SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3006-21

HALLIE TORIAN,
NORHREENA THOMAS, and
CLIFFORD WALKER, JR.,

Plaintiffs-Appellants,

v.

NEWARK SCHOOL DISTRICT,

Defendant-Respondent.

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Submitted September 18, 2023 – Decided November 8, 2023

Before Judges Gilson and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-7317-15.

Goldenberg, Mackler, Sayegh, Mintz, Pfeffer, Bonchi & Gill, attorneys for appellants (Elliott J. Almanza, of counsel and on the briefs).

Adams Gutierrez & Lattiboudere, LLC, attorneys for respondent (Perry L. Lattiboudere, of counsel and on the brief).

PER CURIAM

This appeal involves a class action lawsuit filed by employees of the Newark School District (the District) for alleged violations of the Civil Service Act (the Act), N.J.S.A. 11A:1-1 to 11A:12-6.[1] The class representatives filed suit contending that the District had failed to provide class members with paid vacation leave as required by the Act and its associated administrative regulations, N.J.A.C. 4A:1-1.1 to 4A:10-3.2.

The trial court certified a class and defined it as "all full[-]time [ten]-month or part-time employees of the [District] in the career service, (excluding employees in the unclassified service) who were employed after October 16, 2009." The court then required the District to provide plaintiffs with the name, Civil Service title, dates of employment, and last known address of each class member. The District complied with that order but withheld the names of per diem employees because the District believed those employees did not fit within the definition of the class. Thereafter, the court required the District to provide plaintiffs with the additional names of per diem employees, but the court did not decide whether those per diem employees were within the class.

[1] Defendant's correct name is the Newark Public Schools. We use the Newark School District and the District, to be consistent with what the trial court and parties have used.

Following years of motion practice, including discovery motions and repeated motions for summary judgment, the District moved for summary judgment contending that plaintiffs had failed to demonstrate that any class member was in the career service. The trial court agreed and issued an order dismissing the complaint with prejudice. Plaintiffs now appeal, arguing that the trial court erred in granting summary judgment and dismissing the class action. Plaintiffs also appeal from orders denying several summary judgment motions they had filed, as well as certain rulings on discovery issues.

Having considered the procedural history of this case, the relevant facts established in the record, and the applicable law, we affirm in part and reverse in part.

I.

In October 2015, plaintiffs, a teacher's aide and two cafeteria workers employed by the District, filed a complaint on behalf of a proposed class. They sought to represent a class consisting of full-time and part-time employees of the District, excluding teachers. Plaintiffs contended that the District had failed to provide them with paid vacation leave as required by the Act and its associated administrative regulations.

On September 16, 2016, the trial court issued an order certifying the case as a class action. The class was defined as "all full[-]time [ten]-month or part-time employees of the [District] in the career service, (excluding employees in the unclassified service) who were employed after October 16, 2009." Approximately two months later, on November 28, 2016, the trial court entered an order prescribing notice to the class. That order directed, in relevant part:

> 1. [The District] shall provide to the plaintiff[s], within [fourteen] days, in an electronic data spreadsheet format, the name, Civil Service title, dates of employment, and last known address of each class member, and it is further ordered that the last known addresses shall be kept confidential and shall only be used for purposes of this litigation;
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> 2. Within [thirty] days of receiving the last known addresses from [the District], [p]laintiff[s'] counsel shall send the notice, attached as Exhibit A, to the address of each class member by regular mail[.]

"Exhibit A" explained the notice was being provided "to all persons who were [ten-]month or part-time ('per diem') Civil Service employees, who were employed by the [District] in a non-teacher position, at any time from October 16, 2009 to the present."

The following month, on December 13, 2016, the District provided plaintiffs' counsel with a "CD and a hard copy of the report . . . pursuant to the

[o]rder dated November 28, 2016." The CD and report provided information concerning approximately 1,593 District employees.

In January 2017, counsel for plaintiffs received a letter from a "per diem" aide employed by the District. In the letter, the aide explained she had not received any vacation days or time off and was seeking information on the class action. Plaintiffs' counsel then emailed the District and asked why information about the aide had not been included in the District's December 13, 2016 production, and whether information about other per diem employees had also not been included.

In response, the District stated it had not included information about per diem employees in its production because it did not believe those employees were within the scope of the class. According to the District's business administrator, per diem employees "are used for absence replacement." In other words, the District maintained that per diem employees were used when needed to replace absent employees and were paid hourly.

Plaintiffs filed a motion to compel the production of information regarding the District's per diem employees. On May 26, 2017, the trial court issued an order granting that motion. The order did not, however, include any explanation of the court's decision. Accordingly, the District asked the court to

issue a statement of reasons clarifying the order, and, on August 25, 2017, the court issued that explanation. The court explained that it "was not convinced that the 'per diem' employees fell squarely within the unclassified service statutory category," but it had not made a ruling on that classification issue. Instead, the court stated its ruling "merely indicated that [the District had] not compl[ied] with its initial obligations pursuant to court order."

Thereafter, the District provided information on the employees it considered per diem employees, which totaled approximately 3,650 employees. In addition, on two separate occasions, the District provided information regarding additional employees it had not previously included. In all, the District provided information concerning approximately 7,500 employees.

Within the class, there are several sub-classes representing different job titles associated with different bargaining units. Some per diem employees are covered by collective bargaining agreements. In March 2017, the District filed a motion to compel arbitration of the claims of co-lead plaintiff Walker and all class members associated with his bargaining unit, Local 481 NTU. The District contended those claims were substantively arbitrable under Local 481 NTU's collective bargaining agreement. The trial court denied that motion, holding that the agreement did not expressly address paid vacation. We affirmed that

decision. Torian v. Newark Sch. Dist., No. A-3398-16 (App. Div. Mar. 28, 2018).

During discovery, the District served interrogatories asking class members whether they had been paid for certain holidays, including Thanksgiving and "Christmas/Winter Recess." Plaintiffs objected to the interrogatories, contending the District had access to that information in its payroll records. In December 2017, plaintiffs filed a motion for a protective order to prevent members of the class from having to respond to the interrogatories propounded by the District.

On January 25, 2018, after hearing argument, the trial court issued an order denying the motion. In its oral decision, the court explained it had evaluated plaintiffs' motion under the criteria set forth in Towpath Unity Tenants Ass'n v. Barba, 182 N.J. Super. 77 (App. Div. 1981), and concluded the interrogatories propounded by the District were proper. In that regard, the court found "the interrogatories request[ed] information . . . necessary for the trial class issues in this case"; the information requested was not readily obtainable from payroll records because those records did not indicate which class members contended they had not been paid; and permitting plaintiffs to withhold this information would be "contrary to the spirit of discovery" and inconsistent with

Towpath. In their responses to the interrogatories, several class members stated they had received their "full wages and salary, without having to report to work or perform any work" on several school holidays, including "Christmas/Winter Recess" and "Spring/Easter Recess."

In December 2018, plaintiffs filed a motion for partial summary judgment, seeking a declaration that the Act applied to the District's per diem employees. After hearing argument, the court issued an order on March 15, 2019, denying the motion. In its oral decision, the court noted it could not simply compare the job titles of the per diem employees to the job titles listed by the Civil Service Commission and determine whether the employees were covered by the Act. The court further noted plaintiffs had not submitted any progress reports, examination records, or certifications from the Civil Service Commission demonstrating the per diem employees were covered by the Act. In short, the court explained that "whether the [Act] covers and protects per diem employees" involved questions of fact, and discovery had not yet been completed.

Following the court's decision, the discovery deadline was extended several times. In December 2019, plaintiffs produced their expert report, which detailed their alleged damages claim of more than $38,000,000. At that time, the deadline for discovery was March 13, 2020. The following month, in

January 2020, the District filed a motion to extend the discovery deadline to May 2020, which the court granted. The deadline was later extended to July 8, 2020.

On April 8, 2020, the District filed a motion for partial summary judgment, seeking a determination that certain job categories identified in plaintiffs' expert report were not part of the class because they were "irregular" or per diem jobs. The District also sought a ruling that the claims of the ten-month employees should be dismissed because those employees had been paid for time off from work during school vacation periods.

In response, plaintiffs filed a cross-motion for summary judgment as to liability. Plaintiffs again argued the District's per diem employees were in the career service and, therefore, covered by the Act. Plaintiffs also argued the record demonstrated the District had not given any class members paid vacation. In that regard, plaintiffs pointed out that the collective bargaining agreement for the Local 481 NTU did not provide for paid vacation. Plaintiffs further relied on the payroll data produced by the District, which contained a column for "Vacation Pay," but that column showed that none of the employees listed had received paid vacation. Plaintiffs also pointed out that the District's payroll services provider testified that a "zero" in the "Vacation Pay" column of the

payroll data meant the employee had not received any vacation pay for the specified period.

In June 2020, the court rescheduled the return date of the summary judgment motions to a date after the then-existing July 10, 2020 discovery deadline. Accordingly, on July 7, 2020, the District filed a motion to extend the discovery deadline so that it could depose plaintiffs' expert and submit its own expert report. After hearing argument, on March 16, 2021, the trial court issued an order, supported by a statement of reasons, addressing both summary judgment motions and the discovery motion.

The court denied both motions for summary judgment. The court explained that the parties disagreed over whether the employees identified by the District were in the career service and, therefore, were part of the class and entitled to the Act's benefits. The court found this was a material issue of disputed fact that it could not resolve. In that regard, the court explained that plaintiffs had not "provided sufficient evidence tending to show that all [p]laintiffs have obtained civil service status." The court further explained:

> Plaintiffs have sheltered under the Act and assumed that [p]laintiffs were entitled to the Act's benefits. They have assumed that since they do not fall under the category of 'unclassified,' that they are indeed 'career service' employees. But, even though there has been extensive discovery engaged in by both parties,

> [p]laintiffs still have failed to present evidence of any job descriptions, personnel policies, or other information describing how the categories of employment [are] used and administered within the District. There is no evidence, other than conclusory statements, that [p]laintiffs have civil service status. Without affirmative evidence of the civil service status of [p]laintiffs, there is a material dispute about whether the class members are even entitled to the Act's protections and benefits.
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> [(internal citation omitted).]

Similarly, the court found that whether the District had given paid vacation to all class members remained a disputed issue of material fact. In making that finding, the court rejected plaintiffs' contention that the District was collaterally estopped from litigating whether class members belonging to the Local 481 NTU had received paid vacation under the collective bargaining agreement since the court had already found the agreement did not contemplate paid vacation. The court explained that the dispute over the collective bargaining agreement concerned compulsory arbitration, not whether the Local 481 NTU members had received paid vacation.

Addressing the payroll data and testimony of the payroll services provider, the court acknowledged that a "zero" in the "Vacation Pay" column of the data meant that the employee had not received paid vacation during a specific time frame. Nevertheless, the court noted that the District argued that the "fact that

employees may be paid in 'salary' for the time they are off from work during the breaks in the school calendar, rather than as 'vacation' pay . . . does not mean the payments were not for vacation leave," and that some class members had stated in response to interrogatories that they had received pay for Christmas and Easter vacations.

Finally, the court granted the District's discovery motion. The court found there were exceptional circumstances warranting an extension. In that regard, the court explained that the COVID-19 pandemic was an exceptional circumstance; that the District's counsel had been restricted by the pandemic from engaging with District administrators to address plaintiffs' damages report; and that expert discovery was essential to the litigation. The court then directed "[d]iscovery [to be] extended an additional ninety days."

Following the trial court's decision, plaintiffs sent a letter to the District requesting that it update the payroll data it had previously provided to include data for the 2020-2021 school year so that plaintiffs' expert could update the expert report. Plaintiffs also issued additional requests for production of documents regarding the civil service status of all class members, including per diem employees, and requests for admissions. Specifically, plaintiffs sought

documents "relating to each class member's civil service status," including any examination results and working test period results.

The District objected to plaintiffs' requests, contending the deadline for fact discovery had passed. On May 7, 2021, plaintiffs filed a motion to compel the District to respond to its discovery requests. That same month, the District filed a motion to extend the deadline for expert discovery, contending it could not meet the current deadline because of plaintiffs' recent request for updated payroll data.

On July 16, 2021, the trial court heard argument on the motions and issued an order denying plaintiffs' motion and an order granting the District's motion. In its oral decision, the court noted plaintiffs' discovery requests were not contemplated by the court's March 16, 2021 order. In that regard, the court explained it had granted an extension for expert discovery, not fact discovery, the deadline for which had expired in 2019. The court then granted the District's motion, explaining "the expert discovery[,] which the [c]ourt contemplated when the order was entered back in March [2021][,] should be completed." Nevertheless, the court noted there would be "no more discovery extensions in this case," and if expert discovery was not completed in ninety days, "it [would] be waived."

In September 2021, following the completion of discovery, the District moved for summary judgment. The District sought dismissal of the class action claims with prejudice, contending plaintiffs had failed to produce evidence that any class members had "attained civil service status to be eligible for benefits under the Act." The District separately argued that the claims by the ten-month employee class members should be dismissed because those employees were paid for time off during school holidays, such as "Christmas/Winter Recess" and "Spring/Easter Recess," regardless of how those payments had been categorized for payroll purposes. Plaintiffs opposed the motion, making many of the same arguments they had raised in previous summary-judgment motions.

On May 16, 2022, after hearing argument, the trial court issued an order, supported by a written statement of reasons, granting the District's motion, and dismissing the class action claims with prejudice. The court found plaintiffs had failed to present sufficient evidence demonstrating the career service status of any of the class members. In that regard, the court explained it had previously denied plaintiffs' prior motion for summary judgment, "in part[,] due to the lack of discovery on the underlying issue in this case, i.e., the classification status of the . . . class members." The court further explained that "testimony and evidence demonstrating" plaintiffs' civil service status, such as examination and

working test period results, were "[n]oticeably absent from the record." "Simply put," the court found it could not "assume career service status for the class members by solely relying on job titles from the District's payroll data."

As an alternative basis, the court agreed with the District's contention that ten-month employee class members had been paid for time off during school holidays. In that regard, the court explained that the "payroll data relied upon in [p]laintiff[s'] opposition merely shows that the pay provided to [p]laintiff[s] during the vacation periods was not marked as vacation pay on payroll spreadsheets. This is due to the fact that the [ten]-month employees are required to take vacation during school breaks . . . ." The court further explained it was "undisputed that those [employees] were paid during the mandatory vacation period" and that "[i]ndiscriminate marking of payroll data and testimony stating that those employees were not given vacation pay d[id] not change this salient fact."

On June 3, 2022, plaintiffs filed this appeal.

II.

On appeal, plaintiffs challenge the following orders: (1) the January 25, 2018 order denying their motion for a protective order; (2) the March 15, 2019 order denying their motion for partial summary judgment; (3) the March 16,

2021 order denying their motion for summary judgment as to liability and granting the District's cross-motion to reopen discovery; (4) the July 16, 2021 orders denying their motion to compel discovery and granting the District's motion to extend expert discovery; and (5) the May 16, 2022 order granting the District's motion for summary judgment.[2]

Plaintiffs primarily contend the trial court erred in holding that they had not established the civil service status of the class members. In that regard, they argue the District had produced a list of employees in the "career service" in accordance with court orders, and that those members comprised the class. They further argue that the career service status of all class members, as opposed to just per diem employees, had not been an issue until the court's March 16, 2021 decision and, therefore, it was error for the court to deny their attempts to obtain discovery in 2021, because the court had only just put the civil service status of all class members in issue. Plaintiffs also argue the court erred in determining they had not established the civil service status of per diem employees.

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[2] Although plaintiffs state they are appealing the trial court's July 16, 2021 order granting the District's motion to extend discovery, plaintiffs have not briefed that issue on appeal. Accordingly, they have waived that issue. See Green Knight Cap., LLC v. Calderon, 469 N.J. Super. 390, 396 (App. Div. 2021) (citing Woodlands Cmty. Ass'n v. Mitchell, 450 N.J. Super. 310, 319 (App. Div. 2017)); N.J. Dep't of Env't Prot. v. Alloway Township, 438 N.J. Super. 501, 505 n.2 (App. Div. 2015).

Regarding their motion for summary judgment as to liability, plaintiffs assert the material undisputed facts in the record demonstrate all class members had not been given paid vacation and, therefore, the court's finding to the contrary was erroneous. Finally, plaintiffs argue the court erred in denying their motion for a protective order. In that regard, plaintiffs contest the court's findings on each of the Towpath factors and argue the discovery the District sought was already in its possession.

A. Our Standard of Review.

In reviewing summary judgment orders, appellate courts use a de novo standard of review and apply the same standard employed by the trial court. Crisitello v. St. Theresa Sch., 255 N.J. 200, 218 (2023) (citing Samolyk v. Berthe, 251 N.J. 73, 78 (2022)). Accordingly, we "determine whether 'the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'" Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (quoting R. 4:46-2(c)).

"In that inquiry, the [trial] 'court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special

deference.'" H.C. Equities, LP v. County of Union, 247 N.J. 366, 381 (2021) (quoting McDade v. Siazon, 208 N.J. 463, 473 (2011)). Further, "[a] dispute of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Gayles by Gayles v. Sky Zone Trampoline Park, 468 N.J. Super. 17, 22 (App. Div. 2021) (quoting Grande v. Saint Clare's Health Sys., 230 N.J. 1, 24 (2017)). Unsubstantiated arguments based on assumptions or speculation are not enough to overcome summary judgment. See Dickson v. Cmty. Bus Lines, Inc., 458 N.J. Super. 522, 533 (App. Div. 2019). By contrast, we review "issues regarding questions of law . . . de novo." Davis v. Disability Rts. N.J., 475 N.J. Super. 122, 141 (App. Div. 2023).

In reviewing discovery orders, appellate courts generally defer to the rulings of the trial judge. See Cap. Health Sys., Inc. v. Horizon Healthcare Servs., Inc., 230 N.J. 73, 79-80 (2017); Davis, 475 N.J. Super. at 140-41. Thus, this court's "review of the [discovery] order[s] employs an abuse of discretion standard." Davis, 475 N.J. Super. at 141. "An abuse of discretion 'arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Kornbleuth v.

Westover, 241 N.J. 289, 302 (2020) (quoting Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015)).

B. The Act.

Plaintiffs seek to recover vacation pay for employees they contend were entitled to that benefit under the Act. To provide context for the parties' arguments, we summarize the Act.

The Act "implements the constitutional provision requiring a civil service system." In re Johnson, 215 N.J. 366, 375 (2013) (citing N.J. Const. art. VII, § 1, ¶ 2). It aims to "permit [public] employees to be appointed and advanced based on their merit and demonstrated abilities," ibid., and to "ensure efficient public service for state, county, and municipal government," Commc'ns Workers of Am. v. N.J. Dep't of Pers., 154 N.J. 121, 126 (1998). Among other things, the Act establishes minimum amounts of specified types of leave, including vacation, to be provided to public employees in a civil service jurisdiction. See Headen v. Jersey City Bd. of Educ., 212 N.J. 437, 440 (2012). The District is a civil service jurisdiction and, therefore, subject to the Act. Id. at 439-40; see also Civil Service Jurisdictions, N.J. Civ. Serv. Comm'n, https://www.state.nj.us/csc/about/divisions/slo/jurisdictions.html (last visited October 30, 2023).

Regarding vacation time, the Act sets forth minimum amounts of paid vacation that must be given to full-time and part-time employees. See N.J.S.A. 11A:6-3, -7; see also N.J.A.C. 4A:6-1.2(a), (e). Not all public employees within a civil service jurisdiction, however, are protected by the Act. See Headen, 212 N.J. at 447. In that regard, the Act recognizes three classifications of employment: (1) the career service; (2) the senior executive service; and (3) the unclassified service. See N.J.S.A. 11A:3-1 to -4. Public employees in the unclassified service are "not . . . subject to the provisions of [the Act] unless otherwise specified." N.J.S.A. 11A:3-4.

The Civil Service Commission is charged with "[e]stablish[ing]," "assign[ing] and reassign[ing] [job] titles among the career service, senior executive service[,] and unclassified service." N.J.S.A. 11A:3-1. The unclassified service consists of "those positions and job titles outside of the senior executive service, not subject to the tenure provisions of [the Act]." N.J.A.C. 4A:1-1.3. By contrast, the career service includes "those positions and job titles subject to the tenure provisions of [the Act]" and the senior executive service consists of "positions . . . designated by the [Civil Service] Commission as having substantial managerial, policy[-]influencing, or policy[-]executing responsibilities not included in the career or unclassified services." Ibid.

Generally, "[a]ll job titles [are] allocated to the career service, except for those job titles allocated by the Civil Service Commission to the unclassified service . . . and . . . to the [s]enior [e]xecutive [s]ervice." N.J.A.C. 4A:3-1.1.

The career service is comprised of two divisions, "the competitive division and the noncompetitive division." N.J.S.A. 11A:3-2. Employees appointed to job titles in the competitive division must complete a competitive "examination" and a "working test period," which is the time during which the employee's work performance and conduct are evaluated. N.J.A.C. 4A:4-1.1; see also N.J.A.C. 4A:4-2.2, -5.1. Job titles in the noncompetitive division generally "do not require significant education or experience," and, therefore, employees appointed to those titles do not need to complete a "competitive examination." N.J.S.A. 11A:3-2.1(d). Nevertheless, those employees must "meet the minimum requirements set forth in the job specification and satisfactorily complete a working test period." N.J.A.C. 4A:3-1.2(d); see also N.J.A.C. 4A:4-5.1(b) (explaining that "appointments to a title in the career service shall be subject to a working test period"). Regardless of division, the Act guarantees full-time and part-time employees in the career service minimum amounts of paid vacation. See N.J.S.A. 11A:6-3, -7; see also N.J.A.C. 4A:6-1.2(a), (e).

C. The Scope of the Class.

The primary issue on this appeal is whether the District was entitled to summary judgment dismissing all the claims related to all class members. Accordingly, we initially analyze the May 16, 2022 order granting the District's motion for summary judgment.

The trial court's orders in 2016 and 2017 are important in analyzing the scope of the class issue. In September 2016, the trial court issued an order certifying a class of "all full[-]time [ten]-month or part-time employees of the [District] in the career service, (excluding employees in the unclassified service) who were employed after October 16, 2009." In November 2016, the court then issued an order directing the District to provide plaintiffs with "the name, Civil Service title, dates of employment, and last known address of each class member." In response, the District produced a list of employees. The District's list did not include information regarding per diem employees because the District took the position that those employees did not fall within the scope of the class because they were not career service employees.

Those orders and the procedural history make several points clear. First, the District had effectively conceded that the employees it identified on its first list were career service employees. The District, as a governmental entity, has

the obligation to turn square corners. In re Att'y Gen. L. Enf't Directive Nos. 2020-5 & 2020-6, 246 N.J. 462, 502 (2021); Cardinale v. Bd. of Trs., Police & Firemen's Ret. Sys., 458 N.J. Super. 260, 273 (App. Div. 2019) (quoting Rudbart v. N. Jersey Dist. Water Supply Comm'n, 127 N.J. 344, 378 (1992)). When the District produced its first list of employees on December 13, 2016, it was representing that those employees were career service employees and members of the certified class. The District never took another position concerning the non-per diem employees until 2021, after fact discovery had closed.

Accordingly, the trial court erred in its May 16, 2022 order when it agreed with the District's contention that plaintiffs had failed to demonstrate the civil service status of non-per diem employees. The District had conceded that the non-per diem employees were members of the career service. Indeed, the District listed those employees with Civil Service titles and those titles are positions that have been deemed to be career service titles by the Civil Service Commission.

By contrast, the District always disputed whether per diem employees were career service employees who fell within the definition of the class. Consequently, from the inception of the litigation, the class representatives

knew that the District was contesting whether per diem employees were members of the class.

The Act makes it clear that comparing the job titles of per diem employees to the job titles listed by the Civil Service Commission does not establish whether per diem employees are covered by the Act. The trial court had made it clear since its ruling on March 15, 2019, that plaintiffs needed to submit progress reports, examination records, or certifications from the Civil Service Commission establishing that the per diem employees were covered by the Act. Plaintiffs never sought that discovery until after the close of discovery.

Both parties agree, and the Act makes it clear, that it is the Civil Service Commission's responsibility to establish and assign job titles among the career service, senior executive service, and unclassified service. The Civil Service Commission has also mandated that employees in the career service must satisfy certain requirements, such as examination and working test periods.

Following the close of discovery, the record is not clear whether the District's per diem employees fall within the career service or unclassified service. It was the responsibility of the class representatives to develop that discovery and submit that proof. See Tynes v. St. Peter's Univ. Med. Ctr., 408 N.J. Super. 159, 170-76 (App. Div. 2009) (holding trial court did not abuse its

discretion in declining to extend discovery, and thus affirming the grant of summary judgment to defendants, when plaintiffs were on notice of a material witness but failed to depose him after several prior discovery extensions). Although plaintiffs had years of opportunity to take that discovery, they did not. Given the long procedural history, we discern no abuse of discretion in the trial court's decision not to extend fact discovery. As the trial court noted, plaintiffs had years to take the discovery and they were clearly on notice that the District was contesting whether per diem employees were part of the class. Accordingly, we affirm the trial court's July 16, 2021 order denying plaintiffs' motion to compel discovery.

We also affirm the portion of the May 16, 2022 order granting summary judgment to the District and dismissing the claims related to per diem employees. As already noted, the record does not establish whether the per diem employees are protected by the Act because plaintiffs failed to develop that evidence. The District was, therefore, entitled to partial summary judgment dismissing all claims related to per diem employees.

Plaintiffs contend that the District bore the burden of proving which class members fall within the career service. They argue that because the District is within the Act's jurisdiction, it hires employees to fill positions the Civil Service

Commission has deemed to be within the career service. Accordingly, plaintiffs assert the District should know which of its employees are entitled to the Act's protection. Although that argument has some superficial logical appeal, it does not negate the class representatives' responsibility to conduct discovery and submit proof regarding whether the District's per diem employees were in the career service.

In summary, we affirm the portion of the May 16, 2022 order granting summary judgment in the District's favor and dismissing all claims concerning per diem employees. We reverse, however, the portion of the May 16, 2022 order granting summary judgment to the District on the basis that non-per diem employees were not part of the class. Accordingly, we next address whether the District was entitled to summary judgment concerning the claims for ten-month employees because those employees had received vacation pay.

D. Whether Ten-Month Class Members Received Vacation Pay.

In its May 16, 2022 order, the trial court granted the District summary judgment concerning ten-month employees on the alternative grounds that the record demonstrated that those class members had received paid vacation.

On appeal, plaintiffs argue that the record establishes that none of the class members were paid for vacation and, therefore, the class is entitled to summary

judgment on liability. Plaintiffs therefore challenge the trial court's March 16, 2021 order denying their request for summary judgment as to liability and the part of the trial court's May 16, 2022 order granting the District summary judgment based on the finding that class members had received vacation pay. We affirm the trial court's March 16, 2021 order but reverse the portion of the May 16, 2022 order because the record establishes that there are material issues of disputed fact concerning whether ten-month employees received vacation pay.

Plaintiffs argue that the District payroll data indicates that several of the class members had a "zero" in the "Vacation Pay" column. Plaintiffs contend the "zero" means that those employees had not received paid vacation during certain time frames. They then point to the testimony of the District's third-party payroll vendor and argue that his testimony supports their interpretation. The payroll vendor did state that if there was a "zero" in the "Vacation Pay" column, that meant the employee did not receive vacation pay. The vendor also stated, however, that a "zero" in the column meant that the employees did not earn vacation time the same way a twelve-month employee did. In other words, the current record does not clearly establish that a "zero" in the "Vacation Pay" column means the employee did not receive any pay for days they did not work,

including during school holidays, or that those employees simply did not accumulate days to use for vacation the way full-time, twelve-month employees do.

In short, the record reflects that there are material issues of disputed fact concerning whether the class members received paid vacation. That issue will require fact-finding at either an evidentiary hearing or trial. Consequently, we affirm the March 16, 2021 order because the court correctly determined that there were material issues of disputed fact regarding whether all class members had received vacation pay. We reverse the part of the court's May 16, 2022 order holding that there were no disputed facts and that the ten-month employees had received vacation pay.

In addition, we reject plaintiffs' contention that the court was collaterally estopped from finding that the District had, in fact, given paid vacation. In making that argument, plaintiffs rely on the motion the District filed to compel arbitration under the collective bargaining agreement for the class members in the Local 481 NTU. The issue on that motion was whether the claim required compulsory arbitration, not whether the members had received vacation pay.

E. The Motion for a Protective Order.

Plaintiffs also challenge the January 25, 2018 order denying the class's motion for a protective order. The District had served interrogatories requiring class members to state whether they had been paid for certain holidays. Plaintiffs moved for a protective order so that the class members would not have to respond to those interrogatories. The trial court denied the motion for a protective order after analyzing the factors identified by this court in Towpath. See 182 N.J. Super. at 83.

"It is a 'well-established principle that requests for discovery are to be liberally construed and accorded the broadest possible latitude to ensure that the ultimate outcome of litigation will depend on the merits in light of the available facts.'" Serrano v. Underground Utils. Corp., 407 N.J. Super. 253, 268 (App. Div. 2009) (quoting Piniero v. N.J. Div. of State Police, 404 N.J. Super. 194, 204 (App. Div. 2008)). We have explained that court rules do not expressly state whether any members of a class may be required to answer interrogatories. See Towpath, 182 N.J. Super. at 82. Nevertheless, "in appropriate circumstances[,] members of a class not actively engaged in the litigation may be required to submit to discovery." Ibid. In that regard, we have stated,

> that in order for a defendant to have discovery of unnamed members of a plaintiff class by means of

> interrogatories, the defendant must carry the burden of showing that (a) such interrogatories request only such information as is necessary to trial of the class issues in the case, (b) such information is not readily obtainable from other sources, and (c) the interrogatories are neither unduly burdensome nor promulgated for an improper purpose.
>
> [Id. at 83 (quoting Danzig v. Superior Ct. of Cal., 87 Cal. App. 3d 604, 606 (Cal. Dist. Ct. App. 1978)).]

In denying the motion for a protective order, the trial court reasoned that the District was entitled to have the class members answer the interrogatories under the factors set forth in Towpath. The court found that the interrogatories sought information that was not readily available to the District, but necessary for trial of the class issues. In that regard, the court explained that the payroll data possessed by the District did not inform it of which class members were claiming they had not received paid vacation.

We discern no abuse of discretion in the trial court's decision to deny the protective order. The interrogatories sought to identify which class members contended they had not received paid vacation for certain holidays. That information is relevant and necessary for trial of the class issues.

Moreover, we note that the interrogatories have already been answered. Accordingly, there is no longer a legitimate argument that the interrogatories

were unduly burdensome, and there is nothing in the record that would support the contention that the interrogatories were promulgated for improper purposes.

F. Summary.

In summary, we affirm in part and reverse in part the May 16, 2022 order granting the District's motion for summary judgment. We affirm all other orders appealed, including the January 25, 2018 order; the March 15, 2019 order; the March 16, 2021 order; and the July 16, 2021 orders.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.