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July 7, 2025

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On the Letter-Brief

*LETTER-BRIEF ON BEHALF OF RESPONDENT-MOVANT,
TOWNSHIP OF OCEAN SCHOOL DISTRICT, IN RESPONSE TO AMICUS
CURIAE BRIEFS*

Honorable Chief Justice and Associate Justices of the
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
Trenton, NJ 08625-0970

Re: Giuseppe Amato (Petitioner-Respondent) v. Township of Ocean School
District (Respondent-Movant)
Supreme Court Docket No.: 090133
Appellate Docket No.: A-2543-23

Civil Action: On Appeal from an Order of the Superior Court of
New Jersey, Appellate Division

Sat Below: Honorable Lisa A. Puglisi, J.A.D.
Honorable Lisa Rose, J.A.D.
Honorable Patrick DeAlmeida, J.A.D.

Honorable Chief Justice and Associate Justices:

Kindly accept this Letter-Brief on behalf of respondent-movant,
Township of Ocean School District, in support of its appeal from the
November 25, 2024 Opinion of the Appellate Division.

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PRELIMINARY STATEMENT

This is an appeal from an Appellate Division Opinion, which affirmed an Order from the Division of Workers Compensation, in which the petitioner decedent was declared to be an essential employee under N.J.S.A. 34:15-31 during an alleged period of occupational exposure.

The New Jersey Association for Justice ("NJAJ"), Council on Safety and Health ("CSH"), and the New Jersey Education Association ("NJEA") were granted leave to appear amicus curiae. This Letter-Brief responds to their Briefs.

The clear language of N.J.S.A. 34:15-31.11 does not identify teachers or other educational employees as essential employees. Furthermore, these employees are not deemed to be essential employees anywhere in the legislative history that lead to the enactment of the statute because there was no need to include teachers in the definition of essential employees because after the initial shutdown during the COVID-19 pandemic, schools were closed and learning occurred virtually.

The Judge of Compensation declared the decedent to be an essential employee after oral argument on a motion that was based on nothing but petitioner's attorney's certification and legal argument, despite the existence of genuine issues of material fact. The Judge of Compensation concluded that

teachers fall within the definition of essential employees and that this teacher, the decedent, would be declared to be an essential employee.

The Judge of Compensation erred procedurally and substantively by summarily declaring the decedent to be an essential employee.

The Appellate Division found that teachers fall within the definition of essential employees, and that the Judge of Compensation did not abuse her discretion by granting petitioner's motion even in the absence of any statement of material facts that would be required under the summary judgment standard required by the Court Rules.

Amicus curiae ask this Court to interpret N.J.S.A. 34:15-31.11 to read teachers into the definition of essential employees while the statute is not ambiguous and does not identify teachers as such. Amicus curiae also ask this Court to ignore respondent's basic due process right to a full and fair hearing in favor of expediency.

For the reasons that follow, it is respectfully submitted that this Court should reverse the Appellate Division Opinion and remand this matter to a different Judge of Compensation for a trial on the merits.

PROCEDURAL HISTORY¹

Respondent relies upon and incorporates the Procedural History set forth in its December 31, 2024 Amended Letter-Brief (Rrb3-5), and adds that respondent filed a Notice of Motion for Leave to Appeal from the November 25, 2024 Appellate Division Opinion on December 31, 2024. The Supreme Court granted that motion in an Order that was filed on January 31, 2025.

The New Jersey Association for Justice ("NJAJ"), Council on Safety and Health ("CSH"), and the New Jersey Education Association ("NJEA") were granted leave to appear amicus curiae by the Supreme Court in Orders that were filed on June 27, 2025. This Letter-Brief responds to their Briefs.

STATEMENT OF FACTS

Respondent relies upon and incorporates the Statement of Facts set forth in its December 31, 2025 Amended Letter-Brief. (Rrb5-6).

¹ "Rrb" refers to respondent's Amended Letter-Brief filed on December 31, 2024.

"Rra" refers to the appendix to respondent's Amended Letter-Brief filed on December 31, 2024.

"Ra" refers to the appendices filed by respondent on June 7, 2024 in the Appellate Division in the underlying appeal.

"1T" refers to February 21, 2024 motion transcript.

"2T" refers to March 14, 2024 motion transcript.

LEGAL ARGUMENT

POINT I

PETITIONER WAS NOT ENTITLED TO A FINDING THAT THE DECEDENT OR TEACHERS IN GENERAL ARE ESSENTIAL EMPLOYEES.²

Petitioner was not entitled to a finding that the decedent was an essential employee within the definition of N.J.S.A. 34:15-31.11. The statute defines an "essential employee" as an employee in the public or private sector who, during a state of emergency:

- (1) is a public safety worker or first responder, including any fire, police or other emergency responders;
- (2) is involved in providing medical and other healthcare services, emergency transportation, social services, and other care services, including services provided in health care facilities, residential facilities, or homes;
- (3) performs functions which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, including transportation services, hotel and other residential services, financial services, and the production, preparation, storage, sale, and distribution of essential goods such as food, beverages, medicine, fuel, and supplies for conducting essential business and work at home; or
- (4) is any other employee deemed an essential employee by the public authority declaring the state of emergency.

An employee who is an employee of the State who is offered the option of working at home but has refused that option shall not be regarded as an essential employee.

² This Point responds to Point I of NJEA's Brief at pages 4-8, and Point I of NJAJ's Brief at pages 2-7.

N.J.S.A. 34:15-31.12 then provides for the following rebuttable presumption:

If, during the public health emergency declared by an executive order of the Governor and any extension of the order, an individual contracts coronavirus disease 2019 during a time period in which the individual is working in a place of employment other than the individual's own residence as a health care worker, public safety worker, or other essential employee, there shall be a rebuttable presumption that the contraction of the disease is work-related and fully compensable for the purposes of benefits provided under R.S.34:15-1 et seq., ordinary and accidental disability retirement, and any other benefits provided by law to individuals suffering injury or illness through the course of their employment. This prima facie presumption may be rebutted by a preponderance of the evidence showing that the worker was not exposed to the disease while working in the place of employment other than the individual's own residence.

Teachers are conspicuously omitted from the employees that are identified as essential in N.J.S.A. 34:15-31.11 and 31.12. The statute was not intended to designate teachers to be essential employees for the simple fact that after the initial shutdown during the COVID-19 pandemic, schools were closed and learning occurred virtually. Thus, while teachers, and this decedent in particular, returned to work virtually during the relevant time period, they were not required to return to in-school instruction.

The Appellate Division affirmed the Judge of Compensation's finding that teachers are essential workers because:

section (4) [of the statute]...extends the definition of essential employees to include "any other employee deemed an essential

employee by the public authority declaring the state of emergency." Thus, even if the statute did not identify teachers as essential employees, it nevertheless encompassed any other employee the governing authority deemed essential. Teachers were deemed essential employees through the Governor's delegation of the responsibility to protect the public to OEM [Office of Emergency Management] and OEM's adoption of CISA's [Cybersecurity and Infrastructure Security Agency's] list of essential employees, which included teachers.

This determination is further buttressed by EO [Executive Order] 175, which permitted the reopening of schools because 'in-person instruction provides students with academic, social, emotional, and mental health support that cannot be provided with the same level of efficacy in a remote setting' and 'is critical in facilitating the social and emotional health of students.' Exec. Order No. 175, 52 N.J.R. at 1699. As a result, of EO 175, schools reopened while there was still a public health emergency in place.

(November 25, 2024 Appellate Division Opinion, pp. 14-15, Rra14-15).

The foregoing cited Executive Order and CISA guidance are only advisory and should not be dispositive on the question of whether teachers are essential employees. Under that rationale, it would be difficult to imagine any public employee that would not fall under the definition of an essential employee. Had the Legislature intended to include teachers in this definition, it would have named teachers among the other employees that are specifically named in the statute. Teachers therefore should not be included in the definition of essential employees under N.J.S.A. 34:15-31.11.

Section (3) requires an individual to perform functions which involve physical proximity to the public and are essential to the public's health, safety,

and welfare to meet the definition of essential employee. The statute is written in the conjunctive. Both requirements must be met. Executive Order 175 states:

access to school buildings is not available to the general public and the individuals present in a school building do not vary from day to day, which creates a lesser risk of COVID-19 transmission than exists in spaces generally open to the public and makes contact tracing substantially easier in the event of an outbreak;”

Teachers therefore do not fall within the definition of essential employees.

POINT II³

THE LEGISLATIVE INTENT OF THE WORKERS COMPENSATION ACT DOES NOT WARRANT AN INTERPRETATION OF N.J.S.A. 34:15-31.11 TO INCLUDE TEACHERS AS ESSENTIAL EMPLOYEES

Amicus curiae argue that teachers should be deemed to be essential employees to advance the goal of the Workers Compensation Act. Respondent acknowledges that the Act is remedial social legislation that should be given liberal construction to implement the legislative policy of affording coverage to as many workers as possible. While guided by these general principles, however, in order to interpret a statute, the "general task is to understand and

³ This Point responds to Point II of NJEA's Brief at pages 8-11, and Point II of NJAJ's Brief at pages 7-8.

give effect to the intent of the Legislature." Cruz v. Central Jersey

Landscaping, Inc., 195 N.J. 33, 42-43 (2008). The Court explained:

In doing so, we look first to the plain language of the amendment, seeking further guidance only to the extent that the Legislature's intent cannot be derived from that analysis. In the event that language is not clear and unambiguous on its face, we look to other interpretive aids to assist us in our understanding of the Legislature's will. (Citations omitted).

Id.

Here, the plain language of the statute is clear and unambiguous.

N.J.S.A. 34:15-31.11 does not identify teachers as essential employees. The Legislature listed specific employees whom would be covered by the statute, but teachers were conspicuously omitted from the identified employees. This was because after the initial shutdown during the COVID-19 pandemic, schools were closed and learning occurred virtually in stark contrast to the types of employees who are specifically identified in the statute as being in "physical proximity to members of the public."

Amicus curiae ask the Court to read into the statute that teachers should be deemed essential employees despite the clear and unambiguous language of the statute which reflects the Legislature's intent to omit teachers from this definition. While the Workers Compensation Act is remedial social legislation, it must not be interpreted to go beyond the intent of the Legislature.

POINT III

RESPONDENT WAS DENIED DUE PROCESS BY THE JUDGE OF COMPENSATION SUMMARILY GRANTING PETITIONER'S MOTION, WHETHER IT WAS TREATED AS A MOTION FOR SUMMARY JUDGMENT UNDER R. 4:46-2 OR AS AN OTHER MOTION UNDER N.J.A.C. 12:235-35.⁴

Respondent was denied due process because the Judge of Compensation summarily granted petitioner's motion after relieving petitioner of the basic requirement to present affidavits from individuals with personal knowledge of the relevant facts. Regardless of whether the Judge of Compensation treated the motion to declare the decedent an essential employee as an "other motion" under Workers Compensation Rule N.J.A.C. 12:235-3.5, or as a motion for summary judgment under R. 4:46-2, petitioner failed to satisfy his burden of proof.

If treated as an "other motion" under the Workers Compensation Rules, as urged by amicus curiae NJAJ, N.J.A.C. 12:235-3.5(b) required petitioner's motion to "be supported by affidavit made on personal knowledge setting forth facts which are admissible in evidence to which the affiant is competent to testify."

⁴ This Point responds to Point III of NJAJ's Brief at pages 8-10, and Points I and II of CSH's Brief at pages 4-11.

If treated as a motion for summary judgment, R. 4:46-2(a) required petitioner's motion to be supported by a statement of material facts, which "set forth in separately numbered paragraphs a concise statement of each material fact as to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted. The citation shall identify the document and shall specify the pages and paragraphs or lines thereof or the specific portion of exhibits relied on."

Petitioner did not provide any support for his motion for the Judge of Compensation to even consider the motion, regardless of which of the foregoing Rules applied. The question whether this decedent fell within the definition of N.J.S.A. 34:15-31.11(4) ("any other employee deemed an essential employee by the public authority declaring the state of emergency") was a genuine issue in dispute. Since teachers are not specifically named in the statute, this petitioner would have to show that the decedent was entitled to this presumption as an "any other employee" based on the facts and circumstances pertaining to her employment, including but not limited to her duties, whether she was working remote or in person, and whether her specific school district deemed their full-time teachers to be essential employees.

If petitioner were among the employees whom are specifically named in the statute, these proofs would not be necessary. However, to bring decedent, a teacher, within the purview of the statute, petitioner would have to prove that the decedent was entitled to that presumption as an "any other employee" that satisfied the definition in section (4).

The foregoing Rules must be enforced to afford a respondent its basic right to due process, which includes the right to a full hearing to litigate the issue of whether the decedent in this case fell within the purview of the definition of essential employees under N.J.S.A. 34:15-31.11. Workers compensation claims proceed as summary proceedings. The parties are afforded limited discovery and limited rights to depositions. See N.J.A.C. 12:235-3.8 and 3.9.

To permit the finding below to stand based on a summary decision that did not even follow the basic requirements of the Workers Compensation Rules or the New Jersey Court Rules denied respondent its right to due process. Such a finding would also encourage motion practice in a field that is designed for summary hearings with little or no discovery.

Petitioner's "proofs" consisted of nothing more than his attorney's certification of conclusory allegations, a copy of Executive Order No. 103, a one-page document labeled, "Essential Employees," which is guidance

promulgated by CISA, an Advisory Memorandum, and a CISA Memorandum, touching on workers that are essential to critical infrastructure. (Ra6-40).

Petitioner's motion papers did not establish that there are no disputed issues of material fact. Executive Order 103 does not state that a teacher is an essential employee. The "Essential Employees" document is from a federal agency that has no power to enact any statute or regulation that addresses the compensability of a New Jersey worker's compensation claim. The CISA Advisory Memorandum states that earlier versions were meant to assist officials and organizations identify essential work functions and to allow essential workers access to their workplace. However, allowing access to the workplace differs from conferring a presumption of compensability in the context of a worker's compensation claim. The CISA Memorandum is merely guidance on the essential, critical infrastructure workforce, but certainly does not conclusively resolve the issue of whether a teacher is an essential worker. In fact, the document was dated August 18, 2020, which predates the passage of the Presumption Statute.

The Rules of Evidence may not be relaxed to the point of infringing on the parties' due process rights or other fundamental rights. In Paco v. American Leather Mfg. Co., 213 N.J. Super. 90, 97 (App. Div. 1986), the court explained that:

Our holding today is merely a recognition of a fundamental tenet of our Anglo-American system of justice that no court or administrative agency is so knowledgeable that they can make fair findings of fact without providing both sides the opportunity to be heard. Larson, supra, § 79.84 at 15–426.295–96. As previously indicated, this opportunity to be heard includes not only the right to cross-examine the adversary's witnesses but also the right to present witnesses to refute the adversary's evidence. See, id. § 279.63 at 15–426.206; General Chemical Division, supra, 47 Del. at 547, 94 *A.2d* at 601. Thus, due process in administrative hearings requires that both parties have the right to present oral testimony in critical areas. Larson, supra, § 79.11, 12.

Neither the trial court nor the Appellate Division addressed what is the appropriate standard the court must use in considering this motion. The Court, in Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995), established the standard in summary judgment motions requiring the trial court to view the proofs in the light most favorable to the non-moving party. The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Id. at 540, quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). It would stretch rationality to suggest that a litigant in an administrative proceeding where no dispositive document exists defining teachers as essential workers, where not one affidavit or certification from an individual with personal knowledge was submitted to the trial court, and where a litigant is not entitled to discovery such as depositions would be afforded less protections than a litigant in Superior Court.

Here, respondent was denied these basic fundamental rights of the opportunity to be heard at a full hearing, to present witnesses and evidence, to cross-examine petitioner's witnesses, and to refute petitioner's evidence.

The Judge of Compensation found that while the Workers Compensation Rules do not provide for summary judgment motions, petitioner's motion could be considered under N.J.A.C. 12:235-3.5, which provides for "other motions," and strict compliance with the requirements for summary judgment under the Court Rules do not apply. (2T71-1 to 2T72-19).

The Appellate Division concluded that:

Because the judge's decision here turned on statutory interpretation and analysis of public documents, the lack of a statement of material facts was not fatal to the application and the judge did not abuse her discretion in considering the application absent the statement.

(November 25, 2024 Appellate Division Opinion, pp. 16-17, Rra16-17).

The Appellate Division reached this conclusion after finding that "a party to a workers' compensation dispute may obtain 'a declaration of rights' pursuant to the Declaratory Judgment Act (DJA), N.J.S.A. 2A:16-50 to 62," citing Weir v. Mkt. Transition Facility of NJ, 318 N.J. Super. 436, 442-443 (App. Div. 1999). (November 25, 2024 Appellate Division Opinion, p. 16, Rra 16).

However, petitioner did not file his motion under the DJA, so respondent had no opportunity to respond under that statute. Furthermore, this issue

would not have been appropriate for consideration under the DJA. This matter did not simply involve a ruling on statutory construction. It required consideration whether the decedent should have been considered an essential employee based on the specific facts and circumstances pertaining to her employment, including but not limited to her duties, whether she was working remote or in person, and whether her specific school district deemed their full-time teachers to be essential employees. Had this been filed under the DJA the litigants would have been afforded the right to engage in full discovery. Respondent should have had the opportunity to litigate these issues.

Amicus curiae CSH complains that to afford respondent these basic due process protections would be "to turn every motion into a Scopes Monkey trial over every issue," and would result in further delay. (CSH Brief, pages 8, 10-11). While it may present an inconvenience and some delay to ensure that a litigant's due process rights are not ignored, the right to due process cannot be so casually dispensed with in favor of expediency.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that this Court should reverse the Appellate Division Opinion, which affirmed the Order declaring the decedent and all teachers to be essential employees, and should remand this matter to another Judge of Compensation for a trial on the merits.

Respectfully submitted,
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