
GIUSEPPE AMATO, : SUPREME COURT OF NEW JERSEY
 : DOCKET NO.: 090133
Petitioner-Respondent, :
 : Civil Action
v. :
 : Sat Below:
TOWNSHIP OF OCEAN : Hon. Lisa A. Puglisi, J.A.D.
SCHOOL DISTRICT, : Hon. Lisa Rose, J.A.D.
 : Hon. Patrick DeAlmeida, J.A.D.
Respondent-Appellant. : Superior Court of New Jersey
 : Appellate Division
----- Docket No.: A-2542-23
A-2543-23

**BRIEF OF AMICUS CURIAE NEW JERSEY EDUCATION
ASSOCIATION**

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2020 N.J. S.N. 23809

PRELIMINARY STATEMENT

During Covid-19, school employees essentially risked their lives or serious illness to perform essential work in-person. Teachers reported to work to fulfill their mission to educate our State's children in the midst of a global pandemic. When State and local authorities directed in-person education to re-commence, school employees reported to work in-person. These employees were essential. Schools, and education, are essential services provided by government. Indeed, our State Constitution mandates that the Legislature provide a thorough and efficient public school system. See N.J. Const. art. VIII, § 4, ¶ 1. That duty to provide a thorough and efficient education, which requires dedicated Teachers, is an affirmative right provided in the New Jersey Constitution. See Abbott v. Burke, 100 N.J. 269, 280 (1985); Robinson v. Cahill, 62 N.J. 473, 515-19 (1973). Teachers like Amato, who reported to work, were exposed, at work, to Covid-19 and the dangers of infection. Our Legislature recognized that employees like Amato were essential, recognized that there was a probability of infection from Covid-19 while at work, and recognized that those employees who were exposed to Covid-19 while providing essential services, were deserving of special protection in our Workers' Compensation law. Employees like Amato were deserving of special protection because they did not assume the risk, in becoming Teachers, of exposure to a deadly disease.

The Appellate Division's decision below correctly determined that Teachers like Amato are essential employees. The decision below correctly determined that Teachers like Amato are entitled to a rebuttable presumption that their Covid-19 infection occurred from exposure at work. The panel properly applied the legal authority to the circumstances before it. The legal conclusion reached by the Appellate Division, however, finds support in the policy considerations that motivated the Legislature when it enacted the pertinent portion of the Workers' Compensation law. It is submitted that the Legislature's goal was to protect essential employees like Amato and to compensate them if they contracted Covid-19. The Legislature decided that employees like Amato, who succumbed to Covid-19, should receive all of the benefits of the Workers' Compensation law.

The Court should affirm the decision below because the Appellate Division correctly determined that Amato was an essential employee. Further, the Court should affirm the decision below because of the significant public policy in affording Workers' Compensation protection to essential employees exposed to Covid-19 while performing essential work.

PROCEDURAL HISTORY

Amicus New Jersey Education Association (“NJEA”) relies upon and incorporates by reference the Procedural History set forth in the Brief filed by Petitioner-Respondent Giuseppe Amato (“Amato”) with the Superior Court, Appellate Division, which is on file with this Court.

STATEMENT OF FACTS

Amicus NJEA relies upon and incorporates by reference the Statement of Facts set forth in the Brief filed by Amato with the Superior Court, Appellate Division, which is on file with this Court.

LEGAL ARGUMENT

POINT I

THE APPELLATE DIVISION'S DECISION THAT TEACHERS ARE ESSENTIAL WORKERS SHOULD BE AFFIRMED

The Appellate Division's decision below correctly held that Teachers are essential employees for purposes of Workers' Compensation benefits. In reaching that conclusion, the Court analyzed the action of the governing authorities during the pandemic, and, the pertinent factual data with respect to the re-opening of schools. In re-opening the schools, the authorities recognized the vital and essential roles played by both the public schools, and their staff, whose duty it was and is to educate the children of our State during the Covid-19 pandemic. That duty to educate our State's children is well-established as a requirement imposed by the State Constitution. See Abbott, Robinson, supra.

The Appellate Division correctly found that Amato was an essential employee. Our Workers' Compensation law, N.J.S.A. 34:15-31.11, 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.

Essential employees that contracted Covid-19 are entitled to “a rebuttable presumption that the contraction of the disease is work-related and fully compensable for the purposes of benefits provided under N.J.S.A. 34:15-1 to -6, ordinary and accidental disability retirement, and any other benefits provided by law to individuals suffering injury or illness through the course of their employment.” N.J.S.A. 34:15-31.12. Moreover, the “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.” Ibid.

The Appellate Division's correctly concluded that the proceedings below comported with the law. As the Court recognized, on March 9, 2020, Governor Murphy issued Executive Order (EO) 103, declaring a public health emergency and state of emergency in New Jersey as a result of the Covid-19 pandemic. Exec. Order No. 103 (Mar. 9, 2020), 52 N.J.R. 549(a) (Apr. 6, 2020). EO 103 authorized the State Office of Emergency Management (OEM), in conjunction with the New Jersey Department of Health (DOH), to take any actions necessary to protect the health and welfare of New Jersey citizens. *Ibid.* Further, on March 16, 2020, the Governor issued EO 104, closing all schools in New Jersey. Exec. Order No. 104 (Mar. 16, 2020), 52 N.J.R. 550(a) (Apr. 6, 2020). On August 13, 2020, the Governor signed EO 175, which superseded the prior EOs requiring schools to remain closed and allowed schools to reopen for in-person instruction subject to health and safety protocols. Exec. Order No. 175 (Aug. 13, 2020), 52 N.J.R. 1699(a) (Sept. 21, 2020).

At approximately the same time, in response to the COVID-19 pandemic, the Cybersecurity and Infrastructure Security Agency (CISA), an agency of the United States Department of Homeland Security, issued guidance as to who should be considered essential employees. Teachers of kindergarten through twelfth-grade were included in the list. "CISA, Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response 10" (version 4.0 Aug. 18, 2020). CISA's essential employee guidelines were adopted

by OEM. Essential Employees, OEM, <https://nj.gov/njoem/programs/essential-employees.shtml>. Additionally, on October 16, 2020, DOH promulgated a Covid-19 vaccination plan which identified “education and child-care workers” as essential employees. N.J. Dep’t of Health, COVID-19 Vaccination Plan 43 (version 1 Oct. 16, 2020). Similarly, the Centers for Disease Control and Prevention recommended that frontline essential workers, including “those who work in the education sector (teachers and support staff members)” receive the vaccine prior to healthy young people. Kathleen Dooling, MD et al., “The Advisory Committee on Immunization Practices’ Updated Interim Recommendation for Allocation of COVID-19 Vaccine” - United States, December 2020, Centers for Disease Control and Prevention, <https://www.cdc.gov/mmwr/volumes/69/wr/mm695152e2.htm> [<https://perma.cc/2X8G-YB3W>]. On June 4, 2021, Governor Murphy signed EO 244, ending the Covid-19 public health emergency. Exec. Order No. 244 (June 4, 2021), 53 N.J.R. 1131(a) (July 6, 2021).

The Appellate Division rejected the argument that Teachers are not essential employees, rejecting the argument that N.J.S.A. 34:15-31.11 does not expressly list “Teachers.” The Court correctly determined that section (4), which applies the definition of “essential employees” to include “any other employee deemed an essential employee by the public authority declaring the state of emergency” encompasses Teachers because the governing authorities deemed Teachers essential

employees. Specifically, the Governor delegated the responsibility to protect the public to OEM, and OEM's adoption of CISA's list of essential employees included teachers. The Court's determination is buttressed by EO 175, which permitted the reopening of schools because it "is critical in facilitating the social and emotional health of students." Exec. Order No. 175, 52 N.J.R. at 1699. Consequently, schools reopened while there was still a public health emergency in place, and Teachers returned to work despite the dangers of Covid-19.

The Appellate Division's conclusion that Teachers are essential employees whose return to work during Covid-19 entitles them to the benefits of Workers' Compensation due to Covid-19 infection comports with the governing law. Indeed, this conclusion is fully supported by the policy and aims of the pertinent provisions of our Workers' Compensation law. For these reasons, the decision below should be affirmed.

POINT II

THE APPELLATE DIVISION'S DECISION IS ALIGNED WITH THE PURPOSES AND POLICY GOALS OF THE WORKERS' COMPENSATION LAW TO PROVIDE WORKERS' COMPENSATION BENEFITS TO ESSENTIAL EMPLOYEES THAT WERE REQUIRED TO REPORT TO WORK DURING THE COVID-19 PANDEMIC

The Amicus NJEA submits that the Appellate Division's decision in this matter with regard to the essential employees covered by the Workers' Compensation law should be affirmed because the purpose and intent of the

additions to the Workers' Compensation law was to further the rights of essential employees during the Covid-19 pandemic and to incentivize their return to work despite the dangers of Covid-19. The purpose of the law was to provide these essential employees with Workers' Compensation benefits if they contracted Covid-19 at work. The Appellate Division's determination was consistent with and implemented the legislative intent to afford protection to essential employees like Amato.

The provisions of the Workers' Compensation law at issue here were enacted on September 14, 2020. The importance of the policy embodied in the law, however, is made clear by the Legislature's determination to make the law effective immediately, and retroactive to March 9, 2020, when the Covid-19 virus began to manifest. 2020 N.J. Ch. 84, § 5, 2020 N.J. S.N. 2380. Indeed, the law states that it is intended "to affirm certain rights of essential employees under the circumstances specified in this act, and shall not be construed as reducing, limiting or curtailing any rights of any worker or employee to benefits provided by law." N.J.S.A. 34:15-31.14. The Legislature's action recognized that essential employees faced incredible risks in reporting to work during the pandemic. The Legislature's determination to afford Workers' Compensation protections to essential employees, and here public employees like Amato, was a solution to the issue of the known and dangerous threats faced by such essential employees required to work in-person during the

Covid-19 pandemic. Additionally, the law provided an incentive for essential employees to report to in-person work during the pandemic. As the Appellate Division was well-aware, Teachers like Amato did not have the option to telework and to be shielded from exposure to Covid-19. Given the risk of exposure to the highly contagious Covid-19 and the consequences of exposure to Covid-19, the Legislature's solution constituted a fair and just response to the Covid-19 pandemic for essential employees and should be honored, not frustrated. Against this backdrop, the Appellate Division's determination that Teachers, like Amato, are essential employees entitled to the protections of the law should be affirmed.

The Legislature recognized the importance of essential employees. Essential employees were vital to the functioning of society as the pandemic led to stay-at-home orders. Teachers like Amato fulfilled the government's essential responsibility to educate children. Policy reasons support the Court's determination that Amato was an essential employee. Teachers played a self-evident role in providing the essential service of public education. Teachers should not have been discouraged from reporting to work to perform their duties. This Court has analogously considered similar public policy matters in the context of disability benefits for other public sector employees. For example, in Gable v. Bd. of Trs., PERS, 115 N.J. 212 (1989), the Court posited that public policy considerations supporting its conclusion that corrections officers were entitled to accidental disability benefits which were

initially denied by the pension systems' narrow interpretation of the governing law. Id. at 224. Specifically, the Court determined that such a narrow interpretation would discourage police officers and cause them to potentially act cautiously to avoid injuries, and consequently, cause them to not do their jobs properly. Id. The end result, in such a scenario, would cause the public to not be as well protected. Id. Similarly, here, a narrow interpretation of the law could cause essential employees to refrain from going to work to avoid the dangers of exposure, or, to perform their jobs in an overly-cautious manner which would compromise the performance of essential work.

Moreover, public policy should have, and did, prevent Teachers like Amato from being concerned that a Covid-19 infection from work could lead to uncompensated medical bills, or, protracted litigation over whether or not their infection occurred at work. The aim of the Workers' Compensation law here was to incentivize a return to work for essential employees, and, to fairly compensate them for exposure to Covid-19 while at work. That is what occurred here. The Appellate Division's decision properly considered the aims of the law here in finding that Amato was an essential employee.

CONCLUSION

In light of the foregoing, Amicus Curiae New Jersey Education Association respectfully submits that the decision of the Appellate Division below should be affirmed.

Respectfully submitted,

s/ **Albert J. Leonardo**
Albert J. Leonardo

Dated: April 14, 2025