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EAST ORANGE EDUCATIONAL SUPPORT PROFESSIONALS' ASSOCIATION AND EAST ORANGE MAINTENANCE ASSOCIATION, Plaintiffs-Petitioners, vs. EAST ORANGE BOARD OF EDUCATION, Defendant-Respondent.	SUPREME COURT OF NEW JERSEY CIVIL ACTION DOCKET NO.: 090489 On Petition for Certification of the Final Order of the Superior Court, Appellate Division Appellate Division Docket No. A-3657-21 Sat Below: Robert Gilson, J.P.A.D. Patrick Dealmeida, J.A.D.

BRIEF OF PROPOSED AMICUS CURIAE NEW JERSEY EDUCATION ASSOCIATION

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PRELIMINARY STATEMENT

The New Jersey Education Association (NJEA) respectfully submits this request to appear as amicus curiae and in support of the petition for certification and to urge reversal of the unpublished Appellate Division decision in East Orange Educational Support Professionals' Association and East Orange Maintenance Association v. East Orange Board of Education. That decision, relying on N.J.S.A. 18A:7F-9(e)(1), held that the statute prohibited additional compensation for employees who reported to work during school closures caused by the COVID-19 pandemic, despite clear language in their collective negotiations agreements (CNAs) providing for emergency pay, and the statute not addressing the rate of compensation for those who reported to work.

The Appellate Division's decision misconstrues both the purpose and the language of the statute, which was enacted to protect school employees from financial uncertainty during prolonged emergency closures—not to strip essential workers of bargained-for benefits. It also improperly substitutes its judgment for that of an experienced labor arbitrator, whose award was affirmed by the trial court, in contravention of the well-established "reasonably debatable" standard. Finally, the ruling violates long-settled precedent requiring that any legislative intent to override CNA terms be clear, specific, and unambiguous.

This brief seeks to restore fidelity to those core principles of public-sector labor law: deference to arbitral decisions, respect for collectively negotiated agreements, and a careful, remedial reading of emergency legislation. In a moment of public crisis, custodial and security employees continued reporting to their posts under unprecedented and hazardous conditions. To deny them that protection based on an inference which is not included in the statute, and certainly not clearly, would set a dangerous precedent for the treatment of frontline public employees in future emergencies.

For these reasons, *amicus curiae* NJEA respectfully urges the Court to grant the petition for certification and reverse the Appellate Division's decision.

STATEMENT OF THE MATTER INVOLVED

In March 2020, after the Governor declared a COVID-19 State of Emergency, the East Orange School District closed its buildings to students. Teachers and administrators transitioned to remote work, but custodial and security employees were required to continue reporting in person. Pursuant to the emergency compensation provisions in their respective collective negotiations agreements, the District initially paid those employees enhanced compensation for in-person work during the closure period. That practice ended by unilateral district action on July 13, 2020.

The unions representing custodial and security employees filed grievances challenging the discontinuation of emergency pay. The matters were consolidated and submitted to Arbitrator Jack Tillem, who sustained the grievances in part. He found that both CNAs entitled the employees to enhanced compensation for reporting to work in person while school buildings were closed, and he rejected the District's argument that N.J.S.A. 18A:7F-9(e)(1) preempted those provisions. He ordered that custodial employees be paid time-and-a-half in addition to regular pay and that security employees be paid time-and-a-half as specified in their agreement.

The trial court confirmed the arbitration award in its entirety. On appeal, the Appellate Division reversed in part, holding that the statutory language barred additional compensation for employees. This matter now returns on further appeal, raising questions concerning statutory preemption, the role of arbitral interpretation, and the continued enforceability of negotiated compensation provisions during declared emergencies.

QUESTION PRESENTED

Does a statute enacted to preserve compensation for school employees who work remotely during emergency closures override collectively negotiated provisions that expressly provide additional pay for employees required to work in person during such emergencies?

ERRORS COMPLAINED OF

I. THE APPELLATE DIVISION MISCONSTRUED THE LANGUAGE, INTENT, AND SCOPE OF THE STATUTE

The Appellate Division mistakenly asserted that N.J.S.A. 18A:7F-9(e)(1) was enacted primarily to "limit the financial exposure of school districts for extra compensation arising from school facility closures." Although this interpretation would indeed save districts money, it fundamentally mischaracterizes the Legislature's language and concerns when it enacted the statute in April 2020. It strains credulity to suggest—as the appellate division did—that the Legislature's primary concern during the initial stages of a global pandemic was limiting school districts' negotiations with employees who worked in person during the pandemic. That specific financial concern was not addressed in the statute and has traditionally and appropriately been left to collective negotiations agreements (CNAs), which routinely address compensation for overtime and hazardous conditions.

The Legislature's concern at that critical time was to protect public school employees from financial uncertainty and loss during unprecedented closures and shifts to remote instruction. At the start of the pandemic, the immediate uncertainty facing districts, teachers, administrators, and other school staff was not about hypothetical extra pay obligations—those already been addressed by existing CNAs—but rather about whether employees forced into remote work would continue to receive regular salaries and maintain their employment benefits. School

employees faced numerous potential financial uncertainties; would remote teaching count as a full compensated workday? Could school districts unilaterally reduce salaries or benefits based on perceptions that remote instruction was somehow "less demanding"? Would districts try to force hourly staff unable to report to schools to use sick leave or vacation time instead of receiving normal pay? Without legislative clarity, districts might have treated remote instruction days differently from in-person days for tenure calculations, pension contributions, or seniority. By enacting N.J.S.A. 18A:7F-9(e)(1), the Legislature proactively addressed these critical uncertainties, stating clearly that compensation and benefits must continue uninterrupted exactly as though schools remained open under normal conditions. At the same time, it did not purport to address extra pay, especially for those who were required to work in person and risk contracting COVID-19 at work. See Amato v. Twp. of Ocean Sch. Dist., 480 N.J. Super. 239 (App. Div. 2024), leave to appeal granted (January 31, 2025) (recognizing that under N.J.S.A. 34:15-31.11, essential employees who contracted COVID-19 during the state of emergency are entitled to a rebuttable presumption that the illness was work-related).

This legislative intent is reinforced by examining the statute's language, which the Appellate Division failed to consider in its entirety. The statute specifies that public school employees covered by CNAs must be compensated "as if the school facilities remained open for any purpose and for any time lost as a result of

school closures or use of virtual or remote instruction." The deliberate inclusion of both provisions—connected explicitly by the conjunction "and"—demonstrates an intent to protect targeted employees unable to physically attend school due to closures or virtual instruction. Thus, the statute directly addresses compensation protection for those unable to report and notably does not address—let alone limit—compensation for employees required to work onsite under emergency conditions. This approach to statutory interpretation is precisely what the New Jersey Supreme Court endorsed in Young v. Schering Corp., 141 N.J. 16 (1995), where the Court rejected a literal reading of a statute that would have penalized employees, emphasizing instead that statutes with a remedial purpose must be construed liberally to effectuate legislative intent.

Despite this injustice, the Appellate Court held that custodial employees' rights under their collective bargaining agreements were "protected" by this statute, while simultaneously holding that the statute restricts or even nullifies their contractual rights to emergency compensation. This interpretation is fundamentally inconsistent and illogical. It makes little sense to assert, as the appellate division did, that the Legislature's intent was simultaneously protective and punitive—securing payment for remote employees while explicitly undermining and limiting compensation for those who continued working in-person under hazardous conditions. Contrary to the Appellate Division's reasoning, this statute does no such

thing as it does not address the amount of compensation for employees who were required to work in person.

In sum, a logical and fair interpretation, consistent with both the statute's text and legislative intent, is that N.J.S.A. 18A:7F-9(e)(1) was designed specifically to compensate employees who worked remotely or could not attend school. By ensuring continuity of compensation for those unable to attend work, the Legislature sought to alleviate uncertainty and protect school employees. Any interpretation to the contrary—as proposed by the appellate court—misconstrues the legislative intent, ignores negotiated CNA provisions explicitly addressing emergencies, and unjustly penalizes those who took on substantial personal risk by continuing to physically report to their jobs.

II. THE APPELLATE COURT IMPROPERLY SUBSTITUTED ITS OWN VIEW OF POLICY FOR THE "REASONABLY DEBATABLE" STANDARD

The Appellate Division failed to apply the highly deferential "reasonably debatable" standard that governs judicial review of arbitration awards in public-sector labor disputes. In Borough of East Rutherford v. East Rutherford PBA Local 275, 213 N.J. 190 (2013), the New Jersey Supreme Court reaffirmed that "[a]rbitration awards are given a wide berth, with limited bases for a court's interference" and that "[u]nder 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.'" Id. at 202.

Despite this well-established standard, the Appellate Division rejected the arbitrator's interpretation of N.J.S.A. 18A:7F-9(e)(1) as not "reasonably debatable," relying on a conclusory assertion that "[a]rbitrators cannot be permitted to authorize litigants to violate either the law or those public-policy principles that government has established by statute." As has been demonstrated, that assertion does not apply to this arbitrator's decision. Moreover, it assumes the court's statutory interpretation is the only plausible one and uses that assumption to disregard the arbitrator's analysis. In effect, the court imposed its own policy preferences, rather than apply the reasonably debatable standard.

In East Rutherford, the Court addressed a related scenario in which an arbitrator's award implicated statutory concerns—specifically, increased health benefit contributions under the State Health Benefits Program. The employer argued that the arbitrator's award violated public policy. The Supreme Court disagreed, holding that "[t]he mere fact that this Court or any other court may disagree with an arbitrator's decision is not sufficient to overturn an arbitration award." Id. at 203. The arbitrator had interpreted the contract language in light of the statutory framework, and because his interpretation was reasonable, the Court upheld it under the "reasonably debatable" standard.

That holding applies directly here. Arbitrator Jack Tillem—a highly experienced labor arbitrator—interpreted the statute and the collective negotiations agreements and concluded that they did not preclude additional compensation for custodial and security employees who worked during emergency school closures. The trial court reviewed the same language and reached the same conclusion. That strongly suggests the "reasonably debatable" standard was met.

The Supreme Court reaffirmed the same principle in Kearny PBA Local 21 v. Town of Kearny, 81 N.J. 208 (1979), where it upheld an arbitrator's award granting overtime pay to police officers who were required to remain on standby during a municipal strike. The Town argued that no compensation was due because the CNA contained no express provision for standby pay, and that the arbitrator had exceeded his authority by granting such compensation. The Court rejected that argument, emphasizing that an arbitrator's award "is not to be cast aside lightly" and should be confirmed so long as the interpretation of the contract is "reasonably debatable." Id. at 221.

That is precisely what occurred here. The arbitrator carefully considered both the statute and the contract and made a reasoned determination that was concurred in by the trial court. To override that decision based solely on disagreement with the outcome, as the Appellate Division did, is to abandon the deference that New Jersey law requires.

In sum, the arbitrator's award lies squarely within the boundaries set by East Rutherford and Kearny. His reasoning was rational, supported by the record, and adopted by a trial court. The Appellate Division's rejection of that analysis improperly substituted judicial judgment for arbitral discretion and must be reversed.

III. THE STATUTORY LANGUAGE DID NOT PREEMPT NEGOTIATIONS OVER EXTRA COMPENSATION FOR THOSE EMPLOYEES WHO REPORTED TO WORK WHEN SCHOOL WAS CLOSED

New Jersey law is clear: when the Legislature intends to override rights established through collective negotiations agreements, it must do so expressly, specifically, and comprehensively. That standard, articulated in Bethlehem Twp. Bd. of Educ. v. Bethlehem Twp. Educ. Ass'n, 91 N.J. 38, 44 (1982), requires clear legislative intent to displace collectively bargained terms. Ambiguity is insufficient. As the Court further explained in In re Local 195, IFPTE, 88 N.J. 393, 404 (1982), "negotiation is preempted only if the statutory or regulatory provisions speak in the imperative and leave nothing to the discretion of the public employer."

Here, the statute—N.J.S.A. 18A:7F-9(e)(1)—does not meet that high threshold. It provides that employees "shall be entitled to compensation, benefits, and emoluments as provided in the collective negotiations agreement as if the school facilities remained open for any purpose and for any time lost as a result of school closures or use of virtual or remote instruction," and adds only that "benefits may be negotiated for additional work performed." While that final clause arguably

anticipates future negotiations for added duties, it does not state—or even imply—negotiated rights to additional compensation are nullified. Had the Legislature truly intended to override existing CNA provisions, particularly those involving emergency compensation, it easily could have included explicit language such as: "Notwithstanding any provision of a collective negotiations agreement," or "No additional compensation shall be paid for work performed during a declared state of emergency unless separately negotiated pursuant to this act." Moreover, the language of the statute does not prohibit negotiations of additional compensation.

This omission is particularly significant given the critical role that negotiated extra pay provisions frequently play in collective negotiations agreements. Indeed, extra compensation is often among the most consequential and vigorously negotiated elements of CNAs, representing a critical economic benefit and significant inducement for employees. To construe the statute in a manner that nullifies such negotiated provisions would effectively rewrite these agreements, imposing terms that the parties never contemplated or agreed to. Such a dramatic alteration of contractual rights demands a clear, unambiguous legislative statement. No such explicit legislative intent can be found here.

This brings us to the essential meaning of "emergency," a term that was specifically chosen and negotiated into these collective bargaining agreements. The custodians' CNA explicitly provides that custodians who perform work "on any day

when schools are closed for an emergency shall be paid 1½ times salary in addition to their regular day of pay." Similarly, the security employees' CNA explicitly guarantees time-and-a-half compensation for employees "required to work during a State of Emergency, as declared by the Governor." These negotiated provisions clearly anticipated situations beyond routine school closures. The COVID-19 pandemic, declared a State of Emergency by the Governor, plainly qualifies by these contractual provisions. Employees who were required to report during this emergency did so under considerable and substantial risks—precisely the risks for which additional compensation was bargained.

The importance of preserving those negotiated terms—and the Legislature's obligation to speak clearly if it wished to displace them—is firmly grounded in New Jersey law. In Bethlehem, the Supreme Court emphasized that statutory language must be unequivocal when overriding collectively negotiated rights. The Court held that "the legislative provision must speak in the imperative..." Bethlehem, 91 N.J. at 44. That standard reflects the judiciary's longstanding recognition that negotiated rights—especially those governing compensation—cannot be displaced by implication or vague statutory language. If the Legislature had intended to override existing CNA provisions addressing emergency compensation—particularly for work performed during a declared state of emergency—it was required to do so in

language that left no room for discretion or debate. The statute here does no such thing.

This omission is especially striking given the timing of the statute's enactment in April 2020, when public fear, scientific uncertainty, and health risks were at their apex. It defies logic—and basic fairness—to presume that the Legislature intended, in that moment of crisis, to strip frontline school employees of bargained-for compensation for working under unprecedented and dangerous conditions. Indeed, the Supreme Court has made clear that financial strain or managerial convenience is no justification for discarding collectively negotiated rights. As the Court held in Robbinsville Twp. Bd. of Educ. v. Washington Twp. Educ. Ass'n, 227 N.J. 192, 204 (2016), "[c]ollective negotiated agreements… would mean nothing in the wake of any financial setback faced by a local governmental entity," and allowing such claims "would eviscerate the durability of collective negotiated agreements." The Board's position—that the statute should be read to reduce contractual obligations based on budgetary concerns during a public emergency—is precisely the kind of argument Robbinsville rejected. The absence of any such explicit legislative language strongly confirms that the Legislature did not intend to preempt negotiated rights.

Further reinforcing this point, both the arbitrator and the trial court independently concluded that the Legislature did not intend to override existing

CNA provisions regarding additional compensation. Given the arbitrator's extensive experience interpreting collective bargaining agreements, the concurrence of both the arbitrator and the trial court strongly suggest the Legislature's did not express any intent to nullify negotiated rights. On the contrary, this statute does not apply to this situation at all, but if it does, it does not clearly preempt negotiations over increased compensation for employees who were required to report to work. Thus, the absence of any explicit statutory language, particularly in the context of a subject as significant as overtime compensation, conclusively demonstrates that the Legislature did not intend to override the existing, carefully negotiated rights at issue here.

REASONS WHY CERTIFICATION SHOULD BE ALLOWED

The Supreme Court should grant certification in this matter because it presents three distinct legal questions of significant public importance. First, it raises a recurring issue regarding the proper application of the "reasonably debatable" standard in judicial review of arbitration awards. Although this Court has repeatedly emphasized that arbitration decisions in the public sector are entitled to great deference, the Appellate Division here substituted its own judgment for that of the arbitrator and trial court, in direct conflict with controlling precedent. Clarification from this Court is necessary to once again reaffirm the standards governing judicial

review of arbitration awards, to ensure consistent judicial application, and to preserve the finality of arbitration awards.

Second, certification is warranted to resolve an important question of statutory interpretation. The Appellate Division's reading of N.J.S.A. 18A:7F-9(e)(1) disregards the statute's structure, language, and context. Indeed, it appears that the statute on its face is inapplicable. The court's narrow focus on a single phrase—"as if the school facilities remained open"—ignores the statute's full text and protective purpose. Clarification is needed to confirm that the statute was intended to protect school employees unable to report due to emergency closures, not to eliminate bargained-for compensation for those who were required to continue working in person under hazardous conditions. This is especially clear, since the statute does not address the status of employees who actually reported to work when school was closed.

Third, the case raises a significant issue regarding the circumstances under which a statute may be construed to override the terms of a collective negotiations agreement. Under long-standing precedent, the statute must speak expressly, specifically, and comprehensively if it intends to displace negotiated employment rights. The Appellate Division's decision effectively allows statutory applicability or ambiguity to invalidate CNA terms—particularly those addressing compensation for emergency work—despite the absence of any clear legislative language

authorizing such a result. This Court's guidance is necessary to protect the integrity of negotiated agreements and prevent future erosion of collective bargaining rights. Given the continuing unpredictability surrounding public health responses, it remains entirely plausible that schools may again face extended closures due to future emergencies. Shifts in national public health leadership and evolving public attitudes toward vaccination have introduced uncertainty into how future crises may be managed. In this context, it is especially important that statutes enacted in response to such emergencies—like N.J.S.A. 18A:7F-9(e)(1)—are interpreted clearly and consistently. Doing so ensures that school employees are not exposed to legal or financial uncertainty and that collectively negotiated protections remain enforceable when they are most needed.

Finally, and most compellingly, certification should be granted in the interests of justice. During the most uncertain and dangerous phase of the COVID-19 pandemic, frontline school employees—including custodians and security personnel—reported to work in person to ensure safe learning environments. Their CNAs explicitly provided additional compensation for working during emergency closures. Denying them that compensation not only undermines negotiated protections, but also disregards the personal risk and public service these workers undertook during a global crisis. Certification would reaffirm the Court's

commitment to honoring negotiated rights, protecting vulnerable workers, and upholding fairness in the public sector.

CONCLUSION

For all these reasons, we ask this Court to grant the pending Petition for Certification, our application to appear as *amicus curiae* pursuant to R. 1:13- 9(e), and to reverse the unpublished Appellate Division decision in East Orange, Dkt. No. A-3657-21 (February 25, 2025).

Respectfully submitted,
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