arbitrator James M. Cooney, Esq. (Aa084). At the hearing, the Union presented the testimony of PBA 258 President, Matthew Stillwell and CPO Adamopoulos. Id. In turn, the County presented the testimony of Director of Personnel, Robert Greitz, along with County Chief Financial Officer, Julie N. Tarrant. Id. Thereafter, the parties submitted closing arguments in writing. Id.

On December 26, 2023, Arbitrator Cooney issued his award. (Aa083-101). Arbitrator Cooney ruled that the Union met its burden of proof, that the County violated Article 12 with respect to CPO Adamopoulos and her entitlement to holiday pay, that the County comply with Article 12 moving forward, and that the County promptly compensate CPO Adamopoulos for all holidays that occurred while she was on workers compensation leave at 100 percent of her regular rate of pay. (Aa099).

In brief, Arbitrator Cooney found that Article 12 of the parties' contract was clear and unambiguous and thus concluded that CPO Adamopoulos was entitled to holiday pay for all holidays that occurred while she was out on work-related injury leave. (Aa096). The Arbitrator further ruled that the workers' compensation statute and its exclusivity provision did not preempt the recovery sought by the Union in this matter, pursuant In re IFPTE Local 195, 88 N.J. 393 (1982), which provides, in part, that the mere existence of a statue or regulation related to a given term or condition of employment does not automatically preclude negotiations. (Aa096-097).

Arbitrator Cooney further stated that the County had not cited any authority providing that an employee surrenders contractual benefits not related to compensation for an injury covered by workers' compensation benefits while out of work on such leave. (Aa097). He asserted that the Union was not seeking compensation for CPO Adamopoulos as payment for her work-related injury, but it instead sought a contractual benefit available to all members covered by the CNA. Id. He therefore found that New Jersey's Workers' Compensation Act did not preempt the subject matter of the Union's grievance. Id.

Lastly, Arbitrator Cooney determined, based on the underlying record and the CNA in question, that CPO Adamopoulos was not paid any of her

holiday pay and she was entitled to such payments at 100 percent of her regular rate of pay (Aa098).

On or about March 15, 2024, the County filed an application to vacate the award rendered by Arbitrator Cooney (Aa003). On that front, the County seemingly abandoned its argument that CPO Adamopoulos actually received holiday pay for the holidays in question, at 70 percent or otherwise, and instead argued that the relief afforded by the Arbitrator is preempted by the exclusivity provisions of the state's workers' compensation laws. (Aa003-009). Nor did the County take exception to the Arbitrator's finding that Article 12 of the CNA is clear and unambiguous. Id. (See also Aa096). The Union opposed the County's application and thus sought confirmation of the award contending that the grounds to vacate the same under the relevant statute did not exist. (Aa102-105).

Following submission of briefs, oral argument was conducted before the Hon. Francis R. Hodgson, Jr., J.S.C., on April 26, 2024. (1T).[3] On that same date, Judge Hodgson, having placed his findings and reasoning on the record, issued an Order granting the County's Order to Show Cause, thereby vacating the arbitration award. (Aa001-002). In short, the Judge found that

[3] The transcript in this matter only contains one (1) volume. "1T" refers to the transcript of the oral argument conducted before the Honorable Francis R. Hodgson, Jr., J.S.C., on April 26, 2024.

Arbitrator Cooney's decision should be vacated as being procured by undue means and against public policy, holding that the award was in conflict with the Workers' Compensation Act and the calculation of temporary benefits. (1T:32:23 to 33:5). Consequently, the Plaintiff filed a Notice of Appeal with this Honorable Court on May 29, 2024. (Aa129-131).

III. JUDGE HODGSON'S DECISION

As noted, Judge Hodgson rendered his decision on the record at the April 26, 2024 order to show cause hearing. After citing the relevant law governing the applicable standard for vacating/ confirming arbitration award, the Judge stated the following:

> "Here the issues raised are whether the officer is entitled to additional payments for holiday pay over the -- over what was calculated under the temporary disability for Workers' Compensation Act. All contracts are subject to the Workers' Compensation Act unless express terms provide otherwise. See N.J.S.A. 34:15-9. Temporary disability benefits are paid in lieu of salary, and that's Young v. Western Electric Company, Incorporated, 96 N.J. 220, 226 23 (1984)."
>
> (1T:30:15-24).

The Judge then continued:

> "Quote, 'The purpose of temporary disability benefits is to provide an individual who suffers a work-related injury with a partial substitute for loss of current wages.' And that's Cunningham v. Atlantic States Cast Iron Pipe Company, 386 N.J.

> Super. 423, 428 (N.J. Super. Ct. App. Div.), quoting Ort v. Taylor Wharton Company, 47 N.J. 198, 208 (1966), where certification was denied at 188 N.J. 492 (2006)."
>
> (1T:30:25 to 31:7).

The Court went on to state that the "receipt of such (temporary disability benefits), however, is keyed to the loss of wages occasioned by the work-related injury. See Young v. Western Electric Company, 96 N.J. 220, 226 (1984), noting that temporary disability is paid in lieu of lost wages (citation omitted) where the Court stated, quote, 'temporary disability represents a partial substitute for loss of current wages.' See also Gorski v. Town of Kearny, 236 N.J. Super 213, 215 (N.J. Super Ct. App. Div. 1989), where the court stated that, quote, 'temporary disability benefits are paid in lieu of a salary.'" (1T:31:8-18).

Judge Hodgson then referenced a particular statute and regulation he deemed relevant. The first, was N.J.S.A. 34:15-12, where the Court stated, "Wages shall be calculated by dividing the number of days the worker was actually employed into the total amount the employer earned during the proceeding [sic] six months." (1T:32:7-10). He then turned to N.J.A.C. 12:56-5.2, which states, "All the time the employee is required to be at his or her place of work or on duty shall be counted as hours worked," and "Nothing in this chapter requires an employer to pay an employee for hours the employee

is not required to be at his or her place of work because of holidays, vacation, lunch hours, illness and similar reasons." (1T:32:14-22). The Judge then rendered his conclusion:

> "For the foregoing reasons, it is this Court's conclusion that the arbitrator's decision should be vacated as being procured by undue means and against public policy. That is, it is contrary to, and in conflict with, the Workers' Compensation Act and the calculation of temporary benefits. The Act provides for temporary benefits to be provided in lieu of salary that's calculated from the previous 26 weeks. That is what was done here. The Court further finds that the Department of Corrections was not required to pay for additional hours because of holidays. That these were all calculated and calculated properly under the Workers' Compensation Act for the previous 26 weeks. So I'm going to grant defendant's application."
>
> (1T:32:23 to 33:11).

IV. STANDARD OF REVIEW

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

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

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

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

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

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

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

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

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

> a. Where the award was procured by corruption, fraud or undue means;
>
> b. Where there was either evident partiality or corruption in the arbitrators, or any thereof;
>
> c. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause being shown therefore, or in refusing to hear evidence, pertinent and material to the controversy, or of any other misbehaviors prejudicial to the rights of any party;
>
> d. Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.
>
> [N.J.S.A. 2A:24-8.]

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

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

V. LEGAL ARGUMENT

I. THE TRIAL COURT'S DECISION TO VACATE ARBITRATOR COONEY'S AWARD WAS IMPROPER AS THE ARBITRATOR'S DECISION WAS REASONABLY DEBATABLE GIVEN THE PLAIN LANGUAGE OF THE CONTRACT AND THE LACK OF ANY PREEMPTIVE STATUTE/ REGULATION (Aa001-002; 1T)

In the instant matter, it the Court erred in vacating Arbitrator Cooney's award as it was not procured by undue means or otherwise contrary to law, and it was, at the very least, reasonably debatable. Here, Judge Hodgson

essentially relies upon a few statutory/ regulatory provisions in support of the vacation of the award at issue, namely, N.J.S.A. 34:15-12, N.J.S.A. 34:15-8, and N.J.A.C. 12:56-5.2. This analysis "misses the mark" on several fronts.

First, N.J.S.A. 34:15-12 provides the schedule of temporary disability payments for an employee who suffers a work-related injury. Notably, however, and as recognized by Arbitrator Cooney, the Union was never challenging the temporary disability payments made by the County in this matter. Nor was the Union seeking additional compensation as a result of the work-related injury sustained by CPO Adamopoulos. Instead, the Union was merely seeking to enforce the plain working of its CNA with the County, that provides for the payment of Holiday Pay for "each full-time officer covered by" the Union's contract with the County. (Aa048). In particular, the Union only sought such benefits upon CPO Adamopoulos's return to full duty following her injury leave, as its been the County's practice of providing such holiday pay upon a Union member's return from a period of leave. (Aa088, Aa122, & Aa124).

Judge Hodgson's reliance on N.J.A.C. 12:56-5.2 is also misplaced as that regulation is not preemptive. In fact, a close reading of that regulation indicates quite the opposite, that there is nothing in the applicable regulatory

scheme *preventing* the employer's payment of holiday pay to an employee. That provision provides as follows:

> (a) All the time the employee is required to be at his or her place of work or on duty shall be counted as hours worked.
>
> (b) Nothing in this chapter requires an employer to pay an employee for hours the employee is not required to be at his or her place of work because of holidays, vacation, lunch hours, illness and similar reasons.
>
> N.J.A.C. 12:56-5.2.

A plain reading of the language above demonstrates that it is not a preemptive regulation, for purposes of this matter. Instead, it simply provides that "nothing in this chapter *requires* an employer to pay an employee for the hours the employee is not required to be at his or her place of work because of holidays…" Id. Here, the Union is not relying upon the workers compensation statutes/ regulations nor the wage and hour statutes/ regulations in support of its argument that the County is obligated to remit holiday pay to CPO Adamopoulos for the time period in question. More notably, the regulation provides that "nothing *in this chapter*" requires an employee to remit holiday pay to an employee that is not at work. Id. (emphasis added). Such language, on its face, is not preemptive. Accordingly, nothing in that regulation *precludes* an employer from entering into a CNA with the duly

certified employee representative regarding the payment of holiday for "each full-time officer covered by" the terms and conditions of the Union's contract with the County. (Aa048).

Arbitrator Cooney appropriately recognized that the relief sought by the Union in the underlying grievance was not preempted by statute or any other provision in the law. More specifically, the Arbitrator ruled that the workers' compensation statute and its exclusivity provision did not preempt the recovery sought by the Union in this matter, pursuant to In re IFPTE Local 195, 88 N.J. 393 (1982), which provides, in part, that the mere existence of a statue or regulation related to a given term or condition of employment does not automatically preclude negotiations. (Aa096-098). Thus, Arbitrator Cooney, in his decision, recognized that preemption was an issue and properly analyzed and rejected the County's argument in that regard.

To that end, after rendering a determination on the plain language aspect of the contractual dispute, the Arbitrator stated, "[n]otwithstanding the above, I still must consider the County's argument that the New Jersey Workers' Compensation Act preempt the Article 12 contract language." (Aa096). Arbitrator Cooney then adequately addressed and rejected the County's preemption/ exclusivity argument in a manner that did not run afoul of N.J.S.A. 2A:24-8. In that regard, the Arbitrator stated the following:

> "In the case at hand, the County cites the exclusivity provision of the New Jersey Workers' Compensation Act. There is no question that the statute provides for the sole manner in which workers are to be compensated for their job-related injuries. Thus, an injured worker 'is barred from maintaining a common-law negligence action' against their employer for work-related personal injuries. New Amsterdam Casualty Co. v. Popovich, 18 N.J. at 225.
>
> However, the County has not cited any authority providing that an employee surrenders contractual benefits not related to compensation for an injury covered by workers' compensation benefits. ***Notably, the Union's grievance in his case does not seek compensation to Grievant as payment for her work-related injury, but rather seeks contractual benefits available to all employees covered by the collective negotiations agreement***. Therefore, I find that the New Jersey Workers' Compensation Act does not preempt the subject matter of the Union's grievance."
>
> (Aa0097). (emphasis added).

As demonstrated above, the Arbitrator recognized that the Union was seeking to enforce a contractual benefit provided to "Each full-time Officer covered by (the) Agreement." (Aa048). At no point has the Union contended that CPO Adamopoulos was not properly paid her workers' compensation benefits while she was out on work-related injury leave. The Union's position has consistently been that CPO Adamopoulos is entitled to holiday pay under

Article 12 of the CNA, regardless of whether or not she was out on workers' compensation leave.

The Arbitrator's award in the underlying matter also does not conflict with N.J.S.A. § 34:15-8. (Election surrender of other remedies). Rather, N.J.S.A. § 34:15-8, provides the exclusive remedy by which an employee may recover ***for injuries caused by workplace negligence***. Smith v. Exxon Mobil Corp., 374 F. Supp. 2d 406, 424 (D.N.J. 2005). (emphasis added). In particular, the New Jersey Worker's Compensation Act provides "compensation for personal injuries to, or for the death of, such employee by accident arising out of and in the course of employment." See N.J.S.A. § 34:15-7.

Here, the Union did not seek compensation for a work-related personal injury suffered by CPO Adamopoulos. Conversely, the Union sought a benefit contractually provided by the County to each full-time officer employed thereby. The Union never contended that the County miscalculated CPO Adamopoulos's temporary disability benefits. It merely sought to enforce the clear and unambiguous language in Article 12 of its CNA with the County upon CPO Adamopoulos's return to full duty. Arbitrator Cooney correctly recognized this and his ultimate determination was legally sound. As such,

Judge Hodgson erred by vacating the award in question as there is no preemption to the relief awarded by Arbitrator Cooney.

Further undercutting Judge Hodgson's decision is the method as to how the County remits holiday pay while one is out on leave. By way of background, the County and the Union are parties to an arbitration award entitled In the matter of Arbitration between Ocean County and PBA Local 258, Docket Number AR-2018-459. (Aa109-120). That matter involved a dispute over whether the County violated the parties CNA when it withheld Holiday Pay from two (2) Union members, one who was out on unpaid medical leave (non-work related injury leave) and the other who was out on unpaid family leave (Aa109-110). Ultimately, the arbitrator in that case determined that Article 12 was clear and unambiguous and contained no language requiring officers to be in active payroll status either immediately before or after a holiday, or to otherwise have "accountable time" to be eligible for holiday pay.[4] (Aa115-118).

As demonstrated by that award, the County will remit holiday pay to officers on leave upon their return from such leave. (Aa111-112). In particular, the County will include payment for holidays in one's first

[4] Unlike in the instant matter, in the prior arbitration (AR-2018-459) the County conceded that the officers were not being paid holiday pay while on leave because they were not in "active status" during the pendency of their non-work-related medical leave and thus did not have "accountable time" both immediately prior to and after the holidays in question. (Aa114).

paycheck upon their return from leave. This practice is demonstrated in some of the pay stubs for CPO Adamopoulos included in the underlying record. (Aa122 & Aa124). The first, which covered the pay period ending on May 13, 2020, was CPO Adamopoulos's first pay after returning from maternity leave after having her first child, as per her testimony. (Aa122). As demonstrated by that pay stub, she received payment for 72 hours of holiday pay at her regular rate, accounting for nine (9) holidays that occurred while she was on maternity leave.

Similarly, CPO Adamopoulos testified that the pay stub for the period ending August 18, 2021, was her first paycheck following her return from maternity leave for her second child. (Aa124). That stub demonstrates that she was paid for 40 hours of holiday pay at her regular rate for the five (5) holidays that occurred during her second maternity leave. Id. It logically follows that had the County actually paid CPO Adamopoulos holiday pay for the holidays that occurred while she was worker's compensation leave, it would have simply paid her upon her return from work. Moreover, the grievance was filed shortly after she returned from workers' compensation leave when she realized that the County had not paid her for the holidays that occurred while she was on leave as such payments were not included in her check upon her return to work as it had been after she returned from maternity leave in earlier

years. Id. (See also, Aa088-089). Thus, the Union and CPO Adamopoulos had anticipated that she would be paid the holiday pay in question upon her return to full-duty, consistent with how the County has historically made such payments.

In conclusion, Arbitrator Cooney's decision that the workers' compensation statutes do not preempt the relief sought by the Union in this matter was not procured by undue means. He properly addressed the County's preemption argument and determined that the Workers Compensation Act does not preclude the contractual benefits pursued by the Union in this action. Given his decision that no statute preempted the relief sought by the Union, his decision was appropriate based on the clear and unambiguous language in Article 12 of the parties' contract. Arbitrator Cooney's award, at the very least, is reasonably debatable, and should have been affirmed by the Court below. As such, the decision of Judge Hodgson vacating the award must be reversed.

VI. CONCLUSION

For all the foregoing reasons, it is evident the Trial Court erred in vacating the arbitration award rendered by Arbitrator Cooney as the latter's decision did not run afoul of N.J.S.A. 2A:24-8 and was reasonably debatable.

As such, the Trial Court's determination to vacate the arbitration award issued by Arbitrator Cooney must be reversed and said award must be reinstated/ confirmed.

Respectfully Submitted,

CRIVELLI, BARBATI, & DeROSE, LLC
Attorneys for Appellant, PBA 258

By: /s/ Michael P. DeRose
MICHAEL P. DeROSE, ESQ.

Dated: December 16, 2024

POLICEMEN'S BENEVOLENT ASSOCIATION LOCAL 258,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
Appellant,	:	
	:	DOCKET NO.: A-002974-23T4
v.	:	
	:	ON APPEAL FROM AN ORDER
COUNTY OF OCEAN,	:	ENTERED BY THE SUPERIOR
	:	COURT OF NEW JERSEY,
Respondent.	:	OCEAN COUNTY, LAW
	:	DIVISION, CIVIL PART
	:	
	:	SAT BELOW: HON. FRANCIS
	:	R. HODGSON, JR., A.J.S.C.
	:	

BRIEF OF RESPONDENT, OCEAN COUNTY, DEPARTMENT OF CORRECTIONS, IN OPPOSITION TO APPELLANT'S NOTICE OF APPEAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

PRELIMINARY STATEMENT

Defendant, Ocean County Department of Corrections (hereinafter "County of Ocean"), is filing this Brief in response to the Appeal and Brief filed by the plaintiff, Policemen's Benevolent Association Local 258 (hereinafter "the Union") seeking the reversal of the Order (Aa001) entered by the Honorable Francis R. Hodgson, Jr., A.J.S.C., vacating the Arbitration Award (Aa082) that was previously entered by Arbitrator, James M. Cooney, Esq., dated December 26, 2023.

In said Arbitration Award (Aa082), the Arbitrator upheld the grievance filed by the Union on behalf of Corrections Officer Maria Adamopoulos seeking payment for holidays that occurred during the time that Officer Adamopoulos was out on an authorized workers' compensation leave due to contracting extended COVID.

Although arbitration awards are intended to streamline disagreements between the parties in a contractual setting, this award upholding the grievance must be vacated and reversed pursuant to the provisions of N.J.S.A. 2A:24-8. The Arbitration Award (Aa082) misinterpreted the express wording of the collective negotiations agreement (Aa012) and, furthermore, ultimately disregarded workers' compensation laws of the State of New Jersey which are controlling in this instance. As a result of these errors, the arbitration finding and award was not a "reasonably

debatable" interpretation of the collective negotiations agreement as it relates to the issue to be decided.

It is clear according to the law that the Arbitrator had exceeded his powers and the Arbitration Award (Aa082) was procured by undue means as recognized by Judge Hodgson and he correctly ruled that the Arbitration Award had to be reversed and an Order (Aa001) was entered finding that the County of Ocean paid the plaintiff, Maria Adamopoulos, appropriately for her time that she was out of work due to a workers' compensation injury. Further, he correctly found that payment of monies in addition to the temporary disability amounts paid would be prohibited.

STATEMENT OF FACTS & PROCEDURAL HISTORY

The relevant issue raised by this Appeal is whether the plaintiff is entitled to monies for holidays that occurred while she was out on workers' compensation leave over and above the amount of temporary compensation that she received as a substitute for her salary in accord with workers' compensation laws of the State of New Jersey.

The County of Ocean and the Union are parties to collective negotiations agreements that were in effect from July 1, 2019 through June 30, 2022 and, then again, from July 1, 2022 through June 30, 2025 (Aa012). The sections of the collective negotiations agreement that are applicable to this grievance are Article 12, entitled "Holidays" which reads in part (Aa023): "Each full-time Officer covered by this Agreement shall enjoy the following holidays with pay, to be observed on the dates specified each January by the Board of Commissioners:

Group A	Group B
Christmas Day	Columbus Day
New Year's Day	Veteran's Day
Thanksgiving Day	General Election Day
July 4th	Martin Luther King Day
Memorial Day	Presidents Day
Labor Day	Good Friday

Should the Board of Commissions designate a different date for the County celebration of New Year's Day, July 4th and Christmas, said designation shall not apply to members of the Bargaining unit".

That section then proceeds to set forth how pay will be calculated for holidays.

The other section which is applicable is Article 34, entitled "On The Job Injury Policy" which reads in relevant part as follows (Aa034):

> "The County's on the job injury policy as it affects Officers represented by PBA Local 258 shall provide that when an injury occurs on the job the affected Officer shall be covered for up to sixty (60) days at full pay. All other existing County policies relating to on the job injury benefits shall be continued."

This full pay provision could be extended to a total of one (1) year if the employee were "traumatically injured due to a violent attack by an individual(s)". However, that portion of the on the job injury policy is not relevant in this instance since Officer Adamopoulos was out of work due to extended COVID.

On or about February 15, 2023, the Union submitted a request to Warden Valenti for payment for holidays during the period of time that Officer Adamopoulos was out of work on workers' compensation leave which extended for approximately one (1) year (January 2022 to January 2023) (Aa067). The Warden had indicated that this was a contract question (Aa070) and forwarded the request to Robert Greitz, Director of Employee Relations, (Aa071) and, in accord with the provisions of the

contract, the request was ultimately denied by the County Administrator, Michael Fiure (Aa074), which led to the next level which was arbitration and was advanced thereto in accord with the request for submission of a panel of arbitrators (Aa079).

On April 5, 2023, the matter was assigned to James M. Cooney, Esq., and a hearing was held via online video conference (Zoom) on August 15, 2023. During the hearing, the County of Ocean maintained the position that Officer Adamopoulos was only entitled to payments as set forth in the workers' compensation statutes, that being 70% of her average weekly wage as calculated for the twenty-six (26) weeks prior to her injury and absence from work.

Further, the County of Ocean relied on the clear mandates of the workers' compensation statutes and pointed out that, if the Officer felt that the temporary disability pay amount was improperly calculated, jurisdiction to determine that issue was with the Workers' Compensation Court and not subject to erroneous contract interpretation as is being urged by the Union.

In that regard, the Union indicated that the Officer was not paid holiday pay during the year that she was out of work and, therefore, pursuant to Article 12 (Aa023), "Holidays", Officer Adamopoulos must be reimbursed for same during the period of her authorized workers' compensation leave.

On December 26, 2023, Arbitrator James M. Cooney, Esq., issued his award (Aa082) and found that Article 12 (Aa023) of the contract between the parties was violated by the County of Ocean and that Officer Adamopoulos should receive her full pay for those holidays that she missed while being out on an approved workers' compensation leave. He further ruled that the County of Ocean must in the future adhere to this finding for all similarly situated employees.

It is the County of Ocean's position that Arbitrator Cooney's findings were erroneous in that the referenced contract provision had no bearing on the amount of money that was to be paid to Officer Adamopoulos while she was on workers' compensation leave and that the amount that she was paid was in accord with workers' compensation statutes and was in the appropriate amount.

On or about March 15, 2024, the County of Ocean filed a Verified Complaint and Order to Show Cause seeking to overturn the erroneous finding of Arbitrator Cooney which was opposed by the Union (Aa003).

Briefs were submitted by the respective parties and oral argument was conducted before the Honorable Francis R. Hodgson, Jr., A.J.S.C., on April 26, 2024. Judge Hodgson, after reviewing the submissions of the parties as well as oral argument, rendered his decision (Aa001) on that date vacating the Arbitration Award correctly finding that Arbitrator Cooney's decision was inappropriate since it was

procured by undue means and it was against public policy as well as being in conflict with the mandates of the Workers' Compensation Act regarding calculation of temporary disability benefits that would be received by an employee who was absent from work due to a workers' compensation injury.

As a result of this decision, plaintiff filed a Notice of Appeal with the Appellate Division on May 29, 2024 (Aa129).

LEGAL ARGUMENT

I. JUDGE HODGSON'S DECISION CLEARLY ANALYZED THE STANDARD OF REVIEW TO OVERTURN AN ARBITRATOR'S DECISION

In most instances, courts are deferential in the standard of review when a party to a collective bargaining agreement has sought to vacate an arbitrator's award. Policemen's Benev. Ass'n v. City of Trenton, 205 N.J. 422, 428 (2011). Further, the court in Linden Board of Education v. Linden Education Association ex. rel. Mizichko, 202 N.J. 268 (2010) indicated that "an arbitrator's award will be confirmed so long as the award is reasonably debatable". There is strong public policy to resolve labor-management issues by the use of arbitration and not the courts since there is indication that it is a fast and inexpensive manner in which to settle said disputes as opposed to utilizing the courts.

The New Jersey Arbitration Act, N.J.S.A. 2A:24-1 to -11, which is applicable to the issues relating to this appeal, permits courts to vacate an arbitration award in the following circumstances:

a. Where the award was procured by corruption, fraud or undue means;

b. Where there was either evident partiality or corruption in the arbitrators, or any thereof;

c. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause being shown

> therefore, or in refusing to hear evidence, pertinent and material to the controversy, or of any other misbehaviors prejudicial to the rights of any party;
>
> d. Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.
>
> [N.J.S.A. 2A:24-8]

The phrase "undue means" usually encompasses situations where the arbitrator has made a mistake of fact or law that is either apparent on the face of the record or acknowledged by the arbitrator. PBA Local 160 v. Twp. of North Brunswick, 272 N.J. Super. 467, 474 (App. Div. 1994). In addition, in a public sector setting, the concept of "undue means" is "greatly enlarged." Old Bridge Tp. Ed. of Educ. V. Old Bridge Educ. Ass'n, 98 N.J. 523, 527 (1985).

It is clear from the facts and the content of the Arbitrator's award that it was subject to attack since the Arbitrator's conclusions are not in accord with the holding in United Steelworkers v. Enter. Wheel & Car Corp., 363 U.S. 593, 597 (1960) where the United States Supreme Court held:

> ...an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an

> infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

The Arbitrator's decision as to eligibility for holiday pay concludes in the following fashion (Aa082):

> The language of Article 12 is clear and unambiguous, providing in relevant part that Corrections Officers "shall enjoy the following holidays with pay." The article lists the specific holidays for which officers will receive pay. Notably, there is no contract language stating that an officer is ineligible for holiday pay, or subject to compensation at a reduced pay rate, while out on workers' compensation leave. Therefore, pursuant to the clear and unambiguous terms of Article 12, I conclude that the Grievant was eligible for holiday pay for all holidays that occurred while she was out on workers' compensation leave in this case.

Judge Hodgson clearly and appropriately concluded that the Arbitrator's award should be overturned due to his failure to analyze and appropriately apply the mandates of the workers' compensation laws of the State of New Jersey when he concluded as follows (1T at Page 32, Lines 23-25 and Page 33, Lines 1-11):

> "For the foregoing reasons, it is this Court's conclusion that the arbitrator's decision should be vacated as being procured by undue means and against public policy. That is, it is contrary to, and in conflict with, the Workers' Compensation Act and the calculation of temporary benefits. The Act provides for temporary benefits to be provided in lieu of salary that's calculated from the previous 26 weeks. That is what was done here. The Court further finds that the Department of Corrections was not required to pay for additional hours because of holidays. That these were all calculated and calculated

> properly under the Workers' Compensation Act for the previous 26 weeks. So I'm going to grant defendant's application."

It is submitted that Judge Hodgson's conclusion is clearly supported by the facts in this case and the workers' compensation laws that should have been applied by the arbitrator which was not done in this instance.

II. JUDGE HODGSON'S DECISION CLEARLY AND APPROPRIATELY ANALYZED THE RELEVANCE AND APPLICABILITY OF THE WORKERS' COMPENSATION LAWS OF THE STATE OF NEW JERSEY TO THIS CASE

The issue raised herein by the Union is that Officer Adamopoulos should have received holiday pay in accord with Article 12 (Aa023) while she was absent from work for an acknowledged workers' compensation injury, that being the contracting of long COVID and Arbitrator Cooney erroneously agreed. Judge Hodgson correctly concluded that there is no doubt that the issues raised regarding pay treatment are governed by the workers' compensation laws of the State of New Jersey and any contract in existence between the parties must be interpreted in accord with said law.

It is submitted that the provisions of N.J.S.A. 34:15-9 are applicable in this instance where it is said as follows:

> "Every contract of hiring made subsequent to the fourth day of July, one thousand nine hundred and eleven, shall be presumed to have been made with reference to the provisions of this article, and unless there be as a part of such contract an express statement in writing prior to any accident, either in the contract itself or by written notice from either party to the other, that the provisions of this article are not intended to apply, then it shall be presumed that the parties have accepted the provisions of this article and have agreed to be bound thereby".

As the court held in Arcell v. Ashland Chemical Co., Inc., 152 N.J. Super. 471, 378 A.2d 53 (L. 1977):

> "Every employment contract is presumed to have been made with reference to the provisions of the Workers' Compensation Act in absence of express statement in writing prior to any accident which demonstrates a contrary intent; compensation scheme enters by operation of law into every contract of hiring in New Jersey unless there is an affirmative rejection in accordance with statute." N.J.S.A. 34:15-9 (P. 487, L. 7-12)

Our Supreme Court also concluded that the "scheme and policy of Workers' Compensation Act is embodied by operation of law into every hiring agreement made within the State." Rivera v. Green Giant Co., 93 N.J. Super. 6, 224 A.2d 505 (A.D. 1966), certification granted 48 N.J. 443, 226 A.2d 432, affirmed 50 N.J. 284, 234 A.2d 393.

Further, compensation treatment for the injured employee is based on the schedule of payments as set forth in the workers' compensation law and is standard throughout the State of New Jersey and applies to every case that comes before the Workers' Compensation Court in accord with N.J.S.A. 34:15-8 which reads as follows:

> "Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in this article and an acceptance of all the provisions of this article, and shall bind the employee for compensation for

> the employee's death shall bind the employee's personal representatives, surviving spouse and next of kin, as well as the employer, and those conducting the employer's business during bankruptcy or insolvency".

Therefore, it is clear, as concluded by Judge Hodgson, that Arbitrator Cooney erroneously completely ignored the relevance, the applicability and requirement that compensation while receiving temporary disability benefits must be in accord with the workers' compensation statutes of the State of New Jersey.

III. CALCULATION OF THE TEMPORARY DISABILITY WEEKLY BENEFITS PAID WAS CORRECT IN THIS INSTANCE

Even though it is submitted that, in response to a question from Judge Hodgson regarding the calculation of temporary disability benefits, plaintiff's attorney stated in the affirmative that there was no contention that the calculation was incorrect (1T at Page 10, Lines 10-17), it is important to analyze the relevant portions of the Workers' Compensation Act which sets forth the manner in which injured employees are compensated when they are out of work.

The relevant enactment to determine weekly benefits is set forth in N.J.S.A. 34:15-12 which says in relevant part:

> a. For injury producing temporary disability, 70% of the worker's weekly wages received at the time of the injury, subject to a maximum compensation of 75% of the average weekly wages earned by all employees covered by the "unemployment compensation law"…

In order to determine the proper wage replacement amount, it is appropriate to look "backwards" from the date of injury for a period of twenty-six (26) weeks to determine the average weekly wage during that period of time. Therefore, you would add twenty-six (26) weeks' worth of pay prior to the accident and divide by twenty-six (26) and, in Officer Adamopoulos' instance, the amount was determined to be $1,383.06 and 70% of that amount is $968.14 which she was paid as of the 61st

day of her being absent from work and until she returned to work modified duty on January 20, 2023 when she was again paid her full salary.

It should be noted that payment in accord with the workers' compensation schedule is not taxable and, therefore, no deductions are made from the amount being paid. However, it is also important to note that there are times when an employee would not receive 70% of their average weekly wage due to constraints set on the maximum weekly payable amount by the State of New Jersey on a yearly basis. For the year 2022, the State average weekly wage, as set by the State of New Jersey, was $1,521.00 which would lead to a maximum weekly rate of $1,065.00 if a person were out on workers' compensation temporary disability. As a practical matter, if someone was earning $2,000.00 a week when they were injured, the maximum they could collect weekly in temporary disability benefits would be $1,065.00 and not $1,400.00 due to the maximum rate that is applicable.

Further, workers' compensation statutes allow for "re-openers" once a claim has been settled if additional treatment has been provided or a re-opener petition is filed within two (2) years of settlement of the original claim. However, if the employee were to again be out of work receiving temporary disability payments, those temporary disability payments would be in the same amount as was originally received even if the worker received a pay increase in the interim. The pay treatment

for the year of the injury is controlling further showing the exclusive nature of the temporary disability statutory scheme.

IV. ARTICLE 12 OF THE COLLECTIVE BARGAINING AGREEMENT IS NOT APPLICABLE IN THIS INSTANCE

As previously referenced, the provisions of N.J.S.A. 34:15-8 clearly set forth the fact that the employment agreement is a "surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof…then as provided in this Article…".

Therefore, Arbitrator Cooney's conclusion that Article 12 (Aa023) of the collective bargaining agreement pertaining to holiday pay compensation is enforceable due to a lack of specific prohibition is definitely incorrect which conclusion was properly rejected by Judge Hodgson.

In support of this conclusion, the County of Ocean would specifically point to the fact that Article 34 of the collective bargaining agreement between the parties specifically references an exception to the dictates of the relevant worker' compensation laws which reads as follows (Aa034):

> ON THE JOB INJURY POLICY: The County's on the job injury policy as it affects Officers represented by the PBA Local 258 shall provide that when an injury occurs on the job the affected Officer shall be covered for up to sixty (60) calendar days at full pay. All other existing County policies relating to on the job injury benefits shall be continued.
>
> Should an employee be traumatically injured due to a violent attack by an individual(s) for the intended purpose of causing severe harm to said employee, and upon

> application to the Director of Employee Relations, the sixty (60) calendar days may be extended to a period of up to one (1) calendar year. The Director of Employee Relations' determination in this regard is final and not subject to further appeal under the terms of this Agreement, or any other judicial forum.
>
> Corrections Officers who have returned to work on an unrestricted / full-duty basis, and who are still receiving prescribed physical therapy as a result of their compensable accident, shall make all efforts to arrange to schedule such prescribed rehabilitation session during off-duty hours. If this is not possible due to the shift the officer works, then they may attend the prescribed rehabilitation session during on-duty hours and may use sick time or any other leave entitlement or may choose to be docked for that time.

Article 34 (Aa034) is included in all County of Ocean contracts in its latest form which was passed by the Ocean County Board of Freeholders (now Commissioners) in 1988 and, as noted, specifically indicates that, for the first sixty (60) days a person is out of work as a result of an on the job injury, they will receive full salary and, on the 61st day, if they are still out of work, they would begin receiving 70% of their salary in accord with workers' compensation statutory enactments.

If the County of Ocean never passed the resolution regarding pay treatment for the first sixty (60) day period, all injured workers who are absent and receiving temporary disability benefits would be governed by the workers' compensation

statutes which indicate that, once an injured worker is out for seven (7) days, they would begin to collect temporary disability benefits back to the first day of disability. Therefore, when the Arbitrator concludes "Notably, there is no contract language stating that an officer is ineligible for holiday pay, or subject to compensation at a reduced pay rate, while out on workers' compensation leave," is totally without merit and erroneous (Aa082).

The Arbitrator further totally misconstrued and reached an incomprehensible conclusion relating to the preemption issue when he concluded (Aa082):

> "Notably, the Union's grievance in this case does not seek compensation to grievant as payment for her work-related injury, but rather seeks contractual benefits available to all employees covered by the collective negotiations agreement."

He erroneously concluded that the compensation laws do not preempt this issue. This ignores the fact that the amount of temporary disability benefits that are being paid to an employee is capped at 70% of their average weekly wage and his conclusion that the employee can obtain additional monies for the period that the employee is receiving temporary disability benefits is contrary to the clear mandates of the law. Clearly, any monies received during the period of temporary disability benefit payments is capped by the 70% rule and would include all payments to the

injured employee as previously set forth and calculated in accord with the 26 week rule.

Once again, the County would reiterate that the issue of the amount of monies received for temporary disability benefits on a weekly basis and the calculation thereof is exclusively in the jurisdiction of the workers' compensation court in accord with N.J.S.A. 34:15-49 which reads as follows in relevant part:

> A. The Division of Workers' Compensation shall have the exclusive and original jurisdiction of all claims for workers' benefit under this chapter.

If Officer Adamopoulos or her attorney thought that the amount of temporary disability benefits paid to her was incorrect, her remedy would have been to file a motion with the workers' compensation court to adjust the amount of her 26 week gross pay prior to the date of injury. If she were to prevail, she would be entitled to a different weekly amount of temporary disability benefits. The Arbitrator clearly had no authority to reach any conclusions with regard to that issue and certainly cannot conclude that Officer Adamopoulos is entitled to full pay for holidays that occurred during her absence from work on a workers' compensation leave.

Furthermore, if the parties wished to modify in any other fashion the amount of compensation received by an injured employee, as was specifically referenced in Article 34, they could have negotiated that issue and it would have been clearly set

forth in the agreement between the parties. The lack of any reference to compensation treatment other than the modification relating to the first sixty (60) calendar days of being out of work clearly indicates that Article 12 (Aa023) of the collective bargaining agreement does not entitle the employee to additional compensation especially at the 100% amount as argued by the plaintiff and found by the Arbitrator.

CONCLUSION

As a result of the above, it is abundantly clear that Judge Hodgson's decision overturning the Arbitrator's award is overwhelmingly supported by the facts and the law of this case and should be upheld.

Dated: January 29, 2025

Respectfully submitted,

/s/ Robert D. Budesa
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February 13, 2025

VIA ECOURTS

Joseph H. Orlando, Clerk
Superior Court of New Jersey, Appellate Division
P.O. Box 006
Trenton, New Jersey 08625-0006

Re: Ocean County, Dept. of Corrections vs. PBA Local 258
Docket No.: A-002974-23T4

On Appeal from an Order entered by the Superior Court of New Jersey, Ocean County, Law Division, Civil Part (Sat below: Hon. Francis R. Hodgson, Jr., A.J.S.C.)

Letter Brief of Appellant, PBA Local 258, in further support of its Appeal

Dear Mr. Orlando:

As you are aware, this office represents the Appellant, the Policemen's Benevolent Association Local 258 ("Appellant," "the Union," or "PBA 258") in regard to the above-referenced matter. Please accept this letter brief, in lieu of a more formal submission, in reply to the Appellate Brief submitted by the

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Ocean County Department of Corrections ("Respondent" or "the County") in said matter.

TABLE OF CONTENTS

LEGAL ARGUMENT

I. THE TRIAL COURT'S DECISION MUST BE REVERSED AS RESPONDENT HAS FAILED TO HIGHLIGHT A SINGLE PROVISION IN THE STATE'S WORKERS' COMPENSATION STATUTES IMPERATIVELY PREEMPTING CONTRACTUAL BENEFITS UNRELATED TO WORK-RELATED INJURY AND THE STATUTORY SCHEME IN QUESTION ONLY PREEMPTS PAYMENT FOR A WORKER'S PERSONAL INJURY BEYOND WHAT IS PROVIDED FOR IN SAID STATUTES (Aa001-002; 1T)

At the onset, it must be noted that Appellant is not challenging the calculation of CPO Adamopoulos's temporary disability benefits for the time period in question. The County has framed Appellant's argument in that fashion, but Arbitrator Cooney correctly recognized that the Union was merely seeking "contractual benefits available to all employees covered by the collective negotiations agreement" and did "not seek compensation to (CPO Adamopoulos) as payment for her work-related injury." (Aa097). Simply put, Adamopoulos is not seeking compensation for her work-related injury and to that end, receipt of holiday pay is entirely unrelated to her temporary disability benefits.

Arbitrator Cooney also correctly recognized that the Workers Compensation Act provides the sole benefit in which workers are to be compensated for their job-related injuries. (Aa097). In other words, it preempts common law negligence actions by the employee against their employer. See New Amsterdam Cas. Co. v. Popovich, 18 N.J. 218, 225 (1955). To that end, in Piscopo v. Lemi Excavating Co., 215 N.J. Super. 149 (App. Div. 1986), the Court held, in response to a potential negligence claim stemming from work-related injury, "[w]e observe, of course, that if petitioner's claim were presented in the Law Division it would be met by a

statute which provides that in return for the guaranty of benefits under the workers' compensation system a worker surrenders his right to sue his employer in negligence; this surrender is binding, in cases of death, on the worker's "personal representatives, surviving spouse and next of kin. . . ." Id. at 154-55. There, the Court relied upon N.J.S.A. 34:15-8, which states, in relevant part:

> "If an injury or death is compensable under this article, a person shall not be liable to anyone at common law or otherwise on account of such injury or death for any act or omission occurring while such person was in the same employ as the person injured or killed, except for intentional wrong.
>
> Id. at 155 citing N.J.S.A. 34:15-8.

Thus, the workers compensation statutes preempt common law negligence claims for work-related injuries. The entire statutory scheme relied upon by the County and the Court below concerns compensation for a worker's personal injury. See, for e.g., N.J.S.A. § 34:15-1, stating, "When personal injury is caused to an employee by accident arising out of and in the course of his employment, of which the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he shall receive compensation therefor from his employer, provided the employee was himself

not willfully negligent at the time of receiving such injury, and the question of whether the employee was willfully negligent shall be one of fact to be submitted to the jury, subject to the usual superintending powers of a court to set aside a verdict rendered contrary to the evidence." N.J.S.A. § 34:15-1. The notion that a worker foregoes all other contractual benefits provided under a negotiated contract of employment, such as holiday pay, merely because he/she suffered a work-related injury, is a far too expansive reading of the statutes in question and is likewise, not a reasonably debatable interpretation.

Respondent contends in its brief, that "if the parties wished to modify in any other fashion the amount of compensation received by an injured employee, as was specifically referenced in Article 34, they could have negotiated that issue and it would have been clearly in the agreement between the parties." (Respondent brief, at p. 25-26). Notably, Article 34 of the parties' contract provides for full pay for 60-days for on-the-job injury. (Aa059).

Yet, by making such an assertion, Respondent implicitly concedes that the workers compensation statutes would not preempt negotiations over increasing that 60-day period of full-pay for an on-the-job injury. It logically follows that the statutory scheme in question would not preempt other contractual benefits entirely unrelated to the work-related injury, particularly

when they are traditionally paid upon an employees return to active duty and, in CPO Adamopoulos's case, after her temporary disability benefits have terminated. (See, for e.g., Aa088, Arbitrator's statement of facts indicating that CPO Adamopoulos anticipated receiving compensation for the holidays in question upon her return to work having resume full duties," Aa122 and Aa124, consisting of pay stubs providing for bulk payment of holiday pay upon CPO Adamopoulos's return from respective maternity leaves).

It must be further noted that CPO Adamopoulos did not receive any holiday pay for the holidays that occurred while she was receiving full salary under Article 34. In that regard, for the relevant pay periods in question for the holidays that occurred during this 60-day period, there is no "Holiday" pay description in the earnings section with respect to those pay stubs as compared to those stubs where Adamopoulos was definitively paid holiday pay. (Compare, for e.g., Aa076-077, her pay stubs for her first 60-days out on injury leave where she was paid full pay, with Aa122, Aa124, Aa126, and Aa128). By Respondent's own admission, there was nothing "preempting" them from remitting holiday pay to CPO Adamopoulos for the pay period ending 1/19/2022 (Aa076) nor for the pay period ending 3/2/22 (Aa077), yet the County still did not make such holiday payments to Adamopoulos. We

submit that this undermines the County's entire position in this matter as it demonstrates they never had any intention on paying Adamopoulos holiday pay and subsequently sought to justify that decision via the payment scheme for on-the-job injury under the workers compensation statutes.

An item is not negotiable if it has been preempted by statute or regulation. In re Local 195, IFPTE, 88 N.J. 393, 403 (1982). If the Legislature establishes a specific term or condition of employment that leaves no room for discretionary action, then negotiation on that term is fully preempted. Id. If the statute sets a minimum or maximum term or condition, then negotiation may be confined within the parameters established by these limits. Id. (citing State v. State Supervisory Employees Ass'n, 78 N.J. 54 at 80-82). However, the mere existence of a statute or regulation relating to a given term or condition of employment does not automatically preclude negotiations. In re Local 195, IFPTE, 88 N.J. at 403. Negotiation is preempted only if the "statutory or regulatory provisions . . . speak in the imperative and leave nothing to the discretion of the public employer." Id. at 403-404 (citation omitted). In other words, preemption requires a statute or regulation that leaves "no room for debate on the matter of discretion" and "fixes a term and condition of employment expressly, specifically and comprehensively."

Robbinsville Twp. Bd. of Educ. v. Wash. Twp. Educ. Ass'n, 227 N.J. 192, 201 (2016) (citation omitted).

Arbitrator Cooney's decision was reasonably debatable as the workers' compensation statutes do not speak in the imperative as regards the issue at hand. Just as the statutes do not preempt negotiations over increasing the 60-day period of full pay for on-the-job injury, they do not preempt contractual benefits entirely unrelated to work-related injury, such as holiday pay, provided under the parties' contract to "each full-time officer covered" by the agreement. (Aa023).

Here, the seminal issue is whether Arbitrator Cooney's decision was "reasonably debatable." New Jersey precedent holds that the standard for reviewing an arbitrator's interpretation of the collective bargaining agreement is a deferential one. Twp. of Wyckoff v. PBA Local 261, 409 N.J. Super. 344, 355 (App. Div. 2009). As the Supreme Court held in New Jersey Transit Bus Operations, Inc. v. Amalgamated Transit Union, 187 N.J. 546 (2006):

> An appellate court's review of an arbitrator's interpretation is confined to determining whether the interpretation of the contractual language is "reasonably debatable." Under that standard, a reviewing court may not substitute its own judgment for that of the arbitrator, regardless of the court's view of the correctness of the arbitrator's

> interpretation. The policy of strictly limiting judicial interference with arbitration is intended to promote arbitration as an end to litigation.
>
> Id. at 553-54 (citations omitted).

Judge Hodgson indeed substituted his own judgement for that of the arbitrator. Arbitrator Cooney's finding that the workers compensation statutes do not expressly preempt benefits under the parties' contract unrelated to on-the-job injury is certainly reasonably debatable, as Respondent has failed to point out any portion of those statutes speaking in the "imperative" on that front. Based upon his preemption analysis and his finding that (a) Adamopoulos was not seeking compensation for her work-related injury; and (b) the Union was merely seeking contractual benefits provided to all members under its contract with the County, it is likewise abundantly clear that Arbitrator Cooney's award was reasonably debatable. Accordingly, his decision and award must be reinstated.

II. CONCLUSION

For these reasons and for the reasons originally set forth in Appellant's initial submission, which Appellant incorporates herein, Judge Hodgson's

decision must be reversed and the decision and award of Arbitrator Cooney must be reinstated. We thank the Court for its consideration in this matter.

Respectfully submitted,

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CLIENT