Superior Court of New Jersey

Appellate Division

Docket No. A-003707-24

PATERSON FIREFIGHTERS ASSOCIATION, *Plaintiff-Appellant,* vs. CITY OF PATERSON, a Municipal Corporation of the State of New Jersey, *Defendant-Respondent.*	:	CIVIL ACTION ON APPEAL FROM THE ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, PASSAIC COUNTY DOCKET NO. PAS-L-438-25 Sat Below: HON. BRUNO MONGIARDO, J.S.C.

BRIEF FOR PLAINTIFF-APPELLANT

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Date Submitted: August 15, 2025

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PRELIMINARY STATEMENT

The Appellant Paterson Firefighters Association ("PFA"), a public sector labor organization representing firefighters employed by the Respondent City of Paterson (City"), brought this summary action to confirm a December 22/23, 2024 public sector grievance labor arbitration Opinion and Award of Arbitrator Dean L. Burrell ("Burrell Award") between the PFA and City by Verified Complaint and proposed Order to Show Cause. The Order to Show Cause sought authorization of the PFA to proceed summarily for a trial of the action on the pleadings and affidavits and for a Final Order and Judgment confirming the Burrell Award under *R.*67-1(a), *R.*4:67-2(b) and *R.*4:67-5.

The Law Division (Hon. Bruno Mongiardo) of the Superior Court for Passaic County, relying in part upon purported evidence outside the grievance arbitration record submitted by the City in opposition before that court, rendered a decision from the bench vacating the Burrell Award on the basis that Arbitrator Burrell's interpretation of the relevant clauses of the contract between the PFA and the City, particularly a preservation of benefits clause at Article XXV of the contract, was not "reasonably debatable" and that his interpretation of that preservation of benefits clause as to mandating continuation of a contractual dental benefit had essentially written a new agreement between the parties. In so ruling, the trial court had misapplied and substantially ignored the well-

established applicable law to review of a public sector grievance arbitration award in this State and had seriously erred in reaching the conclusion that the Arbitrator's interpretation of Article XXV of the contract was not "reasonably debatable"; thus warranting this Court, via a *de novo* review, reversing the trial court decision, vacating the Orders that emanated from the trial court denying confirmation of the Burrell Award (and granting the City's cross-motion to vacate that Award), and this Court confirming the Burrell Award in all respects and/or remanding it to the trial court to do so.

PROCEDURAL HISTORY

On January 22, 2024, the PFA filed a grievance with the City, which provided:

> **The PFA grieves the violation of Article XXV and other relevant provisions of the collective bargaining agreement** by the City's failure to pay (or reimburse firefighters for payment of) any and all employee costs relating to the dental plan provided by the City, including, but not limited to premium payments deducted from their salaries and co-pays imposed upon them by the dental plan for dental services. **Emphasis** added. Pa118 to Pa119.[1]

The PFA's grievance proceeded to grievance arbitration before arbitrator Dean L Burrell, Esq. under the auspices of the Public Employment Relations Commission, with the arbitration hearing on the grievance occurring on August

[1] All references to the Appellant's Appendix are indicated by "Pa" followed by the relevant page number of the Appellant's Appendix submitted herewith.

13, 2024. Pa20. At the hearing, the parties agree to the following statement of the issues before Arbitrator Burrell:

> 1. Whether the grievance is substantively and/or procedurally not arbitrable where procedurally the Union did not file within the fifteen (15) day deadline and substantively the MOA does not provide for dental costs.
>
> 2. Did the City violate Article XXV and other relevant provisions of the Collective Negotiated Agreement by its failure to pay (or reimburse firefighters for payment of) any and all employee costs relating to the dental plan provided by the City?
>
> 3. If so, what shall be the remedy? Pa20; Pa167.

At the hearing and in its post-hearings brief[2], the PFA contended that under Article VII of the 2010-2019 collective negotiations agreement and the "Prior Practices" provision at Article XXV of the May 2022 Memorandum of Agreement, as that Memorandum of Agreement did not specifically provide for

[2] The PFA's post-hearing brief before Arbitrator Burrell, inclusive of an arbitration decision submitted to Arbitrator Burrell therewith and the unpublished decision in *Atl. City Bd. of Educ. v. Atl. City Educ. Assn.*, A-0370-19 T3, 2020 N.J. Super. Unpub. LEXIS 1714 (App. Div. Sept. 14, 2020), also included in that submission, are contained in the Appellant's Appendix (Pa118 to Pa164) and are provided to the Court to establish the record before Arbitrator Burrell, the plausibility and at least reasonably debatable nature of the Arbitrator's interpretation and application of Articles VII and XXV of the May 2022 Memorandum of Agreement and to dispute the trial court's conclusions, T26-1 to T27-18, that Arbitrator Burrell had essentially written a new labor agreement by holding that the City was required by Article XXV of the May 2022 Memorandum of Agreement to continue to provide no cost dental coverage to its firefighters and their eligible dependents and that Arbitrator Burrell's interpretation of that new Article XXV was not reasonably debatable.

the termination of the free dental coverage benefit that had been memorialized in the 2010-2019 collective negotiations agreement, City firefighters enrolled in the City's dental program were entitled to that free dental coverage benefit under Article VII of the 2010-2019 collective negotiations agreement until the May 2022 Memorandum of Agreement was effective and thereafter retained that benefit under Article XXV of the May 2022 Memorandum of Agreement. Pa.134 to Pa139; Pa175 to Pa177.

The Burrell Award concerning the PFA's grievance was thereafter rendered on December 22/23, 2024 and held:

1. The grievance is substantively and procedurally arbitrable.

2. The City violated Articles VII and XXV by its failure to pay and reimburse firefighters for payment of all employee costs relating to the dental plans provided by the City in 2021 and beginning January 1, 2024.

3. The City shall immediately cease deducting employee contributions to the dental plan for unit members and shall reimburse firefighters for payment of all employee costs relating to dental plans provided by the City, commencing January 1, 2024. Pa183.

On February 4, 2025, the PFA brought a summary action to confirm the Burrell Award by Verified Complaint and a proposed Order to Show Cause. Pa.19; Pa192. The Order to Show Cause sought authorization of the PFA to proceed summarily for a trial of the action on the pleadings and affidavits and for a Final Order and Judgment confirming the Burrell Award under R.67-1(a),

R.4:67-2(b) and R.4:67-5. Pa192 to Pa 194 The Order to Show Cause was executed by the trial court on February28, 2025. Pa192 to Pa194.

In response to the PFA's Complaint, on April 1, 2025, the City filed an Answer, Affirmative Defenses, and Counterclaim, opposing confirmation and seeking vacatur of the Burrell Award. Pa.195. In the Counterclaim portion of its Answer, seeking the vacatur, the City made allegations at paragraphs 24 through 26 thereof concerning "evidence" presented in an interest arbitration proceedings between the PFA and the City held on February 12, 2025 and February 28, 2025. Pa205 to Pa206 That evidence included a non-testimonial statement made by counsel for the PFA at one those interest arbitration hearings concerning the PFA having to give up certain things (specifically "longevity") during the negotiations for the May 2022 Memorandum in order to secure a desired new salary guide, but making no reference whatsoever to any PFA concession having been made in negotiations of the May 2022 Memorandum of Agreement concerning maintenance of the no-employee-cost dental benefit that had contractually been in place through to the execution of the May 2022 Memorandum of Agreement. Pa205 to Pa206.

In responding to the City's counterclaim's paragraphs 24 through 26, the PFA affirmatively asserted that the City's allegations therein were neither relevant nor material to the issues before the trial court. Pa218.

On June 30, 2025, the trial court rendered a decision from the bench to vacate the Burrell Award. Pa2; Pa4. On that same day the Court rendered an Order denying the PFA's application to confirm the Award (Pa1 to Pa2) and an Order granting a cross-motion to vacate the Burrell Award. Pa3 to Pa5.

On July 28, 2025, the PFA filed its Amended Notice of Appeal. Pa6 to Pa8.

STATEMENT OF THE FACTS

A. THE COLLECTIVE NEGOTIATIONS AGREEMENTS

Article VII of the 2010-2019 collective negotiations agreement between the PFA and the City was comprised of 8 ½ double-spaced pages (running from pages 20 through 29 of that agreement). Pa50 to Pa59. It set forth provisions relating to hospital, medical, prescription, vision and dental benefits for both active and retired firefighters and their dependents and specific provisions concerning the City's Health Benefits Plan and prescription plan and provided a dispute resolution process through arbitration concerning the City's hospital-medical plan. Pa50 to Pa59.

Concerning the City's dental plan with regard to active firefighter employees and their eligible dependents, at Article VII, section A, paragraph number 4, the 2010-2019 collective negotiations agreement provided that "[t]he

City shall pay the full cost of the dental plan currently in effect for full-time employees and their eligible dependents." Pa.51.

Pursuant to Article XXX of the 2010-2019 collective negotiations agreement, that agreement was to remain in full force and effect until a new agreement was executed. Pa100. Such a new agreement was not executed by the City until the end of May of 2022. Pa.116.

The new agreement, the May 2022 Memorandum of Agreement, provided at Article VII for the parties to "Replace this Article with the following," and, in doing so, wholly replaced Article VII of the 2010-2019 collective negotiations agreement with new provisions. Pa108 to Pa109. The new Article VII continued to provide that "[[t]he Employer agrees to provide major medical, dental, and prescription drug insurance to all full-time employees and their dependents," but made no provision whatsoever concerning either who would bear the costs for the dental coverage of firefighters and their dependents enrolled in the City's self-insured dental plan or what that cost (i.e., to enrolled firefighters and their eligible dependents) would be. Pa108 to Pa109.

In order to safeguard such 2010-2019 collective negotiation contract benefits as no cost dental plan coverage, which had been expressly provided for under Article VII of the 2010-2019 collective negotiations agreement, in the May 2022 Memorandum of Agreement, for the first time, the PFA secured an

explicit preservation of benefits clause at Article XXV of the May 2022 Memorandum of Agreement which replaced or was added to an earlier most favored nations clause which had merely attempted to entitle rank and file firefighters to the same benefits as higher rank fire officers. Pa95; Pa114; Pa182. That new clause read:

> All the rights, privileges and benefits which the employees covered by this Contract enjoyed prior to the effective date of this Contract are retained by the employees except as those rights, privileges, and benefits [are] **specifically** abridged or modified by this Contract. **Emphasi**s added. Pa114.

B. THE ARBITRATION HEARING, POST-HEARING SUBMISSIONS AND THE AWARD

At the arbitration hearing before Arbitrator Burrell, no testimonial evidence was submitted by the City. Pa173. The City did not deny (and continues to admit) that collective negotiations unit members were entitled under Article VII of the 2010-2019 collective negotiations agreement, to dental care coverage without personal cost and at the City's sole expense. Pa178; Pa180. The City made no claim, nor produced any evidence to establish, that firefighter collective negotiation unit members were required to pay, or were paying, a percentage of the costs of that self-insured dental benefit under "Chapter78." Pa 138; Pa177 to Pa180.

As Arbitrator Burrell stated in the Burrell Award:

During the hearing the Union put on one witness, retired Fire Captain Frank Petrelli, who was hired by the City in June 2018, was Vice President of the Firefighters Union from July 2018 to July 2020, and then President until promoted out of the unit in February 2022. The Employer put on no witnesses. Petrelli testified to opting out of the medical insurance for 2022 as permitted under the contract. However, when his contributions should have ceased, Petrelli's earnings record for pay period 12/27/21-01/09/22 showed a deduction of $49.69, and a corresponding year-to-date expense of $508.16. Petrelli was informed by Gary Johnson, health and benefits person for the City, that his participation in the private dental plan was unchanged by his withdrawal from the State Health plan. After completing a separate withdrawal form for the dental plan those contributions ceased. No grievance was filed over these dental deductions.

Petrelli as Union president was involved in the negotiations commencing January 2022 for a successor to the expired CBA which resulted in the MOU. Petrelli testified that after his conversation with Johnson he raised the issue of dental contributions during bargaining. His testimony was unrebutted that he was informed across the table by City Director of the Treasury Aaron Hoffstatter, who claimed to have checked with Johnson, that employees were not being charged. The other members of the bargaining committee included Daniel Pierre (outside counsel), CFO Javier Silva and then Business Administrator Vaughn McCoy, none of whom disagreed or stated to the contrary during bargaining. Petrelli also spoke with the heads of the Patrolman and Superior Officers associations who told him they were not paying dental premiums.

While no longer in the unit Johnson[3] remained at bargaining to "see it through" and was never told by the Employer that employees would have to pay for dental. During negotiations the focus was the City's conversion from a private health care

[3] This reference to Johnson was in error, it was meant to refer to Petrelli.

> plan to the State Health Plan and ensuing litigation, the dental plan was otherwise never discussed. Pa173 to Pa174.

As Arbitrator Burrell further noted, "City employees were informed by letter dated December 27, 2023, of a change in dental plan provider effective January 1, 2024. There was no reference to contributions in the letter sent by the City to all employees informing them of this change." Pa174.

Arbitrator Burrell noted further that the new Article VII language in the May 2022 Memorandum of Agreement required the City to provide medical and dental insurance and authorized employee contributions in accordance with "Tier 4 of Chapter 78," but found that "the statutory exclusion of dental deductions from employee contributions under Chapter 78 without more, combined with the elimination of language obligating the Employer to provide dental coverage at no employee cost, leaves an ambiguity that requires consideration of extrinsic evidence to discern the intent of the parties when entering into the MOA." Pa181.

Arbitrator Burrell thereupon expressly found that "there is absolutely no evidence establishing an Employer intent to eliminate its provision of dental coverage without cost to unit members." Pa181. Arbitrator Burrell expressly credited "the unrebutted testimony of the Union President [Petrelli], that he was given assurances by the Employer that in fact the City's stated intent was not to eliminate" the no-cost-to-employees dental plan for firefighters. Pa 181. He

concluded that "[t]hus, there is no bargaining history with respect to a negotiable item that would lead to a conclusion that the parties had reached a resolution authorizing employee deductions for dental coverage." Pa181.

Arbitrator Burrell further held that "the new MOA Article VII must be read along with the newly revised Article XXV Prior Practices." Pa182. He held that "[t]he revised MOA Article XXV now requires specific language to abridge or modify an existing practice" (Pa182) and noted that "there is no specific language in the MOA Article VII eliminating the City's obligation to provide dental coverage without employee cost, merely the deletion of existing language without replacement." Pa182.

Not only was Arbitrator Burrell's interpretation and application of Article XXV of the May 2022 Memorandum of Agreement as requiring specific language terminating or modifying a previously existing contractual benefit in the face of a blanket rewriting of Article VII of the 2010-2019 collective negotiations agreement justified by the language of the new Article XXV, but the record before Arbitrator Burrell evidences both that that interpretation was correct and that the City, in agreeing to the new Article XXV, knew it would be so interpreted and applied by arbitrators. Thus, the PFA had advised Arbitrator Burrell of two earlier arbitration awards in which the City had been a party with its police union, involving, at section 10.1 of the police collective negotiation

agreements, the same language as Article XXV of the May 2022 Memorandum of Agreement, in each of which the arbitrators had reached the same conclusion as Arbitrator Burrell had in the instant case. Pa136 to Pa137:Pa141 to Pa156.

In one case, in granting a grievance concerning the City's unilateral cessation of a practice of reimbursing police negotiations unit members' drug prescription copays through the City's Major Medical Health Insurance Plan for police rank and file and superior officers, in a March 6, 1997 opinion and award in *Paterson Police PBA, Local No. 1 and City of Paterson*, AR-96-147 and AR-96-148, Arbitrator Thomas DiLauro held in similar circumstances to the instant case, that a preexisting benefit entitlement could not be terminated unless it was specifically abridged or modified by a successor agreement:

> Section 10.1 under Maintenance of Standards provides in pertinent part that "[a]ll . . . benefits which the employees covered by this Contract enjoyed prior to the effective date of this Contract are retained by the employees except as those . . . benefits are specifically abridged or modified by this contract . . .". **As was stated above, the Parties are in agreement that there is no language in the present Contract explicitly addressing the practice in question. Any abridgment or modification of this practice is therefore not specified by the Agreement. . . . Therefore, in accordance with the clear and unambiguous language of Section 10.0, any past practice in this regard cannot be unilaterally abrogated by either of the parties**. **Emphasis** added. Pa.153 to Pa154.

Arbitrator Burrell had himself previously recognized the force and effect of the new Article XXV in the May 2022 Memorandum of Agreement, holding

on January 12, 2023 in an arbitration involving the same parties, *City of Paterson and Paterson Firefighters Association, FMBA Local No. 1*, AR-2022-429, Union Exhibit 2 before Arbitrator Burrell in the arbitration hearing in the instant case, concerning a past practice which had been expressly memorialized in the 2010-2019 collective negotiations agreement, but removed from the May of 2022 Memorandum of Agreement:

> [T]he new Prior Practices language in Article XXV requires that any rights, privileges, and benefits prior to the effective date of the successor agreement are retained until "specifically abridged or modified" by the new contract. **This MOU contains no specific abridgment or modification of the past practice of firefighters taking Core training off-duty for which they receive compensation. I, therefore, find the new Practices provides a further basis for my ruling**. **Emphasis** added. Pa137.

Thus, the City was on notice when it agreed to the May of 2022 Memorandum of Agreement's new Article XXV, as well as of the date when the PFA's grievance was filed, as well as when it agreed to the selection of Arbitrator Burrell, as well as when it appeared before Arbitrator Burrell in the instant case, that it could be bound to pre-existing contractual benefits through the new Article XXV in the May of 2022 Memorandum of Agreement between the PFA and the City, including maintaining its dental benefit plan covering firefighters and their eligible dependents without any premium or out-of-pocket costs to them; that it would be so bound unless it had specifically provided in

the May of 2022 Memorandum of Agreement that such dental coverage would thereupon have an employee cost, and what that cost would be. It is undisputed that the May 2022 Memorandum of Agreement contains no such employee cost provision. Pa104 to Pa116.

The Arbitrator also considered this Court's unpublished decision in *Atl. City Bd. of Educ. v. Atll. City Educ. Assn.*, A-0370-19 T3, 2020 N.J. Super. Unpub. LEXIS 1714 (App. Div. Sept. 14, 2020), a decision provided to Arbitrator Burrell with the PFA's post-hearing brief. Pa138. As Arbitrator Burrell stated:

> [W]hile not binding precedent as an unpublished decision, Atl. City Bd. Of Educ. v. Atl. City Educ. Ass'n, Docket No. A-0370-19T3 (App.Div. September 14, 2020) is instructive. I find persuasive the Court's discussion of the reasoning therein of the unnamed Arbitrator, which it found reasonable in reversing the lower court's order vacating the award. In that matter, considering the same exclusion as here of employee contribution rates for dental coverage in Chapter 78, **the Arbitrator concluded that the employer had violated the contract where the parties did not bargain over employee dental contribution rates but rather the employer unilaterally implemented new rates in the absence [of] an express provision in the contract so authorizing, an absence due to the lack of bargaining over a negotiable item.**
>
> **In finding a contractual violation, the Arbitrator held that for her to enforce the Employer's employee deductions for dental coverage would violate contractual language stating that an Arbitrator cannot add to the terms of the agreement.** Similar language was added here in MOA Article III.E.5 stating the Arbitrator cannot add to, modify, detract

> from, or alter the provisions therein. **For me to deny the grievance, permitting employee deductions in the absence of an express provision would similarly be adding language to the existing agreement which is beyond the scope of my authority.** I therefore sustain the grievance finding a violation of MOA Articles VII and XXV. **Emphasis** added.Pa182 to Pa183.

In *Atl. City Bd. of Educ*., this Court was faced with substantially similar circumstances as it is presented with in this matter before Arbitrator Burrell. In that case the trial court, faced with an action to vacate the arbitrator's award, rendered an Order vacating the award. As this Court stated as concerned the trial court's decision in that case:

> It determined the award was contrary to public policy and not reasonably debatable given the "undisputed facts." It found the record "establishe[d] that the parties engaged in negotiations, reached an agreement, and subsequently had a ratification vote that included the dental premiums." It noted that information "regarding the medical and dental premiums and contributions by members was distributed to the Association and members prior to the ratification vote." That information included a PowerPoint prepared by the Board, which set forth 'the details of the dental premiums.' Accordingly, it concluded "the arbitrator's interpretation of the CNA regarding dental premiums is not supported by the facts." Based on its review of the evidence, the court stated it was "left with no other option other than to vacate the award, enforce the agreement and allow the Board to continue to deduct dental premiums."
>
> Noting this case involved a grievance arbitration, the court explained that it must determine if the award is reasonably debatable (i.e., "whether the award draws its essence from the [CNA]" and "whether the award violates the law or public policy").

The court emphasized the PowerPoint advised the membership that the annual cost for dental premiums was $655 for family coverage, $401 for member and spouse coverage, $486 for parent and child coverage, and $230 for single coverage. It noted the CNA stated that medical, dental, and vision coverage shall be available through the SHEBP and that no employee's health care contribution should be less than 1.5% of their salary.

The court determined that the award "was not drawn from the agreement between the parties." It found the arbitrator "ignored the undisputed agreement between the parties regarding dental premiums" and "ignored and gave no meaning or weight to the PowerPoint." The court found "the PowerPoint reflected the true meeting of the minds of the agreement between the parties" and "is part of the contract." The court was "satisfied that the PowerPoint contained sufficient detail to inform the members." It noted "[t]he Board collected dental premiums by applying the same formula as permitted under the legislative contribution requirements provided by Chapter 78." Pa161.

* * *

The court noted the award allows Association members to enjoy dental benefits without contributing to its cost, contrary to public policy and the agreement of the parties. It held the Board did not violate the CNA when it imposed payroll deductions for dental insurance premiums because the CNA included employee contributions towards those premiums. Pa162.

This Court reversed the trial court's order and reinstated the remedy ordered by the arbitrator[4], noting circumstances substantially similar to those before Arbitrator Burrell in support of that conclusion:

> The Arbitrator correctly concluded that N.J.S.A. 52:14-17.28(c) and N.J.A.C. 17:9-9.1(c)(4) do not mandate employee contributions to dental insurance. Accordingly, neither the CNA as written nor the arbitration award violate public policy.
>
> **While the Board and the Association apparently engaged in unspecified negotiations regarding employee contributions to dental insurance premiums, the Board produced no evidence of the substance of such negotiations and any resulting agreement because it elected not to present any testimony, affidavits, or exhibits, other than the PowerPoint, at the arbitration hearing**. Absent this proof, the arbitrator correctly concluded that the record did not support imposing salary deductions for dental benefits. Moreover, the Board drafted the CNA. **If an agreement as to contribution to dental benefits was reached, it was incumbent on the Board to include those terms in the CNA through express language or appendices. It did not.**
>
> We reiterate that the Board did not argue before the arbitrator, the trial court, or this court that dental benefit contribution language was inadvertently omitted from the executed CNA or that the contract should be reformed to correct that error. In the absence of such argument, **neither the arbitrator nor the trial court was free to add additional language to the CNA imposing such contributions where the CNA was not ambiguous and there was no past practice of contributing**

[4] The arbitrator had "ordered the Board to cease deducting dental premium contributions from members and to reimburse the amounts previously deducted by issuing checks or credits to employees toward future health insurance contributions." Pa161.

> **to those premiums**. The trial court erred in doing so. **Emphasis** added. Pa163.

C. THE DECISION AND ORDERS OF THE COURT BELOW

The trial court below vacated Arbitrator Burrell's Award, holding:

> The union is bound by the plain language of the subject MOA that removed Article 7 of the expired agreement and replaced in it in its entirety.
>
> The new language removed the old language that the City would pay for dental coverage and made it clear -- the new language removed the old language that the City would pay for dental coverage and made it clear that the City's only obligation was to make the 6overage available, that is to provide it, not pay for it.
>
> Moreso, Article 25, prior practices in the MOA provides that,
>
> > "All the rights, privileges, and benefits which the employees covered by this contract enjoyed prior to the effective date of this contract are retained by the employees except as those rights, privileges, benefits specifically abridged or modified by this contract."
>
> Therefore, prior practice does not apply to this matter because the subject MOA did address and change the existing practice between the parties on the point at issue.
>
> Now the entire health insurance provision was rewritten and replaced. The union was represented by counsel and had every right to seek the change or alter that language prior to signing the subject MOA and ratifying it.
>
> While Captain Petrelli testified before the arbitrator[,] he did not execute the subject MOA with the successor labor agreement that was at issue, the MOA was executed by union

> president Francisco Lozada and city business administrator Kathleen Long.
>
> More importantly, the MOA was prepared by able labor counsel for both parties, John Shahdanian, for the union, and Peter Perla on behalf of the City.
>
> The City provided relevant interest arbitration documentation where Mr. Shahdanian stated on the record that he was involved in the negotiation of the subject MOA and that the union made concessions for a more generous salary/pay grade from the City.[5] T23-23 to T25-15.
>
> * * *
>
> As such, the union must be held to the bargain it struck at is -- as it is conclusively presumed to know the bargain it made when it executed the subject MOA.
>
> For all these reasons, the Court shall deny the plaintiff's application to confirm the subject arbitration award and grant the City's motion to vacate the award and remand the matter back to the arbitrator.
>
> An arbitrator may not contradict expressed language of the contract. See Linden Board of Education v. Linden Education Association, et al, 202 N.J. 268, 276 (2010).

[5] The City quoted attorney Shahdanian in its Answer, Affirmative Defenses and Counterclaim as having stated during an interest arbitration proceeding held on February 12, 2025 that concessions were made by the PFA in order to secure a new salary guide. Pa205 to Pa206. In his quoted statement, attorney Shahdanian did not identify any such "concessions" other than the PFA having given up longevity in order to secure the new salary guide. Pa206. Attorney Shahdanian did not identify any dental benefit cost-sharing concession as having been made by the PFA in order to secure the new salary guide it sought and there is no evidence in the Burrell Award grievance arbitration record that any such concession was even discussed. Pa 127 to Pa128; Pa 172 to Pa174; Pa206. Arbitrator Burrell, in fact, expressly held to the contrary as a matter of fact. Pa181..

> Now this is not a case where this Court is second guessing the arbitrator. Also, this is not a case where the arbitrator's interpretation of the contract is reasonably debatable.
>
> For these reasons, the Court will rule as it did. T27-2.

The Court thereupon rendered Orders denying the PFA's application to confirm the Burrell Award and vacating the Burrell Award. Pa1; Pa3.

ARGUMENT

POINT I

THE LOWER COURT ERRED IN CONSIDERING EVIDENCE PRODUCED BY THE CITY DEHORS THE ARBITRATION RECORD IN DECIDING TO VACATE THE BURRELL AWARD (Pa1; Pa3)

This Court's review of the trial court's decision to vacate the Burrell Award is *de novo* and no deference is owed to either the trial court's interpretation of the law or the legal consequences that flow from the established facts. *Town of Kearny v. Brandt*, 214 *N.J.* 76 (2013); *Manalapan Realty, LP v. Twp. Comm. of Manalapan*, 140 *N.J.* 366, 378 (1995); *Minkowitz v. Israeli*, 433 *N.J. Super*. 111, 136 (App. Div. 2013).

The City submitted "evidence" to the Court from interest arbitration proceedings that occurred months after Arbitrator Burrell rendered the Burrell Award and the trial court relied upon a single piece of such "evidence" – a

transcribed general statement made by PFA attorney John Shahdanian during the February 12, 2025 interest arbitration hearing concerning the PFA having given up certain benefits (e.g., "the longevity") to secure a salary guide in the May 2022 Memorandum of Agreement – in reaching the nonetheless unsupported conclusion that part of the bargain that the PFA had reached in securing the desired salary guide for collective negotiation unit members through the May 2022 Memorandum of Agreement was to agree to depriving collective negotiation unit members enrolled in the City's dental plan of their pre-existing right to cost-free utilization of that dental plan and agreeing to an unnegotiated employee premium cost to be unilaterally set by the City and deducted from their wages.

Apart from the fact that the trial court was thus relying upon an unsworn generalized statement by an attorney, the contents of which did not include any reference to the City's dental plan for firefighters, not to mention any concession of employee responsibility for dental plan costs, the trial court's reliance upon that post-Award attorney statement to vacate the Burrell Award was clearly error

and should require reversal. *Atl. City Bd. of Educ. v. Atl. City Educ. Ass'n,* A-0370-19T3, 2020 N.J. Super. Unpub. LEXIS 1714, *19.[6]

[6] Holding:

> While the Board and the Association apparently engaged in unspecified negotiations regarding employee contributions to dental insurance premiums, the Board produced no evidence of the substance of such negotiations and any resulting agreement because it elected not to present any testimony, affidavits, or exhibits, other than the PowerPoint, **at the arbitration hearing**. **Absent this proof, the arbitrator correctly concluded that the record did not support imposing salary deductions for dental benefits. Emphasis** added.

This unpublished decision may constitute "secondary authority" and can and should be deemed "persuasive" by this Court, particularly as it involves a substantially similar dispute, was expressly given instructive reliance by Arbitrator Burrell and a complete copy of same was (1) submitted to Arbitrator Burrell with the PFA's post-hearing brief, (2) was provided to the trial court and counsel for the City by the PFA with its post-hearing brief as part of an Exhibit C to the PFA's Verified Complaint and (3) is consequently included in the Appellant's Appendix submitted to the Court (and served upon the City) with this brief. Pressler & Verniero, Current N.J. Court Rules, comment 2 on R. 1:36-3 (2017); *National Union Fire Ins. Co. of Pittsburgh v. Jeffers*, 381 *N.J. Super*. 13, 19 (App. Div. 2005).

Consequently, the Court and all parties have been served with a copy of the opinion in *Atl. City Bd. of Educ. v. Atl. City Educ. Assn*., A-0370-19 T3, 2020 N.J. Super. Unpub. LEXIS 1714 (App. Div. Sept. 14, 2020). The PFA's counsel is unaware of any contrary unpublished decisions to that opinion of this Court. As discussed further below, Supreme Court precedent, including Supreme Court decisions cited by this Court, is totally consistent with this Court's opinion in *Atl. City Bd. of Educ*.

POINT II

THE DECISION OF THE TRIAL COURT DENYING CONFIRMATION OF THE BURRELL AWARD SHOULD BE REVERSED AND THE TRIAL COURT'S ORDERS VACATED, THE COURT SHOULD CONFIRM THE BURRELL AWARD IN ALL RESPECTS OR REMAND IT TO THE TRIAL COURT FOR SUCH CONFIRMATION AND THE CITY SHOULD BE ORDERED TO COMPLY WITH ITS TERMS (Pa1; Pa3)

Although the PFA has presented the Court and counsel for the City with the unpublished decision in *Atl. City Bd. of Educ. v. Atl. City Educ. Assn*., A-0370-19 T3, 2020 N.J. Super. Unpub. LEXIS 1714 (App. Div. Sept. 14, 2020), a substantially similar case to the instant one, in which this Court reversed a trial court decision vacating a public sector labor arbitration award, the PFA recognizes that as an unpublished decision, that opinion is non-precedential.

Nonetheless, while the PFA implores this Court to consider that opinion, deemed instructive by Arbitrator Burrell, as persuasive and worthy of reliance for this Court in deciding to reverse the trial court's decision in this remarkably substantially similar case, multiple published decisions of the Supreme Court of this State establish that this Court should reverse the trial court's decision and confirm (or require confirmation on remand) of the Burrell Award. See *Borough of Carteret v. Firefighters Mut. Benevolent Ass'n, Local 67*, 247 *N.J.* 202 (2021),

Borough of East Rutherford v. East Rutherford PBA Local 275, 213 *N.J.* 190 (2011), *Policemen's Benev. Ass'n v. City of Trenton*, 205 *N.J.* 422 (2011), *N.J. Transit Bus Operations, Inc. v. Amalgamated Transit Union,* 187 *N.J.* 546 (2006) and *State v. Int'l Fedn. of Prof'l & Tech. Eng'rs, Local 195*, 169 *N.J.* 505 (2001).

Borough of East Rutherford is a case on point. In that case, the Borough furnished healthcare coverage for its employees through the State Health Benefits Plan ("SHBP"). Prior to and at the commencement of the collective bargaining agreement's effective period, the SHBP's pertinent medical coverage plans required a $5.00 co-payment from plan participants for doctor's office visits. Effective January 1, 2007, the State Health Benefits Commission ("Commission") increased the co-payment requirement to $10.00 per office visit. The Borough thereupon passed along the increase to the PBA's bargaining unit members. *Borough of East Rutherford*, 213 *N.J.* at 193.

The PBA thereupon filed a grievance disputing the increase, claiming among other things that an Article 7 "Preservation of Rights" provision of the parties' collective negotiations agreement precluded imposition of the higher co-payment obligation on employees covered by the existing agreement. *Id.* That Article 7 provided at section7.03 thereof: "The Borough agrees that all benefits, terms and conditions of employment relating to the status of Employees, which

benefits, terms and conditions of employment are not specifically set forth in this Agreement, shall be maintained at not less than the highest standards in effect at the time of the commencement of the collective bargaining negotiations between the parties leading to the execution of this Agreement." *Borough of East Rutherford*, 213 *N.J.* at 944.

Like the May 2022 Memorandum of Agreement between the parties hereto, the PBA collective bargaining agreement provided in its grievance procedure that "[t]he arbitrator shall have no authority to add to or subtract from the agreement." *Borough of East Rutherford*, 213 *N.J.* at 945.

Before the arbitrator, the Borough argued that had the parties agreed for the Borough to shoulder the cost of a co-payment increase, a section 29.02 of the collective bargaining agreement, which stated that "[a]ll increases in premiums during the term of [the CBA] shall be borne entirely by the Borough pursuant to present practice," would have reflected such intent. Instead, section 29.02 only imposed an obligation to cover premium increases. *Borough of East Rutherford*, 213 *N.J.* at 946-947.

The arbitrator, however, rejected that argument in light of the "Preservation of Rights" clause in Article 7 of the collective bargaining agreement, which stated that benefits, terms, and conditions of employment not specifically set forth in the CBA shall be maintained at the highest standard in

effect at the commencement of bargaining negotiations leading to the execution of the collective bargaining agreement. *Borough of East Rutherford*, 213 *N.J.* at 198. The arbitrator consequently concluded that the collective bargaining agreement was violated when PBA members were required to pay the increased co-payment and directed the Borough "to reimburse the employees for the amount of the [increased] co-payments" for the duration of the contractual period. *Borough of East Rutherford*, 213 *N.J.* at 198-199.

After the Borough commenced an action in the Law Division to vacate the arbitrator's award, the trial court vacated the award, holding that the award was contrary to *N.J.S.A.* 52:14-17.29(C), violated public policy, exceeded the arbitrator's authority, was procured by undue means, and was not reasonably debatable. *Borough of East Rutherford*, 213 *N.J.* at 199. As noted by the Supreme Court, similar to the holdings of the trial court in the instant case, the trial court held that the award impermissibly added terms to the CBA in violation of the above-quoted provision in the grievance procedure and that the trial court had "also concluded that the Arbitrator exceeded her authority by finding support for the award in Article 7 (Preservation of Rights), explaining that Article 7 cannot be construed to give employees greater rights than those afforded by statute"; that "[f]inally, to complete its analysis, the court determined that the Arbitrator's interpretation of the contract was not reasonably

debatable because the award did not comply with the limited authority that the CBA conferred on the Arbitrator." *Borough of East Rutherford*, 213 *N.J.* at 200.

On appeal, this Court reversed and reinstated the arbitration award in favor of the PBA. *Id.* The Supreme Court thereafter granted the Borough's petition for certification. *Borough of East Rutherford*, 213 *N.J.* at 200. In affirming this Court's decision to reverse the trial court's decision and to order confirmation of the Award, in language particularly applicable to this Court's review of the trial court's decision in the instant case, the Supreme Court held, 213 *N.J.* at 203-204:

> With respect to the statutory grounds advanced to support vacation of the arbitration award, none of the Borough's arguments have merit. **The Arbitrator applied the relevant contractual provisions in the CBA to the increased co-payment.** In particular, **the Arbitrator focused on the express language of Article 7.03 of the CBA, namely that "all benefits, terms and conditions of employment . . . shall be maintained at not less than the highest standards in effect at the time of the commencement of the collective bargaining negotiations."** (emphasis added). In interpreting and applying the plain language of that provision, the Arbitrator determined that an increased co-payment did not maintain the benefits available to PBA members at the time that the CBA took effect, contrary to the contractual promise contained in Article 7.03. **The Arbitrator characterized the former level of co-payment required of PBA members as a past practice between the Borough and the PBA, a characterization that was not unreasonable.** Further, **the Arbitrator's ultimate conclusion that the prior existing co-payment obligation must be maintained was not an unfair or unreasonable interpretation and application of the Preservation of Rights language of the agreement. . . .**

> **Although Article 36 prohibited the Arbitrator from adding to or subtracting from the CBA, and Article 29 specifically addressed only the Borough's obligation to bear increases with respect to premiums, the Arbitrator concluded that those provisions did not constitute the equivalent of a CBA provision prohibiting an arbitrator from fashioning the specific make-whole remedy developed here**. **Emphasis** added,

The Supreme Court further went on to hold, 213 *N.J.* at 205-206, in language just as applicable to the Burrell Award:

> **The Arbitrator articulated a contractual basis to support her decision that the agreement had been violated** and to explain how her remedy was not inconsistent with the CBA's provisions. As did the Appellate Division, we conclude that the Arbitrator's remedy did not clash with the CBA's provisions. Thus, we reject the arguments that the Arbitrator's award must be vacated as based on undue means, *N.J.S.A.* 2A:24-8(a), or because the Arbitrator exceeded her authority, *N.J.S.A.* 2A:24-8(d). The Borough fails to meet the standards for the vacation of an arbitration award under those statutory provisions. **Assuming one could conclude that the Arbitrator reached a decision that was not the result of the better of two arguments based on the CBA's language, the outcome here was at least reasonably debatable. Thus, even if the remedy the Arbitrator fashioned was not the preferred or correct outcome, a reversal would be contrary to the deferential standard for reviewing arbitral decisions.**

The Supreme Court further elucidated upon the standard of review where, as here, the claim is not that the arbitrator engaged in any fraud, corruption, or misconduct during the arbitration, holding, 213 *N.J.* at 201-203:

> Consistent with the salutary purposes that arbitration as a dispute-resolution mechanism promotes, courts grant

arbitration awards considerable deference. "[T]o ensure finality, as well as to secure arbitration's speedy and inexpensive nature, there exists a strong preference for judicial confirmation of arbitration awards." *Ibid*. (internal quotation marks omitted). We have stated that "[a]rbitration should spell litigation's conclusion, rather than its beginning," *N.J. Tpk. Auth. v. Local 196, I.F.P.T.E*., 190 *N.J.* 283, 292, 920 A.2d 88 (2007), and that arbitration of public-sector labor disputes, in particular, "should be a fast and inexpensive way to achieve final resolution of such disputes and not merely 'a way-station on route to the courthouse,'" *Policemen's Benevolent Ass'n, Local No. 11 v. City of Trenton*, 205 *N.J*. 422, 429, 16 A.3d 322 (2011) (quoting N.*J. Office of Emp. Relations v. Commc'ns Workers of Am.*, 154 *N.J.* 98, 111, 711 A.2d 300 (1998)). Thus, arbitration awards are given a wide berth, with limited bases for a court's interference.

Generally, when a court reviews an arbitration award, it does so mindful of the fact that the arbitrator's interpretation of the contract controls. **"Under the 'reasonably debatable' standard, a court reviewing [a public-sector] arbitration award 'may not substitute its own judgment for that of the arbitrator, regardless of the court's view of the correctness of the arbitrator's position.'"** *Middletown Twp.*, supra, 193 *N.J.* at 11, 935 A.2d 516 (quoting N.*J. Transit Bus Operations v. Amalgamated Transit Union*, 187 *N.J.* 546, 554, 902 A.2d 209 (2006)). **Courts are not to "second-guess" an arbitrator's interpretation,** *State v. Int'l Fed'n of Prof'l & Tech. Eng'rs, Local 195*, 169 *N.J.* 505, 514, 780 A.2d 525 (2001) (internal quotation marks omitted), because

> the question of interpretation of the collective bargaining agreement is a question for the arbitrator. **It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business**

> **overruling him because their interpretation of the contract is different from his.**
>
> [*Weiss v. Carpenter, Bennett & Morrissey*, 143 N.J. 420, 433, 672 A.2d 1132 (1996) (quoting *United Steelworkers v. Enter. Wheel & Car Corp*., 363 U.S. 593, 599, 80 S. Ct. 1358, 1362, 4 L. Ed. 2d 1424, 1429 (1960)).]
> **Emphasis** added.

As the Supreme Court warned, 213 *N.J.* at 209:

> Arbitration simply is not a mere gateway to the courthouse. The resolution of arbitrated disputes should ordinarily end with the conclusion of the arbitration. Such an approach gives credence to the notion that arbitration provides a straightforward and effective way to resolve legal matters. **That is particularly so in the case of public-sector labor disputes. Parties that agree to arbitrate contractual disputes must recognize that courts give arbitrators significant discretion to make reasoned conclusions based on interpretations of the contractual language and the relevant law. The mere fact that this Court or any other court may disagree with an arbitrator's decision is not sufficient to overturn an arbitration award.**
> **Emphasis** added.

In the instant case, in rejecting Arbitrator Burrell's interpretation and application of the new Article XXV in the May 2022 Memorandum of Agreement because the parties had substantially revised and substituted the language at Article VII of the 2010-2019 collective negotiations agreement via the May of 2022 Memorandum of Agreement, the trial court substituted its own judgment for that of Arbitrator Burrell on an issue of pure contract interpretation. Further, it did so merely because, without reasonable explanation,

the trial court's interpretation of the contract was at odds with that of Arbitrator Burrell.

As concerns the trial court's conclusion that Arbitrator Burrell's interpretation of the agreements between the PFA and the City was not reasonably debatable, the Supreme Court has explained, "an award is 'reasonably debatable' if it is 'justifiable' or 'fully supportable in the record.'" *Policemen's Benevolent Ass'n v. City of Trenton*, 205 *N.J.* 422, 431 (2011). In *Policemen's Benevolent Ass'n,* the Court further stated, in language directly applicable to the Court's review of this appeal,

> **[A]n arbitrator may "weav[e] together" all those provisions that bear on the relevant question in coming to a final conclusion**. *N.J. Transit Bus Operations, Inc. v. Amalgamated Transit Union*, 187 *N.J.* 546, 555, 902 A.2d 209 (2006). When that occurs, **even if the arbitrator's decision appears to conflict with the direct language of one clause of an agreement, so long as the contract, as a whole, supports the arbitrator's interpretation, the award will be upheld.** See, e.g., *ibid.* (upholding arbitration award interpreting agreement as whole, where, in isolation, one provision might appear to contrary); see also *Ludwig Honold Mfg. Co. v. Fletcher*, 405 F.2d 1123, 1132-33 (3d. Cir.1969) (noting unambiguous clause may become ambiguous in light of contract as whole and particular facts presented).
>
> . . . . Applying those standards, we are satisfied that **the arbitrator's interpretation of the Agreement is plausible and, thus, reasonably debatable**.

Policemen's Benevolent Ass'n, 205 *N.J.* at 430-431. **Emphasis** added.

In the instant case, Arbitrator Burrell agreed with the PFA's interpretation of the agreements between the parties; particularly how the benefit preservation clause at the new Article XXV of the May 2022 Memorandum of Agreement was to be interpreted and applied to the issues before him. That interpretation was consistent with both Arbitrator Burrell's earlier interpretation of that new Article XXV in a prior arbitration between the parties and the interpretation of the same language appearing in a City police union contract by two other arbitrators. That interpretation is certainly plausible, if not inescapable.

More recently, the Supreme Court held that "if two or more interpretations of a labor agreement could be plausibly argued, the outcome is at least reasonably debatable,"; that "affirming an arbitrator's award is not a comment on the viability of opposing interpretations of a disputed labor agreement, '[n]or is it a conclusion that the arbitrator's interpretation is the best one. That is not the standard. What is required is that the arbitrator's interpretation finds support in the Agreement.'" *Borough of Carteret*, 247 *N.J.* at 212 and 214-215. See also *Middletown Tp. PBA Local 124 v. Township of Middletown*, 193 *N.J.* 1 (2007) and *State v. Int'l Fedn. of Prof'l & Tech. Eng'rs, Local 195*, 169 *N.J.* at 517 ("Even if we could construct an alternate interpretation of the contractual language, we are without authority to do so. The

parties bargained for the arbitrator's contractual interpretation, and we cannot upset that legitimate interpretation based on our own interpretation.").

In the instant case, Arbitrator Burrell wove together the language of Article VII of the 2010-2019 collective negotiations agreement, the new substituted language of Article VII of the May 2022 Memorandum of Agreement and the language of the new Article XXV of the May 2022 Memorandum of Agreement in reaching the conclusion that under the new Article XXV, the parties had intentionally preserved the no-employee-cost dental plan benefit that City firefighters had been contractually entitled to from at least 2010 through to 2022, as evidenced by the absence of language in the May 2022 Memorandum of Agreement specifically altering the pre-existing no-employee-cost dental plan benefit so as to provide for an employee cost for dental plan benefits.

That conclusion was based upon a more than plausible interpretation of Articles VII of the 2010-2019 collective negotiations agreement, of the new Article VII (which confirmed the provision by the City of a dental plan to firefighters and their eligible dependents, but made no provision for an employee cost) and of the new Article XXV of the May 2022 Memorandum of Agreement that was clearly justifiable in light of the language of those provisions and was fully supportable in the record before Arbitrator Burrell. Consequently, the trial court clearly misapplied the standards for reviewing a public sector labor

arbitration award in holding that Arbitrator Burrell's interpretation of the contract between the PFA and the City was not reasonably debatable and in, therefore, vacating the Burrell Award.

CONCLUSION

For the reasons set forth herein, the Court should reverse the decision of the trial court vacating the Burrell Award and should itself either confirm that Award or remand the case to the trial court to render an Order confirming the Burrell Award in all respects.

Dated: August 15, 2025

Respectfully submitted,

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Superior Court of New Jersey
Appellate Division

Docket No. A-003707-24

PATERSON FIREFIGHTERS ASSOCIATION, *Plaintiff-Appellant,* vs. CITY OF PATERSON, a Municipal Corporation of the State of New Jersey, *Defendant-Respondent.*	:	CIVIL ACTION ON APPEAL FROM THE ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, PASSAIC COUNTY DOCKET NO. PAS-L-438-25 Sat Below: HON. BRUNO MONGIARDO, J.S.C.

RESPONDENT, CITY OF PATERSON'S
BRIEF IN OPPOSITION TO APPELLANT'S APPEAL

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Date Submitted: September 24, 2025

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PRELIMINARY STATEMENT

This appeal stems from a dispute over the language in a negotiated and signed Memorandum of Agreement ("MOA") between the City of Paterson ("City" or "Paterson") (collectively "the Parties") and the Paterson Firefighters Association ("Union" or "PFA"). The firefighters' Union represent some of the highest paid employees in Paterson -- a City of the First Class with a long and well-documented history of fiscal distress and reliance on State transitional aid. The Union complains that its members should not have to pay any contributions for dental coverage despite the fact that (1) the Union's able-bodied labor counsel agreed to replace, in its entirety, the language in the healthcare coverage article contained in the Parties new CBA as a financial giveback to the City in order to reach a new labor contract; and (2) all City employees contribute toward their dental coverage.

The City's prior labor agreement with the Union required the City to provide completely cost-free dental coverage to the Union's members in a contract that lasted from 2010 to 2019. Thereafter, the financial landscape of the City became more dire. The Parties spent years trying to negotiate a new contract and were on the verge of going to interest arbitration when the MOA was reached. While negotiations were ongoing, the City was under oversight by a fiscal monitor appointed by the State's Division of Community Affairs ("DCA"). The Union was faced with two options: (1) either give financial concessions to the City to reach a

new contract; or (2) risk losing the salary grid it desperately wanted to implement in interest arbitration. The Union chose the former option. As such, the MOA was prepared, negotiated and executed.

Article VII - Health Benefits – reflects one financial concession agreed to by the Union. The MOA on this Article reads at the outset: "*Replace this Article with the following . . ..*" The new language removed and replaced the language of the entire Article which removed language obligating the City to pay the entire cost for dental coverage on behalf of the firefighters. The MOA remained in effect for nearly two years with nary a word from the Union as its members contributed their portion to dental plan coverage. Then, with no warning, the Union filed the underlying grievance seeking to renege on the bargain it struck with the City. In essence, the Union wants to keep the new salary grid (another Article that had been replaced in its entirety) and alter the language in the MOA memorializing the Union's promise to contribute to the cost of the dental plan coverage.

This is not the first time the City has been before a New Jersey court to fend off an attack by this Union seeking more compensation from the City. Hence, the financial shortcomings of Paterson is well-documented as well as the City's reliance on annual aid from the State to remain solvent in accordance with prevailing case law and statutory authority that caution against any decisions by a finder of fact that will lead the City into State receivership or municipal bankruptcy.

It is well-settled that an arbitrator's power to hear a dispute and fashion a remedy derives from the terms of the arbitration provision governing the proceedings. Here, the dispute was arbitrated and the decision of the Arbitrator was reversed by Hon. Bruno Mongiardo, J.S.C. (ret./recall) on the grounds that the arbitrator had, as a matter of law, exceeded the authority granted to him by the Parties in their MOA. An arbitrator cannot fashion whatever remedy he feels is the right remedy when he has not been granted the authority by the written agreement to do so. Accordingly, the City respectfully urges the Court to affirm the Order entered by Judge Mongiardo and vacate the Arbitrator's Award.

RELEVANT PROCEDURAL HISTORY

The Union filed the underlying grievance on January 22, 2024. (Pa118-119) The grievance proceeded through the steps at City-level. (Pa119) The Union then filed for binding arbitration with PERC.

PERC docketed the matter as AR-2024-362 and AR-2024-440 because the Union filed for arbitration on the exact same issue twice. (Da110) PERC assigned the matter to Arbitrator Dean L. Burrell, Esq., who treated the matter as PERC Docket No. AR-2024-362. (Pa166) Burrell held a hearing with the Parties on August 13, 2024. (Pa167) At the hearing, the City relied upon the plain language of the MOA arguing the language was clear and unambiguous on its face. The Union presented the testimony of a single witness, Fire Captain Frank Petrelli. (Pa1743) The hearing

was not transcribed. Afterwards, the Parties submitted post-hearing briefs to Arbitrator Burrell. (Pa118, 167; Da009)

Arbitrator Burrell upheld the Union's grievance in an Opinion and Award dated December 23, 2024. (Pa166-184) On February 4, 2025, the Union filed for confirmation of the award in the Superior Court of New Jersey, Law Division, Passaic County, Docket No. PAS-L-438-25. (Pa186) The matter was treated as a summary action and assigned to the Hon. Bruno Mongiardo, J.S.C. (ret./recall). (Pa2, 4) On February 28, 2025, Judge Mongiardo issued an Order to Show Cause against the City, directing the City to respond with an answer or motion by April 1, 2025. (Pa192) The City did just that, filing both an Answer with a Counterclaim to vacate the award (Pa195), as well as a Cross-Motion to vacate and have the matter remanded back to Arbitrator Burrell. (Da026) The Union filed its Answer to the Counterclaim on April 4, 2025. (Pa215)

The matter was initially listed for oral argument on April 11, 2025, but the Union failed to appear, so the matter was relisted for oral argument on May 2, 2025.[1] (T5) During oral argument, the City argued the Union made misrepresentations to Judge Mongiardo on certain legal points, so it asked for permission to submit a

[1] The Union has not ordered the transcripts from either date of oral argument, which is problematic for the Union per R. 2:5-3(a). Hence, the record only contains Judge Mongiardo's bench decision rendered on June 30, 2025, which will be referred to as "(T_)."

supplemental brief as to same, and the Judge agreed to supplemental briefing by both Parties. On May 29, 2025, the City filed its supplemental brief to the Judge (Da161), and on April 3, 2025, the Union filed its reply. (Da186).

On June 30, 2025, Judge Mongiardo set forth his reasons for reversing Arbitrator Burrell's arbitration award, pursuant to the requirements of the Arbitration of Collective Bargaining Agreements Act ("Arbitration Act" or "Act"), N.J.S.A. 2A:24-1, *et seq*. The same day, Judge Mongiardo issued an Order denying the Union's application to confirm the award, and he granted the City's application to vacate and remand the award back to Arbitrator Burrell, finding that Burrell overstepped his authority as Arbitrator and did not follow the law in rendering the award, per the Act. (Pa1-4) The Union filed its appeal (amended) on July 28, 2025. (Pa6)

STATEMENT OF FACTS

Paterson is a municipality like no other. (Pa198) There is no municipality in New Jersey which is a City of the First Class in terms of its population, per N.J.S.A. 40A:6-4 (over 150,000), and also under the complete financial control of the State of New Jersey's Department of Community Affairs ("State" or "DCA") because it receives millions of dollars in Transitional Aid ("TA") from the State to avoid falling into State receivership or, worse, municipal bankruptcy. (Pa198)

In its Counterclaim and Cross-Motion to Vacate, the City discussed how

Kathleen Long, the City's former Business Administrator ("BA" or "Long"), had testified in the pending Interest Arbitration ("IA") between the Union and the City about the dire financial state in which Paterson operates and how the potential for layoffs is a concern. (Da057-069) The IA (PERC Docket No. IA-2025-009) was occurring simultaneously as the instant matter was pending before Judge Mongiardo. (Da034, 053) Ms. Long testified how the City required financial aid from the State for years and this assistance was called *Transitional* Aid because the State expected the receiving municipality to wean itself off of it by reducing their financial demands to the State each year by fifteen percent (15%). (Pa199) Long further testified that to obtain TA, the City was required to enter into a Memorandum of Understanding ("MOU") with the State by which the City had to turn over its complete fiscal control to the DCA. (Ibid.)[2]

Long explained how the DCA sends a fiscal monitor to the City each week, and the role of the monitor is to look for ways to make the City more efficient and economically viable. (Da199) Long affirmed that the City is prohibited from expending *any* funds unless the expenditure has been approved by the DCA. (Pa201) Long discussed how the DCA often does not approve expenditures and tells the City it must do more with less and ultimately become self-sufficient and no longer

[2] The MOU and its implementing City resolution are in the record below. (Da133-157)

dependent on TA. (Ibid.)

Long described how one of the main areas the DCA carefully scrutinizes and oversees is the City's labor negotiations because about eighty-percent (80%) of the City's budget goes to salary and wages for its employees, so this is a critical area for the City to become self-sufficient. (Pa202) Long explained that the DCA will permit the City to be more flexible in agreeing to increases in wages/salary if a union gives up other economic components during negotiations. (*Ibid.*) Javier Silva, as the City's CFO, also testified in the same IA that the City's firefighters are some of the City's highest paid employees, earning more than their police officer counterparts. (Pa203)

The City explained in its Counterclaim and Cross-Motion that the prior labor agreement between the City and the Union covered the period July 1, 2010 through June 30, 2019. (Pa204) The Parties attempted to reach a successor labor agreement but were initially unable to do so. (Ibid.) The subject MOA was reached on the eve of Interest Arbitration. (Ibid.) The Union was not represented by its current attorney (Mark C. Rushfield, Esq.) regarding the negotiation and execution of the subject MOA, but by John Shahdaninan, Esq., of Trenk, Isabel, Siddiqi & Shahdanian. The City was represented by Peter P. Perla, Jr. Esq., of PRB Attorneys at Law, LLC. (Pa204-205) Regarding the contents of the MOA, Mr. Shahdanian explained in the pending IA proceeding that the Union made a number of economic concessions to get a longer and enhanced salary grid as part of the subject MOA:

MR. SHAHDANIAN:

. . . .

Q. Okay. So Exhibit 26 in the - - in the firefighters' submission is the current salary grid. And so the old salary grid had how many steps? Do you remember?

A. [Union President Francisco Lozada:] I would say 12.

Q. Okay. And the new one has how many?

A. Nineteen. 20. 20. I'm sorry.

. . . .

Q. Okay. And when - - you were involved in negotiations of that MOA; right?

A. Yes, sir.

Q. And you signed it; right?

A. Yes, sir.

Q. Was there - - in making that deal with the City, did the City has you for concessions? The union, not you personally, I mean the union.

A. Yes.

Q. And do you recall what the union agreed to give out in exchange for their new salary grid?

A. Yes.

. . . .

MR. SHAHDANIAN: Because I - - my assumption is that the city is going to argue that - - that the grid itself is greater than X percent step and that therefore they should not have to give a salary raise because they're at their final offer head of zero percent increase. And I want the Arbitrator to understand that that - - those increases that are in the guide were bought and paid for by the union in the last round of negotiations, and that's why they are there, and that's why they've gone to a 20-step grid as opposed to a 12-step grid.

> And I think it's absolutely relevant to the determination of - - you know, the issue of when - - especially when you're comparing it to other municipalities and seeing what their - - what their steps are. Because they may have benefits like this union gave up - - I mean, again, I don't want to testify for the president, but I don't think it's going to be disputed, they gave up their terminally - - they gave up the longevity, you know, they gave up - - ***they gave up a number of different items in order to get that to that number.*** [Pa205-206 (emphasis supplied).]

The Parties prior labor agreement, which was in effect from 2010 to 2019, contained plain language that required the City to pay the full cost of the dental plan coverage for the Union's members:

> ARTICLE VII
> HEALTH BENEFITS
> A. HOSPITAL, MEDICAL, PRESCRIPTION AND DENTAL – EMPLOYEES
>
> 1. The City shall pay the cost of hospital and medical insurance for full-time employees and their eligible dependents for the benefits currently in effect, except that active employees shall continue to contribute to the cost of health insurance as required by applicable law. The City and the PFA recognize that when employee health benefit contributions become negotiable under P.L. 2011, Chapter 78, the contribution rate can be negotiated by the parties either up or down from the current percentage amounts required by law. In the event that a court of competent jurisdiction determines that Chapter 78 is unconstitutional and/or that it is illegal for a municipality to require its employees to contribute to the cost of health care without negotiation, the City and the PFA agree that contributions towards the cost of hospital, medical, dental and prescription insurance shall be governed by applicable law and the collective bargaining agreement.
>
> 2. The City shall pay the full cost of the prescription

plan currently in effect for full-time employees and their eligible dependents.

3. Effective as soon as possible after the signing of this Agreement, the prescription plan shall provide a ten dollar ($10.00) co-pay per brand name prescriptions, including oral contraceptives, and a zero dollar ($0.00) co-pay per generic prescription, including oral contraceptives.

4. The City shall pay the full cost of the dental plan currently in effect for full-time employees and their eligible dependents.

5. The City shall pay the full cost of an optical plan for full-time employees.

B. HOSPITAL, MEDICAL, DENTAL AND PRESCRIPTION – RETIREES

1. The City shall pay the full cost of hospital, medical, dental, and prescription coverage for the individual retiree, spouse and dependent unmarried children under the age of twenty-six (26) for employees who retire on a paid pension under the following circumstances:

a. Employee retires after twenty (20) years of continuous service with the City.

b. Employee retires with fifteen (15) years of continuous service with the City and has attained the age of sixty-two (62).

c. Employee retires on an accidental disability pension or ordinary pension with not less than five (5) years of continuous service with the City.

Note: The City will pay the cost of the aforementioned insurance until the death of the retiree.

2. Upon the death of the retiree, the surviving spouse

> and dependent children under the age of twenty-six (26) shall be entitled to remain enrolled in the City's medical, hospital, dental and prescription plan, with the full premiums being paid by the City. This coverage shall cease when any of the following occur:
>
> a. Widow dies.
>
> b. Widow remarries.
>
> 3. The City will pay the full cost of the Medicare supplement effective August 1, 1989 for those employees who retired on or after August 1, 1987.
>
> 4. The provisions of this section are subject to the Rules and Regulations of the carrier and the Police and Firefighters Retirement System, Division of Pensions.
>
> C. HOSPITAL, MEDICAL DENTAL AND PRESCRPTION – WIDOWS
>
> The City shall pay the full cost of medical, hospital, dental, and prescription insurance for the widow and eligible dependents of employees who die while an employee of the Fire Department. [Pa207-209 (emphasis supplied).]

The MOA, however, deliberately **removed** that language from the successor labor agreement so that the City is only required to *provide* dental plan coverage, but it is not required to *pay* its full cost. The language in the MOA could not be clearer that it **replaced** the prior Article with an entirely new Article:

> **ARTICLE VII – Health Benefits**
>
> ***Replace this Article with the following:***
>
> The Employer agrees to provide coverage under the State Health Benefits Plan for all employees and their dependents as defined under the respective policies of insurance. ***The***

Employer agrees to provide major medical dental and prescription drug insurance to all full-time employees and their dependents. For the duration of this Agreement, each employee shall make the required contribution to this plan at the Tier 4 level under Chapter 78. Employees shall become eligible for all health benefits enumerated above under the completion of ninety (90) calendar days.

The contribution shall apply to employees for whom the employer has assumed a health care benefits payment obligation to require that such employees pay at a minimum the amount of contribution specified in this section for health care benefits coverage. An employee on leave without pay who receives benefits under the State Health Benefits Plan shall be required to pay the requisite contribution and shall be billed by the employer for these contributions. Healthcare benefits coverage will cease if the employee fails to make timely payments. The parties agree that should an employee voluntarily waive all coverage under the State Health Benefits Plan and provide certification to the City that he/she has other health insurance coverage; the City will waive the contribution for that employee.

The City agrees to pay an incentive payment to any City employee who waives both medical and prescription coverage under the City's State Health Benefits Program ("SHBP"). The City agrees to pay an annual incentive payment to any City employee who, at the time of open enrollment, is eligible for and waives both medical and prescription coverage under the SHBP. The SHBP waiver incentive payment shall not exceed 25% of the amount saved by the City because of the waiver or $5,000, whichever is less. In order to be deemed eligible for the payment, the employee must waive coverage at open enrollment of each year and the employee's waiver must remain in effect for the full benefit year. The employee's waiver must follow the requirements outlined by the New Jersey Division of Pensions and Benefits. Should an employee seek reinstatement of health benefits coverage with the SHPB at any time during a benefit year, the reinstatement of coverage with the SHPB will void the

employee's eligibility for the SHPB waiver payment. The City will issue the payment in full to each eligible City employee at the beginning of the next benefit year.

The City agrees that if the SHPB removes the Direct 10 plan, the City will immediately seek new coverage under the SHBP that is equal to or better to the Direct 10 plan. If none exists, the City agrees to notify the Association of the removal of the Direct 10 to negotiate the terms of the new health insurance benefits.

The City shall pay the full cost of hospital, medical and drug prescription coverage for the individual employee, spouse, and dependent children up to age 26 for employees who retire on a paid pension under the following circumstances:

1. Employee retires with 20 years or more of continuous service with the City and has attained 20 years of credit in the New Jersey pension plan.
2. Employee who retires on or after 62 with fifteen (15) or more years of service with the City and has attained 15 years of credit in the New Jersey pension plan.
3. Employee retires on an accident disability pension or ordinary pension with at least five (5) years of continuous service with the City.

Retires hired after ratification must pay 1.5% of pension payment as medical benefit contribution, which such contribution will be capped at a pension amount of $100,000.

Upon retirement, if you and/or your dependents are age 65 or have been on Social Security Disability for 24 months or more, you are required to enroll in Medicare Parts A and B. If you have not enrolled in both parts of Medicare, you should contact Social Security to apply 90 days prior to your retirement date.

For employees who retire on and after September 1, 1980, the City will reimburse the cost of the Medicare Part B premium for the retiree only.

The surviving spouse and dependent children of a retiree

> who dies shall be entitled to remain enrolled in the City's Hospital-Medical-Prescription plan, the premiums being paid by the City. The spouse's coverage shall terminate upon the spouses' death or remarriage. Dependent children shall remain enrolled in the Hospital/Medical/Prescription plan until age 26. ***Dependent children shall remain enrolled in the dental plan (if applicable) until age 23.***
>
> The City reserves the right to self-insure or change insurance companies in providing health benefits agreed to hereunder as long as the benefits set forth in this Agreement, and presently in effect, are equal to or better. The Association will be notified by the City in advance regarding such changes. [Pa209-211 (emphasis supplied).]

The MOA was signed by Union President Francisco Lozada on May 17, 2022, and by Long as the City's BA on May 31, 2022, making it fully executed and binding. (Pa115-116, 211)

The MOA further notes that other Articles in the prior agreement were also replaced in full using the exact same language: "Replace this Article with the following," which was also used at Article XIV and Article XXVI. (Pa211) Notably, the Union never raised an issue about those other Articles being replaced. For the Articles that were only modified, there are strikeouts in the MOA reflecting the parts of the prior agreement where this was done. (Ibid.) The Union purposely made these concessions to the City (as well as indirectly to the State) because it desperately wanted the current, enhanced salary grid that is in effect between the Parties by virtue of the MOA being executed, which their attorney for the MOA, Mr. Shahdanian

repeatedly conceded in the IA proceeding. (Ibid.) The Union was well aware of the fact that if it did not make these economic concessions, the MOA would not be ratified by the City or approved by the DCA, and it would lose the salary grid its members coveted, which the arbitrator in the IA made abundantly clear. (Ibid.)

The Union filed its grievance two (2) years after the MOA was executed by President Lozada. (Pa212) The City explained in its Counterclaim that the Union's position was a brash attempt to try and claw back one of the economic concessions it had made for the enhanced salary grid in the MOA, which is the Union's membership would now have to bear part of the cost of their dental coverage from the City as part of the *quid pro quo.* (Ibid.)

The City made these same points to Arbitrator Burrell thus preserving the record:

- "[T]he Union is claiming entitlement to additional benefits notwithstanding the clear language of the MOA demonstrating that the Union waived these benefits in favor of a more lucrative salary grid and overall compensation package from the City." [Da010.]

- "The City's financial struggles are well-documented and have been the piece of numerous interest arbitrations as you, the Arbitrator well know. To now hold the City responsible for paying dental plan costs for all Fire Fighters when the Union agreed to replace the Healthcare Benefits Article in its entirety would have catastrophic financial consequences to the City. The Fire Fighters are currently in contract negotiations with the City. Let them raise this issue at the bargaining table if they so choose, but this additional cost cannot be foisted on the City in light of the clear language of

> the MOA to replace the Health Care Benefits Article in its entirety." [Ibid.]
>
> - "The Parties had equal opportunity to review the MOA before signing it; they both did so and signed off on the new language; and they both ratified the new language. "Furthermore, the Union is well-aware that the main reason the MOA was ratified was that for the Fire Fighters to get the generous financial package they so desperately sought, they had to agree to certain cost-saving measures on behalf of the City. The MOA was signed over two years ago; the Union cannot now alter the terms of what was agreed upon." [Da017.]
>
> - "The truth is, the Union absolutely knew it gave up full payment of its dental coverage in exchange for a financial package that was exceedingly generous in light of the City's limited funds. If the Union disagrees or wants more, its recourse is to bargain for it and not file an out-of-time grievance asking for an absurd interpretation of language that is clear and unambiguous." [Da018]

Arbitrator Burrell also acknowledged being aware of the City's position on these points, since he discussed it in his Award:

> **POSITIONS OF THE PARTIES**
>
> . . . .
>
> **Employer**
>
> . . . .
>
> In this matter the MOA contains no obligation for the City to reimburse dental costs to unit employees where MOA Article VII replaced CBA Article VII in its entirety, removing that previous obligation. The top of the MOU under Article VII expressly states. "*Replace this Article with the following*" (Italics in original). This is unambiguous.

> The Union contends it was without knowledge of the new contribution requirement. However, not only was language removed, thereby ending the City's obligation, the MOA Article VII expressly acknowledges that employees must contribute to their health benefits. The record demonstrates that all City employees have paid for their coverage under the new MOA. Both parties drafted the MOA, were represented by counsel, had the opportunity to review the MOA and thereafter signed it. The MOA reflects the balancing between a generous financial package versus necessary cost saving such as employee contributions for dental coverage.
>
> The Union seems to argue a mistake of fact because they did not appreciate, understand or intend that by agreeing to the MOA, they agreed to relinquish the City's complete granting of dental benefits. At best this constitutes a unilateral mistake of a fact which provides no basis for relief, as contrasted with a mutual mistake of fact. With a unilateral mistake the complaining party's intent is without relevance.
>
> The Union cannot demonstrate a mutual mistake, where immediately after the MOA was executed, the City commenced charging all City employees including the unit for their dental coverage. Such conduct shows the City understood the change by the elimination of the former CBA Article VII. The Union was represented by counsel, the contract was reviewed and ratified, the Union filed numerous grievances and petitions to PERC over the interpretation of the new MOA but for two years has not raised this issue. Having knowingly given up this benefit the Union's option now is to bargain for its restoration, rather than filing an untimely grievance. Accordingly, the Union is bound by the clear and unambiguous language of the contract which removed the prior health plan provision. For this reason, the grievance should be denied. [Pa178-179]

The Union's Answer to the City's Counterclaim regarding all of these points simply "[d]enies knowledge or information sufficient to form a belief as to the truth

of the allegations" or claims the information is "neither relevant nor material to the issues before the Court." (Pa215-200) Thus, the Union did not deny or respond that the information in the City's Counterclaim was false or inaccurate, and it did not assert any affirmative defenses to the *alleged* impropriety of the information being in the City's Counterclaim or its case before Judge Mongiardo. (Pa215-221) In fact, in its Letter Reply Brief, the Union *never objected* to the information being included in the record. (Da186-191) The Union also provided no authority to Judge Mongiardo that the information should not be in the record. (Ibid.) The Union simply contended that the information should be disregarded by the Judge as being irrelevant, stating: "As set forth in the PFA's Answer to Counterclaim, all that information is neither relevant nor material to the issues before the Court in its determination as to whether to confirm the Award." (Da188) The matter below was a bench trial, not a jury trial. It was a summary action before a very experienced attorney and retired trial judge on recall. Judge Mongiardo made it clear he was relying on the plain language of the MOA for his rulings and Orders.

LEGAL ARGUMENT

POINT I

PUBLIC SECTOR ARBITRATION AWARDS ARE CAREFULLY SCRUTINZED AND THE ARBITRATOR CANNOT EXCEED THEIR AUTHORITY AND MUST FOLLOW THE LAW, OR THEIR AWARD CAN BE VACATED UNDER THE ARBITRATION ACT.

Unlike private sector arbitration, in public sector arbitration the courts are supposed to carefully scrutinize the awards because of the public interest involved. City Ass'n of Sup'rs and Adm'rs v. State Operated Sch. Dist. of Newark, 311 N.J. Super. 300, 308-09 (App. Div. 1998) ("in a public labor agreement context, the parties must deal with each other. 'In that circumstance the agreement to arbitrate is vital to keeping the relationship between the parties afloat and guided by a set of agreed-to rules'"; "Thus, public employee arbitration awards are reviewed more extensively than their private counterparts"; "In the public sector, 'public policy demands that inherent in the arbitrator's guidelines are the public interest, welfare and other pertinent statutory criteria"); Habick v. Liberty Mut. Fire Ins. Co., 320 N.J. Super. 244, 252 (App. Div.), certif. denied, 161 N.J. 149 (1999) ("The rationale for the broader public sector standards of review is essentially bottomed on fairness to the parties, for whom arbitration of collective bargaining agreements is compulsory"); South Plainfield Bd. of Ed. v. South Plainfield Ed. Ass'n, 320 N.J. Super. 281, 291 (App. Div.), certif. denied, 161 N.J. 332 (1999).

In this respect, the Legislature has created the Arbitration of Collective Bargaining Agreements Act ("Arbitration Act" or "the Act"), N.J.S.A. 2A:24-1 *et seq.*, which provides that once an arbitrator issues an award, any party to the arbitration may seek confirmation of that award in the Superior Court within three months of the arbitrator's decision. Tretina v. Fitzpatrick & Assoc., 135 N.J. 349, 354-55 (1994) (citing N.J.S.A. 2A:24-7). If the Court does not confirm the award, it can either vacate the award or modify or correct it. Ibid. (citing N.J.S.A. 2A:24-8, -9). Under the Act, a court *shall vacate* an arbitration award:

> 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 any other misbehavior prejudicial to the rights of any party.
>
> d. Where the arbitrators exceed or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.
>
> When an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators. [Id. at 355 (citing N.J.S.A. 2A:24-8.]

Courts are also permitted to vacate an arbitration award in the public sector context because of a mistake of law, City Ass'n of Sup'rs and Adm'rs v., State

Operated Sch. Dist. of City of Newark, 311 N.J. Super. at 309, or if the award is contrary to existing public policy. Paterson Police PBA Local 1, Paterson Police Local 1, Superior Officers Ass'n v. City of Paterson, 2021 N.J. Super. Unpub. Lexis 652, * 24 (App. Div. April 19), certif. denied, 248 N.J. 384 (2021) (Da292-305). The same is true if the arbitrator exceeds their authority in the agreement: "An agreement can set limits on the powers delegated to the arbitrator"; "If the arbitrator exceeds the scope of that authority, then his decision may be vacated . . . pursuant to N.J.S.A. 2A:24-8." City Ass'n of Sup'rs, 311 N.J. Super. at 310.

Here, the Union argued before Judge Mongiardo that the only issue the court needed to concern itself with was whether the arbitrator's award was reasonably debatable, and, if so, then the award had to be confirmed. (Da164) The City sought permission to provide a supplemental brief on the point, since the Union misstated the correct application of the law. The court agreed and the City provided Judge Mongiardo with this Court's holding in Hunterdon Cent. Reg'l High Sch. Dist. Bd. of Ed. v. Hunterdon Cty. Reg'l High Sch. Educ. Ass'n, 1994 N.J. Super. Unpub. Lexis 8 (App. Div. March 14, 1994) (Da270-274), which made clear the requirements of the Act which must be considered before the issue of whether the award is reasonably debatable is reached:

> The scope of review for arbitration awards in the public sector is broader than that applicable to private-sector arbitration . . . .

> But public-sector arbitrations are subject to additional scrutiny. Because, unlike in private industry, prerogatives of management may not be bargained away in the public sector, the arbitrator of public-employment disputes must decide in accordance with the law and must be guided by "the public interest, welfare and other pertinent statutory criteria." Kearny PBA Local No. 21 v. Town of Kearny, 81 N.J. 208, 215-17, 405 A.2d 393 (1979); Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 184, 622 A.2d 872 (App. Div. 1993), certif. granted, 134 N.J. 478, 634 A.2d 525 (1993).
>
> ***On a complaint to vacate or confirm an award of a board of education, the threshold question for the court is whether the arbitrator breached any of the criteria of N.J.S.A. 2A:24-8 or misapplied any relevant public-employment law or policy. If the award survives this initial inquiry, then the only role of the reviewing court is to determine whether the arbitrator's interpretation of the contract was "reasonably debatable."*** State v. State Troopers Fraternal Ass'n, 91 N.J. 464, 469, 453 A.2d 176 (1982); Kearny, supra, 81 N.J. at 221. In performing his or her interpreting role, the "arbitrator may not disregard the terms of the parties' agreement, . . . nor may he rewrite the contract for the parties." County College of Morris Staff v. County College of Morris, 100 N.J. 383, 391, 495 A.2d 865 (1985). If the award conflicts with or goes beyond the contract, it is vacatable under exceeds-his-powers criterion of N.J.S.A. 2A:24-8(d). Ibid. [See Id., at ** 10-12 (emphasis supplied).] (Da164)

Judge Mongiardo agreed with the City's position on the proper standard and the Union reargues its position on appeal. Again, the Union is wrong in its analysis. (Pb23-34)

First, even the cases the Union cites on appeal make clear that the Arbitration Act *must* be considered and applied in assessing the legitimacy of an arbitration

award. (Pb23-24) See Atl. City Bd. of Ed. v. Atl. City Ed. Ass'n, 2020 N.J. Super. Unpub. Lexis 1714, *16 (App. Div., Sept. 14, 2020) ("N.J.S.A. 2A:24-8 sets forth the grounds for vacating an arbitration award"); Borough of East Rutherford v. East Rutherford PBA Local 275, 213 N.J. 190, 202 (2013) ("Under the New Jersey Arbitration Act, a court may vacate an award . . . ."); N.J. Transit Bus Ops., Inc. v. Amalgamated Transit Union, 187 N.J. 546, 554 (2006) ("That said, courts may vacate an arbitration award when '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:24-8d. That legislatively granted authority to vacate awards serves as a check on whether the arbitration award 'draws it essence from the bargaining agreement'"); State v. Int'l Fed'n of Prof'l & Tech. Eng'rs, Local 195, 169 N.J. 505, 514 (2001) ("A court . . . may vacate an arbitration award in cases . . . '[w]here the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and define award upon the subject matter was not made.' N.J.S.A. 2A:24-8").

Second, the Union's approach to handling the confirmation of an arbitration award would make the Arbitration Act utterly useless, since the Union asks the Court to skip considering the application of the Act and just determine whether the award is reasonably debatable. Relevant legislation can never be ignored by a court which is what the Union asks this Court to do. See Cty. of Monmouth v. Wissell, 68 N.J.

35 (1975) ("There is a strong presumption against any legislative intent to find an entire section of a statute . . . a nullity on the ground that it is useless"); State v. Wean, 86 N.J. Super. 283, 289-90 (App. Div. 1965) ("Nor will the courts impute to the Legislature an intent to enact useless legislation") (citing Gualano v. Bd. of Sch. Estimate, 39 N.J. 300, 313 (1963)).

This Court's holding in Hunterdon Cent. Reg'l High Sch. is clear and undebatable. The proper analysis first requires a court to decide if the Act requires an award to be vacated for failing to follow the law, and if not, only then does the analysis turn to whether the award is reasonably debatable. Thus, Judge Mongiardo properly handled the reasonably debatable issue under the Arbitration Act, which he never reached because the Arbitrator plainly failed to follow the relevant law as explained herein.

POINT II

THE ARBITRATOR'S AWARD WAS PROPERLY VACATED BECAUSE THE ARBITRATOR EXCEEDED HIS AUTHORITY.

A. The Arbitration Clause Is Narrow and Severely Restricts the Role of an Arbitrator in Arbitration.

Public sector labor agreements tend to contain two different types of arbitration clauses. Port Auth. Police Sgts. Benev. Ass'n, Inc. v. Port Auth. of N.Y. and N.J., 340 N.J. Super. 453, 458-59 (App. Div. 2001). Where the agreement has language that provides: "[t]he arbitrator shall not have the power to add to, subtract

from, or modify the provisions of this Agreement and shall confine his . . . decision solely to the interpretation and application of this Agreement," the courts have characterized this as typical of a "narrow" arbitration clause, as distinguished from a "broad" arbitration clause. Id. at 459. In Communication Workers of America, Local 1087 v. Monmouth Cty. Bd. of Social Svcs., 96 N.J. 442 (1984), the New Jersey Supreme Court held/explained the significance of such clauses as follows:

> The core issue in this case concerns the scope of the arbitrator's authority. That authority is limited in two ways. First, it is limited by the scope of the parties' contractual delegation. Second, since public employees are involved, it is limited by existing law and public policy.
>
> **It is well settled that the arbitrator's authority to resolve a given dispute depends upon the contract between the parties.** Thus, the jurisdiction and authority of the arbitrator are circumscribed by and limited to the powers delegated to him. These restrictions relate both to the procedure that the arbitrator must apply in resolving disputes and the substantive matters that he may address. **Moreover, "[a]ny action taken beyond that authority is impeachable," and may be vacated on statutory grounds.**
>
> . . . **The agreement also provides that "[t]he arbitrator shall not have the power to add to, subtract from, or modify the provisions of this Agreement and shall confine his . . . decision solely to the interpretation and application of this Agreement."** Moreover, it states that "he shall confine [himself] to the precise issue for arbitration and shall have no authority to determine any other issues not so submitted to him" . . ., nor shall [he] submit observations or declarations of opinions which are not essential in reaching the determination."

> **The language limiting the arbitrator's authority to the resolution of grievances arising out of the terms of the agreement and denying him the authority to add to, subtract from, or modify its terms is typical of a narrow, as distinguished from a broad, arbitration clause.** *F. Elkouri & E. Elkouri, How Arbitration Works* 65-66 (3rd ed. 1960). Dean Harry Shulman made the following pertinent comments with respect to these4 restrictive clauses:
>
> Doubtless these are wise, perhaps even necessary, safeguards - - at least before the parties develop sufficient confidence in their private rule of law to enable them to relax the restriction. And an arbitrator worthy of appointment in the first place must conscientiously respect the limits imposed on his jurisdiction, for otherwise he would not only betray his trust, but also undermine his own future usefulness and endanger the very system of self-government in which he works.
>
> Under such narrow arbitration clauses, disputes that do not involve rights traceable to the agreement are beyond the jurisdiction of the arbitrator and therefore are not properly arbitrable.
>
> **Unless the parties provide otherwise, it is also presumed that they intended that their dispute be resolved in accordance with the law** . . . . The parties in public employment cases cannot clothe the arbitrator with unbridled discretion, "for public policy demands that inherent in the arbitrator's guidelines are the public interest, welfare and other pertinent statutory criteria." [Id. at 448-451 (citations omitted) (emphasis supplied).]

In Port Auth. Police Sgts. Benev. Ass'n, supra, the Appellate Division likewise held that where the arbitration agreement had a narrow arbitration clause, comparable to Communication Workers of America, Local 1087, and the arbitrator

disregarded the limitations of the clause and issued a decision that "grafts an additional condition upon the parties' collective bargaining agreement," "[t]he arbitrator exceeded her delineated authority by modifying the provisions of the collective bargaining agreement." Thus, the Appellate Division reversed and remanded the matter for vacation of the arbitration award. Id., at 458-462; accord City of Camden v. International Ass'n of Firefighters, 1994 N.J. Super. Unpub. Lexis 2 (App. Div. July 19, 1994) (Da254-259) (the Appellate Division affirmed the Chancery Division's vacation of an arbitration award with a narrow arbitration clause where the arbitrator did not resolve the dispute on the terms of the agreement but on the basis of the parties' past practice, which was deemed improper).

The Union misrepresented the narrow scope of the arbitration provision before Judge Mongiardo which required additional supplemental briefing. (Da161) The MOA limits the authority/scope of Arbitrator Burrell's power as follows:

> E. IMPARTIAL AND BINDING ARBITRATION – REVISE as follows:
>
> . . . .
>
> 4. The Arbitrator shall be bound by the provisions of this Contract and restricted to the application of the facts presented to him involved in the grievance.
>
> 5. **The Arbitrator shall not have the authority to add to, modify, detract from, or alter in any way the provisions of this Contract** or any amendment or supplement thereto. [Pa107 (emphasis supplied).]

Thus, it is irrefutable that the intent of the Parties was to limit the ability of the

arbitrator to fashion a remedy and to preclude him/her from rendering an award that would "add to, modify, detract from, or *alter in any way*" the terms of the Parties' Agreement. (Ibid. (emphasis supplied)) The City relies on the holding in Policemen's Benev. Ass'n v. Trenton, 205 N.J. 422, 429-30 (2011), for the proposition that "our courts have vacated arbitration awards . . . when arbitrators have, for example, added new terms to an agreement or ignored its clear language." (Ibid.) Accordingly, Judge Mongiardo was correct in vacating Arbitrator Burrell's Award improperly obligating the City to pay for the full cost of the dental coverage when that language was nowhere to be found in the MOA.

B. The Arbitrator Improperly Disregarded the Scope of His Power and Blatantly Ignored the Plain Language in the MOA's Health Benefits Article.

The City put Arbitrator Burrell on notice that he was subject to a narrow arbitration clause in the MOA. (Da012-014, 016) The City also put Arbitrator Burrell on notice that the language in the Parties' prior labor agreement for Article VII – Heath Benefits was replaced in its entirety by the language at the start of the same Article in the MOA: "**Replace this Article with the following**." (Da016-017) Although he had no authority to do so, Arbitrator Burrell blatantly ignored the plain language in the MOA. Instead, he improperly found the City obligated to provide cost-free dental coverage to all Union's members even though there is no such language in the MOA to this effect. The arbitration provision prohibits an arbitrator

from adding to, modifying, or detracting from the Parties' Agreement and by foisting a new obligation on the City after the Union agreed to this economic concession (two years after the MOA went into effect) was a blatant abuse by Arbitrator Burrell which cannot go unchecked.

C. The Language "Replace With" Means Replace This With That And Is Commonly Used In Labor Negotiations for New Agreements.

The phrase "replace with" has a well-understood and accepted meaning in the English language. Per Google, the phrase means to remove an existing item, person or situation and put another, newer, or different one in its place. The phrase highlights the substitution of one thing for another. For example, "she replaced the old furniture with new pieces" indicates that the new furniture is now in the place of the old. Merriam-Webster states that "replace with" and "replace by" are used interchangeably, but the latter is in the passive voice whereas the former is in the active voice. The Cambridge Dictionary has a similar definition. The Webster's Third New Internat'l Dictionary (1981) at 1925 states that the word "replace" means "to take the place of," to "serve as a substitute or successor of," to "supplant" or "supersede." The American Heritage Dictionary of the English Language (3rd ed. 1992) at 1530 gives a similar definition. In New Jersey, regarding statutes, the rule is that if a word or phrase is not given a different, technical meaning, then they are supposed to be read and construed in their context and given their common, everyday

meaning in English. See N.J.S.A. 1:1-1.

Decisions from PERC similarly show that attorneys regularly use this basic phrase to commonly replace parts of one labor agreement that is being succeeded with something else in a new one. In the Matter of Cty. of Union and PBA Local No. 108, 2012 N.J. PERC Lexis 48, *3 (July 19, 2012) (Da213-224) ("Management Rights (Article 2(c)): Replace existing contract language with: . . . ."); In the Matter of Ocean Cty. Pros. and Ocean Cty. Pros. Det. & Invest. Ass'n, 2012 N.J. PERC Lexis 24, *9 (May 3, 2012) (Da205-211) ("The language of Article 13, Health Benefits, shall be replaced by the following: . . . ."); In the Matter of City of Atl. City and Atl. City Police SOA, 2013 N.J. PERC Lexis 51, *6 (April 25, 2013) (Da225-230) ("Replace Article XXVII Personnel Officer with Personnel Committee"); In the Matter of Township of Bedminster and PBA Local 366, 2019 N.J. PERC Lexis 103, *5 (Aug. 15, 2019) (Da231-239) ("Eliminate Article 28 'Pool Time' and replace with 'Police Training' provision requiring 48 hours of mandatory training and an optional two days of specialty training").

Arbitrator Burrell not only exceeded his authority as arbitrator by adding new financial obligations on the City that were never agreed to by the Parties, but by utterly disregarding the plain language in the MOA intended to replace all of Article VII - Health Benefits with the new language agreed upon by the Parties; it is the only explanation for the outcome of his Award. Hence, the Parties deliberately removed

the language: The City ***shall pay the full cost of the dental plan currently in effect*** for full-time employees and their eligible dependents and replaced it with the following language: The Employer agrees ***to provide*** major medical dental and prescription drug insurance to all full-time employees and their dependents. "Provide" means to make available; "pay the full cost of" means exactly that – to assume the full financial obligation of payment for a benefit. Arbitrator Burrell also ignored that (1) for nearly two full years after the MOA was executed and put into effect the firefighters (along with all other City employees) contributed toward their dental plan coverage and (2) the only reason the Union received the salary grid it so desperately wanted (another Article that completely replaced the old Article in the contract) was because the Union agreed to give the City (in part) this financial concession. (Da012) The Arbitration Act prohibits the outcome reached by Arbitrator Burrell and Judge Mongiardo properly vacated the Award.

D. The Union Is Sophisticated and Had Counsel in the Preparation of the MOA, So It Cannot Assert a Mistake in Executing the MOA as It Was Written.

The New Jersey Supreme Court is clear that in grievance arbitration, the arbitrator must follow the "well-settled principles of contract law" in analyzing the part of the agreement that is at issue. Communication Workers of Amer., Local 1087 v. Monmouth Cty. Bd. of Soc. Svcs., 96 N.J. 442, 452 (1984). The rules for contract construction are straightforward. Terms are to be given their plain and ordinary

meaning, so that the expectation of the parties will be fulfilled. Norman Int'l v. Admiral Ins. Co., 251 N.J. 538, 552 (2022).

The doctrine of freedom of contract applies in New Jersey. Marcinczyk v. State of New Jersey, Police Training Comm'n, 203 N.J. 586, 592-93 (2010). This means parties bargaining at arms-length may contract as they wish, subject only to the traditional contract defenses of fraud, duress, illegality or mistake. Id., at 593. "In the absence of those defenses, such a contract is fully binding because the parties are 'conclusively presumed' to understand and assent to its legal effect." Ibid.; see also Rudbart v. North Jersey Dist. Water Supply Comm'n, 127 N.J. 344, 353, cert denied, 506 U.S. 871 (1992) ("A party who enters into a contract in writing, without any fraud or imposition being practiced upon him, is conclusively presumed to understand and assent to its terms and legal effect"). It is well settled that parties to a contract are entitled to stand on the precise terms of their contract. Moreira Constr. Co. v. Wayne, 98 N.J. Super. 570, 576 (App. Div.), certif. denied, 51 N.J. 467 (1968); Badiali v. New Jersey Mfg. Ins. Grp., 220 N.J. 544, 556 (2015) ("The parties have the right to stand upon the precise terms of their contract; the court may not rewrite the contract to broaden the scope . . . or otherwise make it more effective"); accord United Servs. Ass'n v. Turck, 156 N.J. 480 (1998) (also holds, "the arbitrator's authority is circumscribed by whatever provisions and conditions have been mutually agreed upon").

This is especially the case where the parties themselves or their counsel are sophisticated, because then the courts are more likely to hold them to the bargain they struck. See e.g. Itzhakov v. Segal, 2019 N.J. Super. Unpub. Lexis 1829 (App. Div. Aug. 28, 2019) (Da275-282) ("A party's sophistication may certainly bear on whether he or she knowingly and voluntarily agreed to a contract's terms"); Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 439 (2009); County of Passaic v. Horizon Healthcare Svcs., Inc., 474 N.J. Super. 498 (App. Div.), appeal dismissed, 2023 N.J. Lexis 1167 (2023) (Da260) ("We reject this argument and affirm because, even though the arbitration provision does lack such an explicit waiver, the County is a sophisticated contracting party and is not . . . an employee or consumer lacking sufficient bargaining power to resist the extraction of an agreement to arbitrate"; "This concern for those not versed in the law . . . vanishes when considering individually-negotiated contracts between sophisticated parties – often represented by counsel in the formation stage – possessing relatively similar bargaining power").

New Jersey's well-settled contract jurisprudence is that a *unilateral mistake of fact* by one party entitles that party to *no relief whatsoever*; a contract can only be reformed and relief had when the mistake of fact is *mutual* not unilateral. St. Pius X House of Retreats, Salvatorian Fathers v. Diocese of Camden, 88 N.J. 571, 580-81 (1982) ("If the writing accords with the express intentions of one party, the court will not hold him bound by a different contract"; "If it does not accord with the

intentions of the other party, or if his assent was induced by an antecedent unilateral mistake, . . . he is not entitled to reformation"; "New Jersey adheres to this rule"); New York Sash & Door Co. v. National House & Farms Ass'n, 131 N.J.L. 466, 469 (E.&A. 1944) ("Suffice it to say, . . . it is the general rule that a unilateral material mistake of fact, unknown to the other party, is not ordinarily ground for avoidance or recission"); Center 48 Ltd. Partnership v. May Dept. Stores Co., 355 N.J. Super. 390, 412 (App. Div. 2002) ("Contrary to defendant's argument, a unilateral mistake of fact, unknown to the other party, is not, ordinarily grounds for avoidance of a contract"); American Rieter Co. v. Dinallo, 53 N.J. Super. 388, 394-95 (App. Div. 1959) ("We regard the point as without merit. In the first place, courts give effect to the mutual, not unilateral, intention of the parties"; "Consequently, evidence of surrounding circumstances indicative of the intent only of the defendants and not of the plaintiff would not be of any probative value"); Fidelity Chem. Prod's. Corp. v. Rubino, 1 N.J. Super. 184, 188 (App. Div. 1949) ("Equity will not relieve from the consequences of a unilateral mistake arising from a failure to exercise reasonable care").[3]

[3] The two most important parts of any public sector labor agreement are first the article(s) dealing with salary/wages and any longevity payment for remaining with the employer over time, and second the extent of the benefit package (e.g., retirement, medical, dental, vision, and prescription drug coverage). The terms and conditions of employment are generally second to the economic issues at any bargaining table. As such, there is no logical way the language in the health care

Furthermore, when interpreting a contract, the court is required to look at its plain language, and if the terms are clear, they are to be given their plain, ordinary meaning. Pizzullo v. New Jersey Mfrs. Ins. Co., 196 N.J. 251, 270 (2008). Courts do not supply terms to contracts that are plain and unambiguous, nor do they make better contracts for either of the parties than the one which the parties themselves made. Maglies v. Estate of Guy, 193 N.J. 108, 143 (2007). A basic principle of contract interpretation is to read the document as a whole in a fair and common sense manner. Hardly ex. Rel. Dowdell v. Abdul-Matin, 198 N.J. 95, 103 (2009). A contract should not be interpreted to render one of its terms meaningless. Cumberland Cty. Impro. Auth. v. GSP Recyc. Co., Inc., 358 N.J. Super. 484, 497 (App. Div.), certif. denied, 177 N.J. 222 (2008).

Here, as noted above, the meaning of the phrase "replace with" is common and used in everyday English, as well as by experienced labor attorneys in labor negotiations. Here, each Party is sophisticated and was represented by able legal counsel; they are regularly in contested matters before PERC.[4] The Union cannot

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article here, "*Replace this Article with the following*" and the absence of the City's obligation to pay for full dental coverage would have gone unnoticed by the Union or its legal counsel. This is the reason why the Union's reliance on the past practices article is specious and absurd.

[4] The Union and the City have another matter pending right now in the Superior Court of New Jersey, Law Division, Passaic County, Docket No. PAS-L-984-25, under the same MOA regarding a pay dispute concerning FF Kevin Laverde where the Union wants confirmation and the City wants vacation. Thus, the MOA was

prove a *mutual mistake* because of the evidence submitted by the Parties after the MOA was executed, which is that the City was taking out deductions for the dental plan coverage from the firefighters' pay without issue or objection. The record contains the payroll stubs for both CFO Silva as well as for FF Kyle Williams on this point. (Da012) Indeed, the Union's only witness, Fire Captain Petrelli, testified that deductions were taken from his pay for the dental coverage, which is noted in the Award. The best argument the Union could raise, but which is extraordinarily weak, is that the Union made a unilateral mistake in executing the MOA; however, during oral argument before Judge Mongiardo, the Union stated that it was not relying on mistake for its case. Instead, the Union told Judge Mongiardo that it was relying on the prior practices Article in the MOA which does not warrant a finding in the Union's favor.

E. The MOA's Prior Practices Article Is Irrelevant to This Matter.

It is not uncommon for a successor labor agreement to have what is known as a maintenance of benefits (MOB)/prior practices (PP) article. The reason for these

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clearly negotiated at *arm's length* between the Parties, since both the Union and the City are typically in conflict over labor matters as between themselves, which result in litigation. That is the dynamic at play. This means the Union and Mr. Shahdanian were even further required to make sure the MOA accurately reflected their position before it was executed in May 2022. The fact the MOA was executed shows it did/does properly reflect the Union's position on the dental coverage issue when it was signed by Union President Lozada. The Union's position to Arbitrator Burrell below was nothing more than alligator tears.

provisions is because labor agreements are not created in a vacuum, and there can be established protocols in the workplace, which are fine or not at issue but of value to either side, which are often skipped and not addressed in the negotiations of a successor agreement, which only focuses on the parts of the prior agreement that are of importance and require change by the parties. Thus, the purpose of a PP article is so the successor agreement does not have to cite to or specify at length exactly what every single prior practice is which is to remain in place. A PP article, however, is not a vehicle to change a material term in a new agreement that was already negotiated and agreed to by the parties which is the improper conclusion the Union is trying to reach here.

An example of a PP article can be found in Local 353, AFSCM, Council 45 v. City of Waterbury, 815 A.2d 231 (Conn. App. 2003):

> The parties further recognized that if any provision in this Agreement is contrary to a practice existing prior to the date of execution of this Agreement, then the provision of this Agreement, shall prevail. In all other respects, this Agreement shall not be construed as abridging any rights, benefits or privileges, based on historical practice, that employees have enjoyed heretofore; which rights, benefits or privileges are not specifically covered or mentioned in this Agreement. [Id., at 232 n.2]

In this matter, Article XXV is the Prior Practices provision in the MOA, and reads:

> Revise as follows: All the rights, privileges and benefits which the employees covered by this Contract enjoyed

> prior to the effective date of this Contract are retained by the employees ***except*** those rights, privileges, and benefits specifically abridged ***or modified*** by this Contract. [Pa114 (emphasis supplied).]

Arbitrator Burrell incorrectly concluded, *inter alia*, two glaring mistakes to manufacture an award in favor of the Union: first, that Article XXV was in essence a "most favored nation" (MFN) clause; and second, he found that any change required specific language abridging any prior practice.[5, 6] (Pa181-182)

Regarding the prior practices Article being a MFN clause, the Arbitrator is completely wrong. Neither Party made this argument to the Arbitrator, not the Union (Pa134-139), and not the City. (Da009-025). PERC also has concluded that "parity provisions are illegal subjects of negotiations":

> "The mere existence of the clause is sufficient to chill the free exchange between a public employer and an employee organization by permitting a third employee organization, not a party to the negotiations, to have impact upon those negotiations. **Parity clauses must be and shall henceforth be illegal subjects of negotiations**." [In the Matter of Jersey City and Jersey City PBA, 1980 N.J. PERC Lexis 266, *10 (April 3, 1980) (emphasis supplied) (citing In re City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (P4130 1978).]

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[5] The purpose of a MFN clause is to guarantee a party the most favorable terms offered to any other party in similar circumstances. Assembly Bill Number A2651 in legislative session 2014-2015 sought to make these provisions illegal in health benefit plans in New Jersey under the Health Care Quality Act, N.J.S.A. 26:2S-1 *et seq.*, but it never became law.

[6] In PERC decisions, these clauses are referred to as "me too" or "parity" provisions.

In Twp. of Montclair v. Montclair PBA Local No. 53, 2012 N.J. Super. Unpub. Lexis 1122 (App. Div. May 22, 2012) (Da306-310), the court held that where an arbitrator goes off on a tangent that neither party cited, relied upon or even had notice of, this violates due process. This conclusion is warranted based on Arbitrator Burrell's treatment of the PP article as a MFN clause in the MOA.

On the other issue, the MOA's prior practice Article clearly provides that it *does not apply* if a prior practice has been "modified." The City argued to the Arbitrator and to Judge Mongiardo below that the MOA had a narrow arbitration clause, and the Arbitrator was substantially restrained from adding to, modifying, or detracting from rendering any award beyond the plain language of the MOA. (Pa107) Here, there is no question that the Health Benefits Article was modified by the Parties. As set forth above, the Parties agreed to delete the entire Article and replace it with new language a clear modification negating any argument of past practice. (Pa108) For this reason, Judge Mongiardo rejected the Arbitrator's prior practices analysis and correctly vacated Arbitrator Burrell's Award. (T24)

F. Judge Mongiardo's Decision Is Sound and Legally Correct in All Respects.

Judge Mongiardo properly considered the plain language of the MOA and the requirements of the Act and the law, and correctly determined that Arbitrator Burrell exceeded his authority and rendered a patently defective arbitration award, which

required vacation and a remand back to the Arbitrator, ruling as follows:

> Herein, the parties' MOA makes clear in Article 3 the grievance procedure, Section E, that [. . .] any arbitrator in binding grievance arbitration is subscribed by a narrow arbitration clause, whereas here the agreement has language that states,
>
> > "The arbitrator shall not have the power to add, modify, or detract from the previous –" strike that – "the provisions of the agreement."
>
> The courts have characterized this as typical of a narrow arbitration clause. See Port Authority Police Sergeants supra., 340 N.J. Super. 459.
>
> Again, in this particular case, the Court has to look at this and shall define this decision solely to the interpretation and application of the agreement.
>
> Here, the Court finds that it was the irrefutable intention of the parties that the arbitrator can only give effect to the actual terms in the subject MOA and that the arbitrator is, or was, without any authority to "add to, modify, detract from, or alter in any way" those terms.
>
> Rather, the arbitrator was required to apply the MOA as it is plainly written to the facts of this matter.
>
> . . . .
>
> In Port Authority Police Sergeants Benevolent supra, the Appellate Division held that where the arbitration agreement had a narrow arbitration clause and the arbitrator disregarded the limitations of the clause and issued a decision that "grafts an additional condition upon the parties' collective bargaining agreement,' the arbitrator exceeded her delineated authority modifying the provisions of the collective bargaining agreement.
>
> . . . .
>
> Here, the parties' MOA for a successor labor agreement undeniably has a narrow arbitration clause

which purposely limited the arbitrator's authority to apply the plain language of its terms to this matter.

The arbitrator is required to apply the MOA as it is plainly written to the facts of this matter. Our courts have vacated arbitration awards when arbitrators have added new terms to an agreement or ignored its clear language.

Article 7, health benefits of the expired agreement provided that the City would pay the full cost of the dental plan provided to the union. . . .

The subject MOA, however, replaced in its entirety Article 7 of the expired agreement with the new language negotiated and agreed to by the parties.

At the very top of Article 7 in the subject MOA it reads in italics that Article 7 of the expired agreement was being replaced with the new language set forth therein.

This Court agrees with the City's argument in interpretation that the language requiring the City to pay for the total and full cost of the dental care was deliberately removed in the – in its entirety by the parties.

. . . .

The new language removed the old language that the City would pay for dental coverage and made it clear – the new language removed the old language that the City would pay for dental coverage and made it clear that the City's only obligation was to make the coverage available, that is to provide it, not pay for it.

Moreso, Article 25, prior practices in the MOA provides that,

> "All the rights, privileges, and benefits which the employees covered by this contract enjoyed prior to the effective date of this contract are retained by the employees except as to those rights, privileges, benefits specifically abridged or modified by this contract."

Therefore, prior practices does not apply to this

matter because the subject MOA did address and change the existing practice between the parties on the point at issue.

Now the entire health insurance provision was rewritten and replaced. The union was represented by counsel and had every right to seek the change or alter that language prior to signing the subject MOA and ratifying it.

While Captain Petrelli testified before the arbitrator he did not execute the subject MOA with the successor labor agreement that was at issue, the MOA was executed by union president Francisco Lozada and city business administrator Kathleen Long.

More importantly, the MOA was prepared by able labor counsel for both parties, John Shahdaninan for the union, and Peter Perla on behalf of the city.

The City provided several relevant interest arbitration documentation where Mr. Shahdanian stated on the record that he was involved in the negotiation of the subject MOA and that the union made concessions for a more generous salary/pay grade[sic] from the city.

In contract disputes such as this where parties themselves or their counsel are sophisticated, the courts are more likely to hold them to the bargain they struck. See Itzokoff v. Segal, 2019 N.J. Super. unpublished Lexis 1829, Appellate Division, August 28, 2019.

It is well-settled that parties to a contract are entitled to stand on the precise terms of their contract. See Moreira Construction Company v. Wayne, 98 N.J. Super. 570, 576 (App. Div. 1968).

The court may not rewrite the contract to broaden the scope or otherwise make it more effective. See Badiali v. New Jersey Manufacturers Insurance Group, 220 N.J. 544, 556 (2015).

. . . .

Thus, the union must be held to the bargain it struck

> and it was improper for the arbitrator to essentially write a new agreement to fashion a remedy for the union.
>
> To sum up, the law in New Jersey, which the arbitrator is required to follow, is that the plain language of the labor agreement must be enforced as between the parties and the arbitrator cannot rewrite or make a better labor agreement than the ones the parties made for themselves.
>
> . . . .
>
> For all these reasons, the Court shall deny the plaintiff's application to confirm the subject arbitration award and grant the City's motion to vacate the award and remand the matter back to the arbitrator.
>
> An arbitrator may not contradict expressed language of the contract. See Linden Board of Education v. Linden Education Association, ex rel., Mizichko, 202 N.J. 268, 276 (2010). [T, at 19-27.][7]

Accordingly, the City respectfully urges this Court to affirm Judge Mongiardo's well-reasoned and proper decision vacating the Award.

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[7] The Union cites to Atl. City Bd. of Ed. v. Atl. City Ed. Ass'n, supra; however, the case, an unpublished decision with no binding authority, has nothing to do with a union contract that was succeeded by a new one, and where the new contract was crafted based on an memorandum of agreement that read "Replace this Article with the following" which is dispositive to the issues here. (Pb23) Atl. City Bd. of Ed. is a dispute over the interpretation of article regarding employee contributions for dental insurance under facts having no similarities to the facts at hand except that it involves dental contributions. Accord Ford Motor Credit Co. v. Dir., Div. of Tax, 2014 N.J. Tax Unpub. Lexis 43 (Tax Ct. Aug. 5, 2014) (Da261-269) (explaining that where the facts of one case are "directly on point" with another case, the court can rely on the holding in the other case).

POINT III

THE UNION NEVER OBJECTED TO THE INFORMATION IN THE RECORD BELOW THAT IT TAKES EXCEPTION TO NOW ON APPEAL AND, THEREFORE, WAIVED THESE OBJECTIONS ON APPEAL.

In its Appellate Brief, the Union contends the Court erred below in considering information that was not before Arbitrator Burrell. (Pb20-22) The Union incorrectly views the confirmation process in the Superior Court to be the equivalent of an appeal regarding the record in the Superior Court. The Union cites absolutely no authority to support its proposition. More so, the information the Union objects to (and which Judge Mongiardo considered) was part of the record before Arbitrator Burrell as set forth in the Statement of Facts (above).

As to the first point, when the Legislature created the Arbitration Act and provided for confirmation or vacation of an arbitration award, it expressly stated that the process was a summary action. N.J.S.A. 2A:24-7 reads:

> A party to the arbitration may, within 3 months after the award is delivered to him, unless the parties shall extend the time in writing, commence a *summary action* in the court aforesaid for the confirmation of the award or for its vacation, modification or correction. Such confirmation shall be granted unless the award is vacated, modified or corrected. [Emphasis supplied.]

R. 4:67-1(a) controls the handling of summary actions in the Superior Court "in which the court is permitted by rule or by statute to proceed in a summary manner." R. 4:67-2(a) explains that such matters are to proceed by way of an order

to show cause. R. 4:67-4 provides that the defendant shall file either an answer, answering affidavit or motion returnable on the return date. R. 4:67-5 provides that the "court shall try the action on the return day, or on such day as it fixes." If there is no genuine issue of material fact, "the court may try the action on the pleadings and affidavits, and render final judgment thereon." MAG Entertainment, LLC v. Div. of ABC, 375 N.J. Super. 534, 551-52 (App. Div. 2005) (explaining that summary actions are to be short, concise and immediate to effectively dispose of matters which lend themselves to summary treatment; indicating that for matters brought under R. 4:67-2(a) "protracted discovery is simply not suitable," such as depositions).[8]

R. 1:7-2 requires parties to make objections during trial. R. 2:10-2 provides that if an objection was not made below, the "error or omission shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result," but an appellate court can notice "plain error" in the interests of justice." Further, so the appellate court is aware that an issue is one of

[8] The Legislature provided for an entirely different mechanism for appeals from police and fire interest arbitration awards conducted pursuant to N.J.S.A. 34:13A-16. Per N.J.S.A. 34:13A-16f(5), once an IA award is issued by the arbitrator, a dissatisfied party has fourteen days to file notice of an appeal with PERC. PERC can affirm, modify, correct or vacate the award. Then the party can appeal, per the statute, directly to the Appellate Division. The matter here pertains to grievance arbitration. It is subject to the confirmation/vacation process in the trial level of the Superior Court, per the Arbitration Act, N.J.S.A. 2A:24-1 *et seq*.

plain error, a party must note in point headings where the issue was raised below or indicate that it was not raised below, per R. 2:6-2(a)(1). State v. Santamaria, 236 N.J. 390, 404-05 (2019) (plain error must be disregarded unless it is clearly capable of producing an unjust result; it is a "high bar" to meet and is intended to be an incentive to make a timely objection below, so the trial court can consider and correct the issue in the first instance); New Jersey Div. of Child Prot. & Perm. v. T.M., 2015 N.J. Super. Unpub. Lexis 2159, **10-14 (App. Div., Sept. 10, 2015) (Da283-291) (indicating that plain error is harder to prove in a bench trial, noting that the risk of the misuse of improperly admitted evidence 'does not pose as serious a concern' in a bench trial in comparison to a jury trial).

As shown by the City's Statement of Facts, the City made the identical points and legal/evidentiary arguments to Arbitrator Burrell that it made to Judge Mongiardo. The Union never objected to the City's points at issue before the Arbitrator or before Judge Mongiardo. Rather, the Union simply told the Judge to *ignore* the information as *not relevant*. No objection was made by the Union. No discovery was requested or taken by the Union. The Judge then issued his decision on the provided record in a summary fashion, as required by the Rule.

N.J.R.E. 402 provides that all relevant evidence is admissible, and N.J.R.E. 403 deals with when relevant evidence must be excluded, which does not apply to

any of the evidence at issue here.[9] The disputed information in the record below only went to explaining the context for the language in the MOA. The Union has not shown that the information in the record below was even improper. It certainly has not shown plain error regarding this summary action.[10]

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[9] Mr. Shahdanian's comments in the IA proceeding that the Union made a multitude of concessions in the subject MOA for an enhanced salary grid are all admissions that must be considered against the Union's position in this matter. N.J.R.E. 803(b)(4). That Rule permits "a statement by the party-opponent's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship" to be admitted into evidence.

[10] Judicial estoppel prevents a party from playing fast and loose with the facts in different forums, telling one forum one thing and another forum another thing. It applies to administrative matters. Bray v. Cape May City Zoning Bd. of Adj., 378 N.J. Super. 160, 165-66 (App. Div. 2005) ("Central to the concern is the principle that a litigant should not be allowed to mislead courts by having one tribunal rely on his or her initial position while a subsequent body is led in a different direction"; 'The principle is that if you prevail in Suit #1 by representing that A is true, you are stuck with A in all later litigation growing out of the same events'). Here, the Union attempted to get higher salary and wages in the parallel IA proceeding occurring around the time this matter was pending before Judge Mongiardo. In the IA proceeding, the Union vocally complained about all the economic concessions they had made in the subject MOA, arguing this required a substantial salary/wage increase by the IA arbitrator. The City ultimately appealed that IA award to PERC. 2025 N.J. PERC Lexis 39 (June 26, 2025) (Da240-248). PERC found errors in the IA arbitrator's award and the matter was remanded back to the IA arbitrator. Here, before Judge Mongiardo, the Union failed to acknowledge that the removal of the City's obligation to pay for the dental coverage was one of those economic concessions it had made in the MOA, instead suggesting that it was really just a mistake, per Capt. Petreilli's testimony. The City opted to explain to Judge Mongiardo what was really going on. That did not result in an unjust result but the exact opposite, a just result consistent with what actually occurred regarding the drafting and execution of the MOA.

CONCLUSION

For all of the reasons set forth above, Respondent, City of Paterson, respectfully requests this Honorable Court deny the Union's appeal in its entirety as devoid of all merit and affirm the trial court's order that vacated the arbitration award and remanding the matter back to the Arbitrator to bring the award in line with the law and the plain language of the Parties' MOA.[11]

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[11] In the grievance article of the MOA, the Parties purposely shorted the time to file a grievance from the previous twenty-five (25) day period down to fifteen (15) days, stating: "to expedite handling, employees and the Association are expected to present their grievances through regular supervisory channels in the foregoing order and within fifteen (15) days from the date the incident occurred or within fifteen (15) days from the date the employee should have known of the incident, or the grievance shall be deemed waived." (Pa40, 106) The MOA was executed by the Union on May 17, 2022 (Pa115), but the grievance was filed on January 22, 2024. (Pb2) The Union argued the continuing pay doctrine as a basis for tolling this limitations period to the Arbitrator. (Pa129-134) It cited to out-of-state authority and a prior grievance decision for the Paterson PBA from 2007, which was not appealed or approved by PERC. (Pa133) The City opposed that doctrine as tolling the deadline to the Arbitrator and as another reason to vacate the Award to Judge Mongiardo. (Da19-25) Judge Mongiardo never decided the issue and focused on the merits. (T) The City is not waiving this issue on appeal. Arbitrator Burrell was required to follow the plain language of the MOA, and not add to or detract from any terms. There is no language in the MOA that provides for equitable tolling beyond the plain language that requires grievances filed within fifteen days. The Union has no PERC decision or appellate case law in this State to support its position. The City believes this is a procedural bar to the grievance and another example where the Arbitrator did not follow the plain language of the MOA. The New Jersey Supreme Court has held that equitable tolling requires *diligence* on whether the party "should know." Palisades at Ft. Lee v. 100 Old Palisade, LLC, 230 N.J. 427, 442-47 (2017); see also Garden State Inv. V. Twp. of Brick, 465 N.J. Super. 469, 476 (App. Div. 2020) ("Plaintiffs' failure to act more diligently in ascertaining any defects in or limitations on their investments bars their claim for equitable relief, particularly against the

PRB ATTORNEYS AT LAW, LLC

By: */s/ Peter P. Perla, Jr.*
Peter P. Perla, Jr., Esq.

Dated: September 24, 2025

township, which acted passively and innocently throughout"; noting the maximum 'equity favors the vigilant'); Hollander v. Masuch, 136 N.J. Eq. 215, 218 (Ct. of Chanc. 1945) ("Equity favors the vigilant, not those who slumber on their rights"); Adams v. Adams, 2006 N.J. Super. Unpub. Lexis 117, **14-15 (App. Div. March 13, 2006) (Da249-253) ("We are satisfied that plaintiff was not diligent in pursuing the remedy she now seeks"; "[e]quity does not aid one whose indifference contribute[d] materially to the injury . . . complain[ed] of').

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September 30, 2025

Via eCourts Appellate
Clerk
Appellate Division of the Superior Court
25 Market St.
Trenton, New Jersey 08625

Re: **Paterson Firefighters Association v. City of Paterson, Docket No. A-003707-24; Appellant's Reply Letter Brief**

Dear sir or madame:

As per the Court's rules, the Appellant Paterson Firefighters Association ("PFA") hereby submits this letter brief in reply to the responsive Brief[1] of the Respondent City of Paterson ("City").

[1] Citations to that brief are indicated by "Db," followed by the page thereof.

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ARGUMENT

The purpose of this letter brief is not to argue the applicable law as concerns this Court's *de novo* review of the lower court's erroneous decision to vacate the Arbitration Award of Arbitrator Dean L. Burrell. That law is well-established and asserted in the PFA's brief. See e.g., the decisions of the Supreme Court and of this Court in the substantially similar cases of, respectively, *Borough of East Rutherford v. East Rutherford PBA Local 275*, 213 *N.J.* 190 (2011) and *Atl. City Bd. of Educ. v. Atll. City Educ. Assn.*, A-0370-19 T3, 2020 N.J. Super. Unpub. LEXIS 1714 (App. Div. Sept. 14, 2020) [2], the latter of which was cited by Arbitrator Burrell in his Opinion and Award as being instructive. Pa 182 to Pa183. The underlying facts and contract provisions involved in each of those cases were remarkedly similar to those in the instant case.

Significantly, in its responsive brief before this Court, although acknowledging those two decisions (Db23), the City nonetheless makes no effort whatsoever to distinguish either the Supreme Court's decision in *Borough of East Rutherford* or this Court's decision in *Atl. City Bd. of Educ*., in each of which a trial court decision vacating the public sector arbitration award was reversed, from the instant case. The reason for this failure is clearly not poor lawyering, but the City's apparent recognition that the decisions in neither of those cases is distinguishable in

[2] This unpublished decision was cited to the Court in compliance with *R.* 1:36-3 (see footnote 6 to the PFA's brief before this Court).

any material respect from the instant case and, therefore, best left unaddressed.

The purpose of this letter brief is, instead, to point out to the Court the seriously misleading statements contained in the City's brief to this Court concerning the facts and evidence before Arbitrator Burrell and the trial court and the arguments made before Arbitrator Burrell.

Thus, in the Preliminary Statement portion of the City's brief, the City asserts, without any citation to the record before either the Arbitrator or the trial court, "the fact that (1) the Union's able-bodied labor counsel agreed to replace, in its entirety, the language in the healthcare coverage article contained in the Parties new CBA **as a financial giveback to the City in order to reach a new labor contract; and** (2) **all City employees contribute toward their dental coverage**." Db1 (**emphasis** added).

There is no evidence whatsoever in the record, either before Arbitrator Burrell, or before the trial court, that the PFA's agreement to the new Article VII in the May 2022 Memorandum of Agreement between them was agreed to as a financial giveback to the City by the PFA; nor was there any evidence in either of those records that would support such a conclusion. Rather, the evidence was to the contrary. Thus, as stated by Arbitrator Burrell, concerning the testimony of sole hearing witness former PFA President Frank Petrelli, "[h]is testimony was unrebutted that he was informed across the table by City Director of the Treasury

Aaron Hoffstatter, who claimed to have checked with Johnson, that employees were not being charged" for dental care benefits (Pa173); that he "was never told by the Employer that employees would have to pay for dental" and that "[d]uring negotiations the focus was the City's conversion from a private health care plan to the State Health Plan and ensuing litigation, the dental plan was otherwise never discussed." Pa 174.[3]

As Arbitrator Burrell consequently concluded:

> Here, there is absolutely no evidence establishing an Employer intent to eliminate its provision of dental coverage without cost to unit members. I credit the unrebutted testimony of the Union President, that he was given assurances by the Employer that in fact the City's stated intent was not to eliminate the deductions. Thus, there is no bargaining history with respect to a negotiable item that would lead to a conclusion that the parties had reached a resolution authorizing employee deductions for dental coverage. Pa181.

Nor was there any such evidence, which would establish that all City employees, particularly all unionized bargaining unit employees, contribute toward their dental coverage. Apart from the fact that the City was admittedly required to cover those dental coverage costs without participating firefighter contribution during the prior twelve years from at least 2010 through to June 1, 2022 (i.e., the implementation date of the May 2022 Memorandum of Agreement) under Article VII of the 2010-2019 collective negotiations agreement between the parties

[3] See *Paterson Police PBA Local No, 1, et al v. City of Paterson*, A-3937-19, 2021 N.J. Super Unpub. LEXIS 652 (App. Div. Feb 22, 2021), certif. denied, 248 N.J. 384 (2021). Da292

(Pa169)[4], the only evidence whatsoever as to the City's contention in its brief before this Court was to the contrary of that contention.

Thus, as Arbitrator Burrell noted, the only witness who testified at the arbitration, former PFA President Frank Petrelli, stated under oath that he had spoken "with the heads of the Patrolman and Superior Officers, who told him that they were not paying dental premiums." Pa173. This evidence was not disputed during the hearing by the City presenting any countervailing evidence or testimony to the contrary, even though both the Chief Financial Officer for the City, Javier Silva, and an Assistant Corporate Counsel for the City, Oscar Escobar, were present for the arbitration hearing at which the City called no witnesses to dispute Petrelli's testimony. Pa166. Nor is there any evidence to the contrary in the post-Award interest arbitration "evidence" presented by the City to the trial court below, which made no reference to the dental benefits that members of any bargaining units were receiving.

In its statement of facts portion of its brief to this Court, the City expounds upon testimony it presented or elicited during post-Award interest arbitration proceedings before a different arbitrator as to the City being a transitional aid recipient. Db5 to Db7. However, again, none of that evidence was before Arbitrator

[4] Article XXX C of the 2010-2019 collective negotiations agreement provided that "[t]his Agreement shall remain in full force and effect during the period of negotiations until a new Agreement is executed." Pa100, Pa 169 to Pa170.

Burrell as there was admittedly no testimony whatsoever offered by the City before Arbitrator Burrell concerning that status, the Joint and City's exhibits did not touch upon the City's financial status (Da011 to Da012) and even the trial court made no reference to that status in its decision.

The City asserts at page 7 of its brief to this Court that "the subject MOA was reached on the eve of Interest Arbitration" [citing to Pa204] (Db7), but that claim is nonetheless unsupported by that citation to the PFA's Appendix. There is no evidence in the record to support that contention.

Referring to other Articles in the May 2022 Memorandum of Agreement between the City and the PFA, other than Article VII ("Health Benefits"), in which the language "Replace this Article with the following" was used i.e., Article XIV ("Dues Check-Off") and Article XXVI ("Savings Clause") (Pa108, Pa112 and Pa114), the City contends that the "Union purposely made these concessions to the City (as well as indirectly to the State) because it desperately wanted the current, enhanced salary grid that is in effect between the Parties by virtue of the MOA being executed" (Db14); that "[t]he Union was well aware of the fact that if it did not make these economic concessions, the MOA would not be ratified by the City or approved by the DCA, and it would lose the salary grid its members coveted . . . ." Da15.

Each of those contentions is disingenuous at best. Neither Article XIV, nor Article XXVI of the May 2022 Memorandum of Agreement between the City and the

PFA (nor Article XXII ["Non-Discrimination"] [Pa114], which also includes that language) involves any economic concession or, for that matter, any concession by the PFA which could by any stretch of the imagination be deemed to provide a giveback which would lead the City to agree to an enhanced salary grid for PFA bargaining unit members. There is, again, no evidence whatsoever in the record (including statements made by PFA attorney Shahdanian during the post-Award interest arbitration proceedings) that the replacement of the pre-existing language of any of the "Replace this Article with the following" Articles in the May 2022 Memorandum of Agreement, including Article VII, were agreed to as incentives for, or givebacks to, the City to convince it to agree to an enhanced salary grid for PFA bargaining unit members.

Despite the City's argument in its post-hearing brief to Arbitrator Burrell claiming that the "clear language" of the May 2022 Memorandum of Agreement (Da10) demonstrated "that the Union waived these benefits in favor of a more lucrative salary grid and overall compensation package from the City," there is absolutely nothing in the May 2022 Memorandum of Agreement which explicitly or implicitly ties any particular alleged reduction, alteration or waiver of any benefit possessed by PFA bargaining unit members under the 2010-2019 collective negotiations agreement between the PFA and the City to such "a more lucrative

salary grid and overall compensation package."[5] Pa103 to Pa116. Again, as the May 2022 Memorandum of Agreement, on its face, does not itself establish such a *quid pro quo*, and Arbitrator Burrell effectively so found, the source for such a bargaining history of the May 2022 Memorandum of Agreement with regard to the replacement of Article VII of the 2010-2019 collective negotiations agreement would need to be either testimonial or documentary evidence. It is undisputed that the City provided neither before Arbitrator Burrell and, in fact, the record establishes that the City provided neither to the trial court.

The City also emphasizes that it argued before Arbitrator Burrell that "the Union is well-aware that the main reason the MOA was ratified was that for the Fire Fighters to get the generous financial package they so desperately sought, they had to agree to certain cost-saving measures on behalf of the City." Db16 and Da017. However, as the Burrell Award makes clear, this alleged awareness of the PFA was not an issue raised before Arbitrator Burrell. No specification of any PFA-agreed cost-savings measures other than the parties' agreement concerning longevity is mentioned in the post-Award evidence presented by the City to the trial court[6].

[5] At page 31 of the City's brief to this Court, the City contends that "the only reason the Union received the salary grid it so desperately wanted (another Article that completely replaced the old Article in the contract) was because the Union agreed to give the City (in part) this financial concession." (Da012). Db31. Page 12 of the City's Appendix, a page from the City's post-hearings brief to Arbitrator Burrell, however, provides no support whatsoever for this claim that a dental benefit financial concession to the City was ever made by the PFA. Da012. Furthermore, Arbitrator Burrell expressly found to the contrary. Pa181.

[6] The May 2022 Memorandum of agreement provides as concerns "longevity," that "[e]mployees hired after ratification of CNA are ineligible for any longevity." Pa110.

Pa205 to Pa206.

The City mentions repeatedly that the PFA allegedly waited 2 years after the May 2022 Memorandum of Agreement was entered into before grieving the City's collecting dental premium contributions from enrolled firefighter salary payments. E.g. Db 31 ("for nearly two full years after the MOA was executed and put into effect the firefighters [along with all other City employees] contributed toward their dental plan coverage.").

However, as Arbitrator Burrell found, during negotiations for the May 2022 Memorandum of Agreement, the PFA was misled by the City into believing that the City was then covering all costs for dental benefits for enrolled firefighter bargaining unit members (and their eligible dependents) and that the City was not seeking to reduce or terminate that benefit in negotiations; further employee earnings statements during those two years (and before) did not separately show employee medical versus dental contribution deductions (i.e., they were merged as a single figure) and City notice of a new dental care provider, effective January 1, 2024, which made no mention of employee contributions or premiums, was issued by the City to bargaining unit members on December 27, 2023. Pa173 to Pa174 and Pa180 to Pa 181. Consequently, Arbitrator Burrell held that the PFA's grievance was timely filed, but limited the remedy to employee costs commencing January 1, 2024. Pa181 and Pa183.

The City also appears to argue that, despite the trial court not addressing such an issue, the Burrell Award should have been vacated as the PFA was arguing a unilateral mistake in its agreement to the new Article VII in the May 2022 Memorandum of Agreement. Pb33 to Pb34. While this is an argument earlier made in the City's post-hearing brief to Arbitrator Burrell (Da017 to Da018), reference to the Burrel Award and the PFA's post-hearing brief to Arbitrator Burrell each establish that no "mistake" argument concerning Article VII in the May 2022 Memorandum of Agreement was presented by the PFA in the arbitration. Pa134 to Pa139 and Pa174 to Pa177.

Finally, the City audaciously falsely claims that Arbitrator Burrell held that Article XXV of the May 2022 Memorandum of Agreement was a most favored nations ("MFN") clause. Db38. Arbitrator Burrell merely mentioned in his Award that Article XXV of the 2010-2019 collective negotiations agreement was a MFN[7] and was "inapposite" and "not an issue here." Pa181 and Pa182. He then went on to hold that the new language of Article XXV in the May 2022 Memorandum of Agreement -- by its terms requiring all "rights, privileges and benefits which the employees covered by this Contract enjoyed prior to the effective date of this

[7] Article XXV A of the 2010-2019 collective negotiations agreement read:

> All other rights, benefits, and privileges enjoyed by members in all other bargaining unit ranks of the Paterson Fire Department shall also be enjoyed by members of the Paterson Firefighters Association as if fully set forth herein. Pa95.

Contract are retained by the employees except as those rights, privileges, and benefits [are] specifically abridged or modified by this Contract" -- "now requires specific language to abridge or modify an existing practice" (Pa182); that "[t]here is no specific language in the MOA Article VII eliminating the City's obligation to provide dental coverage without employee cost, merely the deletion of existing language without replacement." Pa182.

Arbitrator Burrell was obviously correct in that finding. It is incontrovertible that there is no language present in the May 2022 Memorandum of Agreement **specifically** abridging or modifying the pre-existing practice of dental coverage without bargaining unit member cost.

The new Article VII in the May 2022 Memorandum of Agreement, which provides, without more, in regard to dental benefit coverage that the City "agrees to provide . . . dental . . . insurance to all full-time employees and their dependents" (Pa108), is not inconsistent in any respect with the maintenance of the established prior practice between the parties of the City paying "the full cost of the dental plan currently in effect for full-time employees and their eligible dependents" (Pa151). Arbitrator Burrell held (as had other arbitrators addressing City arbitrations with the City's police unions and Arbitrator Burrell himself in a prior arbitration between the parties hereto, all dealing with the same language) that such preservation of benefits language as appears at Article XXV of the May 2022 Memorandum of Agreement

required specific language to be placed in a successor agreement modifying or eliminating that "full cost of the dental plan" benefit in order for that benefit to be unilaterally terminated by the City. Pa135 to Pa137 and Pa150 to Pa155.

CONCLUSION

For the reasons set forth herein and in the PFA's August 15, 2025 Brief for Plaintiff-Appellant, the Court should reverse the decision of the trial court vacating the Burrell Award and should itself either confirm that Award or remand the case to the trial court to render an Order confirming the Burrell Award in all respects.

Respectfully submitted,

SHAW, PERELSON, MAY & LAMBERT, LLP

BY: _____
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