LAW OFFICES OF WILLIAM R. CONNELLY, LLC

7 WEST MAIN STREET
MENDHAM, NEW JERSEY 07945

(973) 543-5301
Fax (973) 543-5140
https://williamconnellylaw.squarespace.com
wconnelly@connellylaw.net

WILLIAM R. CONNELLY
NJ NY & MA BARS

OF COUNSEL:

CAROLE WHITE-CONNOR
NJ BAR

August 3, 2015

Clerk of Superior Court, Law Division
Union County Courthouse
2 Broad Street, Room 107 Rotunda
Elizabeth, New Jersey 07207

Re: New Jersey Foundation For Open Government, Inc. and John Paff v. Summit Housing Authority and Joseph M. Billy, Jr.
Docket No. UNN-L-1927-15

Dear Sir/Madam:

Enclosed is an original and copy of a Letter Brief in opposition to the Plaintiffs' Summary Judgment Motion in the above matter. Would you kindly file same and return the copy of the Letter Brief to this office marked filed in the envelope provided.

Thank you for your attention to this matter.

Very truly yours,

William R. Connelly

WRC/cmm
Enclosures

cc: Honorable James Hely, J.S.C., w/encl.
Anthony H. Ogozalek, Jr., Esq., w/encl.
Joseph M. Billy, Jr., w/encl.

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August 3, 2015

Honorable James Hely, J.S.C.
Union County Courthouse
2 Broad Street, Room 107 Rotunda
Elizabeth, New Jersey 07207

Re: New Jersey Foundation For Open Government, Inc. and John Paff v. Summit Housing Authority and Joseph M. Billy, Jr.
Docket No. UNN-L-1927-15

Dear Judge Hely:

Our office represents the Summit Housing Authority in the above-captioned matter. Your Honor will recall that we appeared before you on July 10, 2015 pursuant to an Order To Show Cause dated June 3, 2015 signed by Judge Kenneth Grispin. The Order To Show Cause was obtained by the Plaintiff and the matter proceeded on a Verified Complaint along with supporting papers. At that time, our office filed a Certification in opposition and we also filed an Answer to the Verified Complaint. The Plaintiffs filed a Reply Brief for that proceeding. Oral argument was held before your Honor at 10:00 am on July 10, 2015.

We have now been served with a Motion for Summary Judgment filed by the Plaintiffs in this case even though the matter has already had a summary proceeding as sought by the Plaintiffs. Please accept this Letter Brief in lieu of more formal brief in opposition to the Plaintiffs' Motion for Summary Judgment. For the reasons stated hereafter, we believe that the summary judgment proceedings are procedurally improper and, further, the relief sought should also not be granted as a matter of law.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT BE HEARD, OR SHOULD BE DISMISSED, AS IT IS PROCEDURALLY IMPROPER

On June 3, 2015 the Honorable Kenneth Grispin entered an Order To Show Cause sought by the Plaintiffs, New Jersey Foundation for Open Government, Inc. and John Paff, ordering that the Defendants, Summit Housing Authority and Joseph M. Billy, Jr. (its Executive Director) appear on July 10, 2015 before the Honorable James Hely and to show cause why judgment should not be entered for various relief. The Defendants submitted the Certification of Joseph M.

is prepared to rule on the entire matter. Moreover, by presenting this second application, the Plaintiffs are attempting to reargue their case outside the boundaries of the summary action proceeding and this creates the potential for inconsistent rulings between the summary action and the Summary Judgment Motion. For these reasons, the Summary Judgment Motion should not be heard, or in the alternative, it should be dismissed as procedurally defective.

THE DEFENDANTS' FAILURE TO CREATE MINUTES OR RESOLUTIONS FOR EXECUTIVE SESSION MEETINGS IS NOT A VIOLATION OF THE OPEN PUBLIC RECORDS ACT

N.J.S.A. 47:1A-1 defines a government record as:

> Any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency, or authority of the state or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the state or of any political subdivision thereof, including subordinate boards thereof. (Underline added)

The custodian of a government record must permit members of the public to inspect that record. N.J.S.A. 47:1A-5. A person "who is denied access" to a governmental record may seek relief. N.J.S.A. 47:1A-6.

The entire statutory scheme is predicated on an existing record. If the record does not exist, there can be no denial of access to that record and, thus, no OPRA violation. Bent v. Township of Stafford Police Department, 381 N.J. Super 30, 38 (App. Div. 2005). See also, Pusterhofer v. N.J. Department of Education, Comp. No. 2005-49 (Govt. Records Counsel 2005).

The lack of an OPRA violation is significant because an OPRA violation entitles the prevailing party to reasonable attorneys' fees. N.J.S.A. 47:1A-6. Accordingly, because the Plaintiffs have sought to recover records which have not been kept, there is no violation of OPRA and, the Plaintiffs are not entitled to any attorneys' fees pursuant to OPRA.

THE SUMMIT HOUSING AUTHORITY HAS NOT VIOLATED THE OPEN PUBLIC RECORDS ACT AS IT PROVIDED A PROPER RESPONSE TO PLAINTIFFS' APRIL 9, 2015 REQUEST FOR DOCUMENTS

The Plaintiffs have presented its April 9, 2015 document request which was attached to its Verified Complaint and fully discussed at the summary action proceedings previously held. As argued at the summary action proceedings, language used in the April 9, 2015 request for records is ambiguous and confusing. The language appears to call for the minutes of the three

most recent non-public sessions and then provides confusing qualifiers "for which minutes are available". Indeed, at the summary action proceedings, Judge Hely had reviewed the Plaintiffs' request for records and had initially interpreted that request similarly to the interpretation that Summit Housing had put on the request (that the Plaintiffs were seeking minutes of the Summit Housing Authority's three most recent non-public meetings). It was only after extensive articulation and explanation by the attorney for the Plaintiffs that the Court realized that the scope of the request being made by the Plaintiffs appear to be greater than the three most recent public meetings and, in fact, would encompass any meetings which took place "over the last 20 years" as long as they were the three most recent meetings in which minutes were held. This appears to be a tortured reading of the request and certainly the request is not straightforward and is subject to interpretation and confusion.

For this reason, when the Summit Housing Authority responded with its April 17, 2015 response, it is clear the response was directed to the same interpretation that the Court had initially had of this request calling for the minutes of the last three most recent non-public sessions.

It would be unfair and inappropriate for the Court to render a decision entitling the Plaintiffs to the relief sought, including attorneys' fees, based upon the language of the April 9, 2015 request. Instead, it would be appropriate if this Court would direct the Plaintiffs to issue a new and clearer request for documents so that the request could be properly understood by all parties and by the Court.

PLAINTIFFS' RELIEF REGARDING THE OPEN PUBLIC MEETINGS ACT IS TOO BROAD AND NOT CONSISTENT WITH THE ACT

The Plaintiffs in its Summary Judgment Motion seeks to have an order enjoining the Summit Housing Authority from going in to public session unless it passes a motion or resolution in public providing the public "as much information regarding the non-pubic meeting topics as is consistent with full public knowledge without doing any harm to the public interest and also stating as precisely possible, the time when and the circumstances under which the discussion conducted in close session of the public body can be disclosed".

The Plaintiffs also seek in the Summary Judgment Motion to enjoin the Housing Authority from entering into any non-public sessions unless "reasonably comprehensive minutes of those executive sessions are recorded or maintained".

These strictures set forth by the Plaintiffs which they wish to embody into this Court's order enjoining the Defendants from conducting closed sessions are not consistent with the statutory requirements of the Open Public Meetings Act and are essentially lawyer interpretations of that Act.

Under N.J.S.A. 10:4-12, a public entity may conduct a closed session, also known as an executive session, when discussing certain sensitive topics, such as personnel matters and ongoing litigation. To lawfully do so, the entity must adopt a resolution at a lawful meeting stating the "general nature of the subject to be discussed" and stating as precisely as possible

when the information from the closed session can be disclosed. N.J.S.A. 10:4-13. The public entity must keep reasonably comprehensive minutes of all of its meetings showing the time and place, the members present, the subjects considered, the actions taken, and the vote of each member, and any other information required to be shown in the minutes by law, which shall be promptly available to the public to the extent that making such matters public should not be inconsistent with Section 7 of the Act. N.J.S.A. 10:4-14.

Section 7 of the Act provides for exclusion of the public to portions of the meeting during which the entity discusses topics, including, but not limited to confidential matters. Case law has interpreted this section to permit disclosure of the minutes of the executive session once said minute are no longer confidential or to prevent disclosure if disclosure would be inconsistent with the exceptions set forth in Section 7. See O'Shea v. West Milford Board of Education, 391 N.J. Super 534, 540 (App. Div. 2007). The board's obligation to release the notes to the public exist "unless full disclosure would support the purpose of the particular exception" that justifies the closed session in the first place. Payton v. N.J. Turnpike Authority, 148 N.J. 524 (1997).

As noted by the Court in O'Shea:

> However, particularity with respect to minutes of a closed session, the board's determination as to what information to include in the minutes is itself a policy decision. The minutes of executive sessions are typically general enough to avoid disclosure of the kind of "free and frank exchange of views among the members" that OPMA is intended to protect. O'Shea v. West Milford Board of Education, 391 N.J. Super 534, 540-541 (App. Div. 2007).

If the entity violates the Act, its actions at the improper meetings are voidable. N.J.S.A. 10:4-15. Any person who knowingly violates the Act is subject to a fine. N.J.S.A. 10:4-15. Injunctive relief is available against the erring public entity. N.J.S.A. 10:4-16. Attorneys' fees are not authorized under the Open Public Meetings Act.

As defense counsel stated at the summary action proceeding in July, the Summit Housing Authority has been appraised of the requirements of the Open Public Meetings Act and it is promptly taking actions to ensure that it always has resolutions and minutes for all meetings, including executive session meetings. The relief sought by the Plaintiffs have been voluntarily enacted and, therefore, there is no basis for any further relief and certainly no basis for any attorneys' fees and costs to be awarded for violation of the Open Public Meetings Act. However, the Plaintiffs' excessive strictures sought by way of injunctive relief against the Housing Authority are excessive and unnecessary as the Court has recognized that requiring too much information in the resolution may defeat the purpose of the closed/executive session. McGovern v. Rutgers, 211 N.J. 94, 111 (2012). The Plaintiffs seek to establish too fine a line not supported by the case law or by the Open Public Meetings Act.

CONCLUSION

The Defendants, Summit Housing Authority and Joseph M. Billy, Jr. (its Executive Director) hereby request that the Motion for Summary Judgment filed by the Plaintiffs not be heard as procedurally improper, or in the alternative, that it be dismissed, and further that if the Motion for Summary Judgment is to be heard, that the relief sought by the Plaintiffs be denied for the reasons set forth in this Letter Brief.

Respectfully Submitted,

William R. Connelly

WRC/cmm
Enclosures (Unpublished Opinions)

cc: Clerk of the Superior Court, w/encls.
Anthony H. Ogozalek, Jr., Esq., w/encls.
Joseph M. Billy, Jr., w/encls.

Township of Bloomfield v. 110 Washington Street Associates
Superior Court of New Jersey, Appellate Division. August 29, 2006 Not Reported in A.2d 2006 WL 2472993 *(Approx. 3 pages)*

2006 WL 2472993
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.

TOWNSHIP OF BLOOMFIELD, Plaintiff-Appellant,
v.
110 WASHINGTON STREET ASSOCIATES, Defendant-Respondent.

Argued March 7, 2006. Decided Aug. 29, 2006.

On appeal from the Superior Court of New Jersey, Law Division, Civil Part, Essex County, L-2318-05.

Attorneys and Law Firms

Catherine E. Tamasik argued the cause for appellant (DeCotiis, Fitzpatrick, Cole & Wisler, attorneys; Ms. Tamasik, of counsel and on the brief).

James M. Turteltaub argued the cause for respondent (Carlin & Ward, attorneys; Mr. Turteltaub and William J. Ward, of counsel and, with John J. Carlin, Jr. and Scott A. Heiart, on the brief).

Before Judges KESTIN, R.B. COLEMAN and SELTZER.

Opinion

PER CURIAM.

*1 This is a condemnation proceeding commenced as a summary action in a complaint filed with an order to show cause. *See R.* 4:67. Plaintiff, Township of Bloomfield, asserted its eminent domain powers as conferred by the Local Redevelopment and Housing Law, *N.J.S.A.* 40A:12A-1 to -49, and the Eminent Domain Act of 1971, *N.J.S.A.* 20:3-1 to -47. The trial court dismissed the condemnation complaint, concluding, inter alia, that the record lacked adequate basis for finding that the use of defendant's property posed a detriment to the public health, safety or welfare, *see N.J.S.A.* 40A:12A-5d, or was underutilized in the same sense, *see N.J.S.A.* 40A:12A-5e.

Plaintiff appeals, posing several arguments that were presented to the trial court. One argument is that, in the light of the lack-of-timeliness dismissal in a prior proceeding in lieu of prerogative writs in which defendant-owner, 110 Washington Street Associates, had challenged the redevelopment designation and sought, inter alia, to restrain condemnation proceedings, the trial court erred in not applying the doctrines of res judicata and collateral estoppel to bar the challenge, in this proceeding, to the redevelopment designation. Plaintiff also argues that the challenges advanced by defendant were time-barred; and that, in any event, defendant failed to discharge its burden of overcoming the presumption of validity attending a redevelopment designation. The trial court rejected the issue-preclusion arguments and related contentions on the basis that a dismissal of the prerogative writ challenge on lack-of-timeliness grounds was not an adjudication of the merits, and that defendant was entitled to a full and fair opportunity to litigate the issues it raised. We affirm that ruling essentially for the reasons announced by the trial court.

We have reviewed the record in detail in the light of the written and oral arguments advanced by the parties and prevailing legal standards. On appeal, plaintiff has asserted that the standard of review pertaining to appeals from grants or denials of summary judgment controls. Based on this premise, plaintiff has argued that we are obliged to apply the same standard to resolve the dispute as the trial judge was required to use, *see Prudential Prop. & Cas. Ins. Co. v. Boylan*, 307 *N.J.Super.* 162, 167 (App.Div.), *certif. denied*, 154 *N.J.* 608 (1998), that is, to engage in a *de novo* assessment of all the issues.

Plaintiff is manifestly incorrect in the basic assertion, however. The trial court's ruling was not a resolution of a summary judgment motion, it was a full decision on the merits in a summary action. "A summary action is, of course, not a summary judgment proceeding. In a summary action, findings of fact must be made, and a party is not entitled to favorable inferences such as are afforded to the respondent on a summary judgment motion for purposes of defeating the motion."Pressler, *Current N.J. Court Rules,* comment 1 on *R.* 4:67-5 (2006).*See Courier News v. Hunterdon County Prosecutor,* 358 *N.J.Super.* 373, 378-79 (App.Div.2003); *O'Connell v. New Jersey Manufacturers Ins. Co.,* 306 *N.J. Super.* 166, 172 (App.Div.1997), *appeal dism.,*157 *N.J.* 537 (1998).

*2 We are, therefore, bound on appeal by the trial court's findings and conclusions of fact to the extent they are supported by adequate, substantial, credible evidence in the record. *See Rova Farms Resort, Inc. v. Investors Ins. Co.,* 65 *N.J.* 474, 484 (1974). There was no dispute of underlying fact in these proceedings in the trial court, and we must defer to the trial court's view of the background and the factual dynamic between the parties as established in the record. *See Township of West Windsor v. Nierenberg,* 150 *N.J.* 111, 132-33 (1997).

Of course, we are never bound by a trial court's interpretations of law. *See Balsamides v. Protameen Chem., Inc.,* 160 *N.J.* 352, 372 (1999); *Manalapan Realty, L.P. v. Township Committee of Manalapan,* 140 *N.J.* 366, 378 (1995). Given the trial court's view of the facts, however, our independent analysis of the legal arguments presented leads us to substantial agreement with many of the reasons for decision Judge Costello articulated in her letter decision of August 3, 2005. We discern no error of law or any misapplication of discretion in evaluating issues committed to the trial court in matters of this type. Accordingly, we affirm, also, regarding the redevelopment and condemnation issues for reasons essentially similar to the trial court's expressed rationale in those respects.

In arriving at our conclusions on the issue-preclusion and condemnation-issue aspects of the case, we do not reach other issues addressed by the trial court, including whether the Township's attorneys' representation of both the Township and its land use boards so tainted the redevelopment designation as to render it invalid. Plaintiff's argument that the trial court erred in relying on dictum in *Kelo v. City of New London,* 545 *U.S.* 469, ----, 125 *S.Ct.* 2655, 2670, 162 *L. Ed.*2d 439, 460 (2005), is without sufficient merit to warrant discussion in a written opinion. *R.* 2:11-3(e)(1)(E).

Affirmed.

All Citations

Not Reported in A.2d, 2006 WL 2472993

End of Document

State v. The General's Group, I

2010 WL 4876902
State v. The General's Group, L.L.C.
Superior Court of New Jersey, Law Division, Bergen County
July 21, 2010

...Argued: July 9,2010 Additional Submissions: July 12-15 Decided: July 21,2010 On May 13, 2010, the Attorney General of New Jersey, attorney for the State of New Jersey by the Commissioner of Transportat...

County of Bergen v. Arnold

2015 WL 3658771
County of Bergen v. Arnold
Superior Court of New Jersey, Chancery Division, Bergen County
June 09, 2015

...This matter is before the court by way of a Verified Complaint and Order to Show Cause filed by the plaintiff County of Bergen (the "County" or "Plaintiff") on January 22, 2015. Defendant Rosemarie Arn...

Trenton Educational Secretaries Ass'n v. Trenton Bd. of Educ.
Superior Court of New Jersey, Appellate Division. May 10, 2012 Not Reported in A.3d 2012 WL 1622670 (Approx. 7 pages)

2012 WL 1622670
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.

TRENTON EDUCATIONAL SECRETARIES ASSOCIATION, Plaintiff–Appellant,
v.
TRENTON BOARD OF EDUCATION, Defendant–Respondent.

Submitted April 25, 2012. Decided May 10, 2012.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L–2646–09.

Attorneys and Law Firms

Wills, O'Neill & Melik, attorneys for appellant (Arnold M. Melik, of counsel; Gidian R. Melik and Edward A. Cridge, on the brief).

Parker McCay, P.A., attorneys for respondent (Carl Tanksley, Jr., and Elizabeth M. Garcia, of counsel; Stacy L. Moore, Jr., on the brief).

Before Judges FUENTES and J.N. HARRIS.

Opinion

PER CURIAM.

*1 This appeal involves the arbitration of a public-sector labor dispute. Plaintiff Trenton Educational Secretaries Association (the Association) appeals from the Law Division's vacation of an arbitration award obtained against the Trenton Board of Education (the Board) and the court's concomitant refusal to confirm the award in the Association's favor. We reverse both prongs of the Law Division's determination and remand for the entry of a judgment confirming the arbitrator's award.

I.

A.

The events that are the subject of the parties' dispute occurred over a one-year span beginning in July 2007. At that time, the Association and the Board were contractually bound to the terms of a collectively negotiated agreement (the Agreement) that began on July 1, 2005, and ended on June 30, 2009.

Article 3 of the Agreement, entitled "Grievance Procedure," outlines a four-step procedure to resolve disputes over contractual interpretation, application, and violation. Step 4 of the process provides that parties who remain dissatisfied with the outcome of the previous steps are permitted to submit their grievance to an arbitral forum. The Agreement notes the following:

> The decision of the arbitrator shall be final and binding upon the parties and the arbitrator shall be selected from the American Arbitration Association and adhere to their [sic] rules and procedures. The arbitrator shall limit himself to the issue submitted to him and shall consider nothing else. He can add nothing to nor subtract anything from this Agreement.

B.

Prior to July 2007, the registration of students in the Trenton school district was decentralized and conducted at local schools. The process, including interaction with students and their parents or guardians, was performed by secretaries assigned to such

localities. In July 2007, the Board changed the way it administrated registrations by creating the Office of Central Registration.

Generally, local school secretaries were designated as Senior Secretaries or Administrative I Secretaries, and compensated pursuant to the Agreement's Salary Guides. [1] When the Office of Central Registration was created, the Board contemplated the cessation of all registration activities by secretaries at individual schools and the Board assigned two Administrative II Secretaries to perform the tasks necessary to that office.

However, on September 10, 2007, due to the large volume of work being performed at the newly-created Office of Central Registration, Dr. David S. Weathington, the Board's Assistant Superintendent, Division of Student Services, ordered local school-based secretaries to assist with the new-fangled registration process. He wrote a memorandum —addressed to school principals and secretaries—stating, in part, the following:

> Due to the volume of work at central registration, I am asking you to input information into SASI [2] during the day hours effective immediately.

In compliance with Dr. Weathington's directive, several Senior Secretaries and Administrative I Secretaries worked to input data into the Board's SASI. Those secretaries were not paid the salary commensurate with an Administrative II Secretary even though it was claimed that the work they were now performing was that of the higher category of secretary.

*2 On December 14, 2007, the Association filed its initial grievance against the Board seeking relief on behalf of "the school secretaries who have always done registrations in the schools and apparently should have been working in a higher category level of secretary."Specifically, the Association demanded that

> [s]ecretaries in the school district who have previously been doing registrations be compensated at the higher level of an Administrative [II] Secretary [ ] on their step of the salary guide. This compensation should be retroactive to their starting date until the date they are relieved of these duties.

One year later, on December 22, 2008, after exhausting the first three steps of the Agreement's grievance procedure without significant success, [3] the Association filed a demand for arbitration pursuant to the Agreement. Two testimonial hearings were conducted in April and June 2009. On September 5, 2009, after permitting the parties to argue their respective positions through written submissions, the arbitrator rendered a ten-page written award.

The arbitrator canvassed the Agreement together with the testimonial and documentary evidence presented, including an unrebutted chart prepared by Association Vice President Ann Sciarrotta (the Sciarrotta Chart) listing the names of the secretaries involved and the months when they performed registration duties. Thereafter the arbitrator made the following relevant findings:

> The Association has shown that Administrative I and Senior Secretaries were assigned by Mr. [sic] Weathington to perform the work of Administrative II Secretaries due to an unexpected increase in the number of registrations. Mr. [sic] Weathington's directive has never been withdrawn. The Association has shown that the school secretaries continued to do the work as assigned from September 2007 to July 2008 when Dr. [Carolyn] Gibson took control of Central Registration. The Board has offered no proof that the work assignment was rescinded during this time period and its failure to call Mr. [sic] Weathington must carry an adverse inference to their [sic] position.
>
> ....
>
> Therefore, I find that the Board did violate the [Agreement] by requiring Senior and Administrative I secretaries to perform the duties of Administrative II secretaries without additional compensation.

Accordingly, the arbitrator ordered the Board to compensate the affected secretaries pursuant to the Agreement's Article 20(B) [4]: "at the employee's same step on the appropriate guide to the position being filled, prorated from the initial date through the date on which he is relieved."

C.

On November 30, 2009, the Association filed a summary action—by means of a verified complaint and order to show cause pursuant to *Rule* 4:67–1(a) and –2(a)—seeking to confirm the arbitrator's award and enter judgment thereon. On January 4, 2010, the Board filed an answer and counterclaim, which sought to vacate the award. Notwithstanding *N.J.S.A.* 2A:24–7's express provision permitting summary actions, the Law Division refused to proceed in a summary fashion and entered an order on January 29, 2010, as follows:

> *3 ORDERED that Plaintiff Trenton Educational Secretaries Association's Order to Show Cause is DENIED for reasons stated on the record.

The court reasoned:

> [O]n a procedural basis I'm going to deny the order to show cause. It's without any prejudice to you filing for summary judgment and we'll deal with it based on summary judgment burden of proof standard. It may not change much from your perspective, but I do think that in this case where there doesn't appear to be—nobody's out of a job, there doesn't seem to be any immediate or irreparable harm. And this comes down to money damages. And while I'm not suggesting that we protract this and cause the taxpayers a lot of time and expense I also need to follow the rules and make sure that we use the proper procedures and order to show cause only for those times when it's really appropriate.

More than one year passed during which the parties engaged in fact discovery.[5] Then, in May 2011, the parties filed and argued cross-motions for summary judgment. The motion court granted the Board's motion, denied the Association's motion and "reverse[d] the arbitrator's award," finding that the arbitrator made mistakes of fact and violated public policy by "essentially chang[ing] the ... job description ... retroactively without any negotiations."This appeal followed.

II.

A.

We first note the inappropriate and overlong procedural journey taken by this action. The Legislature contemplated the swift confirmation, vacation, modification, or correction of arbitration awards. In pertinent part, the statute provides:

> A party to the arbitration may, within 3 months after the award is delivered to him, unless the parties shall extend the time in writing, *commence a summary action* in the court aforesaid for the confirmation of the award or for its vacation, modification or correction. Such confirmation shall be granted unless the award is vacated, modified or corrected.
>
> [*N.J.S.A.* 2A:24–7 (emphasis supplied).]

Rule 4:67–1(a) further endorses expedited treatment by its recognition that a summary action is appropriate "to all actions in which the court is permitted ... by statute to proceed in a summary manner," and *Rule* 4:67–2(a) provides that such an action may be commenced by an order to show cause demanding "why final judgment should not be rendered for the relief sought."Furthermore, *Rule* 4:67–5 requires, with limited exceptions, that "the court shall try the action on the return day, or on such short day as it fixes."

In light of these provisions, the Law Division's conversion of the matter into a plenary action because "there [didn't] seem to be any immediate or irreparable harm" garners no support in the law. The order to show cause only sought confirmation of the arbitration award; it did not seek injunctive relief. The court's reservation that "[i]t's without any prejudice to [the Association] filing for summary judgment" negated the legislative preference for prompt resolution of arbitration matters, but also ignored the jurisprudential differences between a summary proceeding and a summary judgment motion. *See O'Connell v. N.J. Mfrs. Ins. Co.*, 306 *N.J.Super.* 166, 172 (App.Div.1997) (recognizing differences between the procedural devices), *appeal dismissed*,157 *N.J.* 537 (1998).

*4 Moreover, permitting the parties to engage in extended discovery of fact issues was counterproductive to the goal of arbitration to be a forum "of providing final, speedy and inexpensive settlement of disputes."*Barcon Assocs. v. Tri–County Asphalt Corp.*, 86 *N.J.* 179, 187 (1981). Arbitration serves as a substitute, and not a catalyst, for litigation and is

designed primarily to avoid the complex, time-consuming, and costly alternative of litigation, all of which were lost by the process invoked by the Law Division. In arbitration, with abbreviated discovery and expansive treatment of evidence, parties are engaged in simple, inexpensive, and expeditious dispute resolution. Notwithstanding the Association's reasonable efforts, those benefits were thwarted by judicial misguidance.

B.

An arbitration award is presumed valid and judicial review of an arbitration award is strictly limited. *Del Piano v. Merrill Lynch*, 372 *N.J.Super.* 503, 510 (App.Div.2004), *certif. granted*,183 *N.J.* 218,*appeal dismissed*,195 *N.J.* 512 (2005). Consequently, to ensure "finality, as well as to secure arbitration's speedy and inexpensive nature, there exists a strong preference for judicial confirmation of arbitration awards,"*New Jersey Turnpike Authority v. Local 196, I.F.P.T.E.*, 190 *N.J.* 283, 292 (2007) (internal citations and quotations omitted), and "the arbitrator's decision is not to be cast aside lightly."*Bd. of Educ. of Alpha v. Alpha Educ. Ass'n.*, 190 *N.J.* 34, 42 (2006). Accordingly, a party "seeking to vacate [an arbitration award] bears a heavy burden."*Del Piano, supra*, 372 *N.J.Super.* at 510. On appeal from a trial court's decision vacating an arbitration award, our review is de novo, that is, " '[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.' " *Id.* at 507 (quoting *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 *N.J.* 366, 378 (1995)).

Moreover, courts have engaged in an "extremely deferential review" when a party to a collectively negotiated agreement has sought to vacate an arbitrator's award. *Policeman's Benevolent Ass'n., Local No. 11 v. City of Trenton*, 205 *N.J.* 422, 428 (2011). Thus, "the party opposing confirmation ha[s] the burden of establishing that the award should be vacated pursuant to *N.J.S.A.* 2A:24–8."*Twp. of Wyckoff v. PBA Local 261*, 409 *N.J.Super.* 344, 354 (2009) (citation omitted).

"In the public sector, an arbitrator's award will be confirmed 'so long as the award is reasonably debatable.' " *Linden Bd. of Educ. v. Linden Educ. Ass'n ex rel. Mizichko*, 202 *N.J.* 268, 276 (2010) (quoting *Middletown Twp. PBA Local 124 v. Twp. of Middletown*, 193 *N.J.* 1, 11 (2007)). Under this standard, we "may not substitute [our] judgment for that of the arbitrator, regardless of the court's view of the correctness of the arbitrator's interpretation." *Linden, supra*, 202 *N.J.* at 277 (quoting *N.J. Transit Bus Operations, Inc. v. Amalgamated Transit Union*, 187 *N.J.* 546, 554 (2006)).

*5 In addition to the foregoing, the statutory grounds upon which a reviewing court may vacate an arbitration award are set legislatively forth in *N.J.S.A.* 2A:24–8:

a. Where the award was procured by corruption, fraud or undue means;

b. Where there was either evident partiality or corruption in the arbitrators, or any thereof;

c. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause being shown therefor, or in refusing to hear evidence, pertinent and material to the controversy, or of any other misbehaviors prejudicial to the rights of any party;

d. Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.

Applying the aforesaid principles and statutory standards, we are satisfied that the arbitrator's interpretation of the Agreement was both plausible and reasonably debatable. In ruling, the arbitrator looked to the totality of the evidence presented and integrated it with a logical understanding of the Agreement. We are unable to agree with the Law Division that a judicial unwinding of the award is either necessary or appropriate.

The Board argues that the arbitrator's award (1) was procured by undue means because it constituted a clear mistake of undisputed fact, (2) violated public policy, and (3) exceeded the scope of the arbitrator's powers under the Agreement. The motion court's ruling was narrower. It held that the arbitration award should be vacated because it was procured through undue means pursuant to *N.J.S.A.* 2A:24–7(a) due to errors of fact "apparent on the face of the award itself."One such error of fact was the arbitrator's reliance upon the Sciarrotta Chart to support the Agreement's requirement of performing "more than twenty (20) working days" as "a higher level secretary" to enjoy an increase in salary. The other putative error was the arbitrator's conclusion that the affected secretaries "were doing out

of title duties," which the motion court found was mistaken because "registration was part of an Admin [istrative] I and Senior secretary's duties."

Also, the court held that pursuant to *State, Office of Employee Relations v. Communications Workers of America, AFL–CIO,* 154 *N.J* . 98, 109–11 (1998) ("[w]hen reviewing an arbitrator's interpretation of a public-sector contract, in addition to determining whether the contract interpretation is reasonably debatable, the court must also ascertain whether the award violates law or public policy"), the award was contrary to public policy because it "change[d] the ... job description ... retroactively without any negotiations."

Courts have interpreted undue means as a "clearly mistaken view of fact or law."*Local Union 560, I.B.T. v. Eazor Express, Inc.,* 95 *N.J.Super.* 219, 227–28 (App.Div.1967). This "does not include situations, ... where the arbitrator bases his decision on one party's version of the facts, finding that version to be credible."*Local No. 153, Office & Prof'l Employees Int'l Union v. Trust Co. of N.J.,* 105 *N.J.* 442, 450 n. 1 (1987). Rather, the mistake of fact must appear on the face of the award or by the statement of the arbitrator, *PBA Local 160 v. Township of North Brunswick,* 272 *N.J.Super.* 467, 474 (App.Div .), *certif. denied,*138 *N.J.* 262 (1994), and be so gross as to suggest fraud or corruption. *Trentina Printing, Inc. v. Fitzpatrick & Assoc., Inc.,* 135 *N.J.* 349, 358 (1994).

*6 There is no mistake of fact, much less one so gross as to justify overturning the arbitration award. The arbitrator recognized that high-level secretarial staffing of the Office of Central Registration was required for its effective operation. When the press of initial business overwhelmed the central office's complement of secretaries, the Board enlisted experienced personnel (the local-based secretaries) for a several-months-long rescue effort. There was sufficient evidence in the record, including the Sciarrotta Chart, to support the arbitrator's conclusion that the work performed by local-based secretaries was at the level of an Administrative II Secretary and satisfied the twenty-hour rule. Ordering pay parity for that limited time period does no harm to the Agreement's provisions controlling promotions and does not re-write the Agreement to give the Association a better deal than it bargained for.

In like vein, we disagree with the Law Division's view of the award's impact on public policy. The "public policy exception requires 'heightened judicial scrutiny' when an arbitration award implicates 'a clear mandate of public policy[.]' " *N.J. Tpk. Auth., supra,* 190 *N.J.* at 294 (quoting *Weiss v. Carpenter, Bennett & Morrissey,* 143 *N.J.* 420, 443 (1996)). This standard will only be met in "rare instances." *Ibid.* (emphasis omitted).

The Court has explained:

> Assuming that the arbitrator's award accurately has identified, defined, and attempted to vindicate the pertinent public policy, courts should not disturb the award merely because of disagreements with arbitral fact findings or because the arbitrator's application of the public policy principles to the underlying facts is imperfect. If the correctness of the award, including its resolution of the public policy question, is reasonably debatable, judicial intervention is unwarranted. The judiciary's duty to provide an enhanced level of review of such arbitration awards is discharged by a careful scrutiny of the award, in the context of the underlying public policy, to verify that the interests and objectives to be served by the public policy are not frustrated and thwarted by the arbitral award.
>
> However, if the arbitrator's resolution of the public-policy question is not reasonably debatable, and plainly would violate a clear mandate of public policy, a court must intervene to prevent enforcement of the award. In such circumstances, judicial intervention is necessary because arbitrators cannot be permitted to authorize litigants to violate either the law or those public-policy principles that government has established by statute, regulation or otherwise for the protection of the public.
>
> [*Weiss, supra,* 143 *N.J.* at 443.]

Importantly, in determining whether the public policy exception applies, we concentrate on the award, not the conduct that gave rise to the dispute.*N.J. Tpk. Auth., supra,* 190 *N.J.* at 297.

"[F]or purposes of judicial review of labor arbitration awards, public policy sufficient to vacate an award must be embodied in legislative enactments, administrative regulations, or legal precedents," not "amorphous considerations" of the public's well-being. *Id.* at 295.We

find nothing but amorphous considerations to support the motion court's public policy conclusion. The award neither granted promotions to secretaries nor did it change any employee's job description. Rather, it simply analyzed the Board's purposeful decision of transferring registration functions to higher-level secretaries, and then appropriately compensated lower-level secretaries when they were commandeered to perform at the newly-designated higher level. This does not contravene public policy; it merely honors the contractual promises the Board made to its secretaries in Article 20(B) of the Agreement.

*7 Finally, we find no merit in the Board's arguments that the arbitrator exceeded his powers and went beyond the scope of the Agreement under *N.J.S.A.* 2A:24–8(d)."Whether in the public or private sector, it is the agreement between the parties that essentially empowers the arbitrator and his function is to comply with the authority given him by the parties."*PBA Local 160, supra,* 272 *N.J.Super.* at 476 n. 5. In other words, because an arbitrator's powers are derived from the express terms of an agreement to arbitrate, he exceeds those powers by disregarding the terms of that agreement. *See Office of Emp. Relations, supra,* 154 N.J. at 112. Thus, while " 'arbitration is traditionally described as a favored remedy, it is, at its heart, a creature of contract.' " *Fawzy v. Fawzy,* 199 *N.J.* 456, 469 (2009) (quoting *Kimm v. Blisset, LLC,* 388 *N.J.Super.* 14, 25 (App.Div.2006), *certif. denied,*189 *N.J.* 428 (2007)).

Here, the parties expressly agreed to arbitrate, as a fourth step, all grievances emanating from the Agreement "based upon the interpretation, application, or violation of th[e] Agreement."This is unquestionably what the arbitrator in this instance did. By arguing that the award is based on the theory that the arbitrator promoted secretaries or gave them unwarranted raises, the Board overstates and mischaracterizes the rather limited scope of the relief granted by the award. Simply put, the award merely fairly (and contractually) compensates lower-level secretaries for doing work that their employer designated as functions of higher level secretaries. Not only is this outcome reasonably debatable, it appears equitably appropriate under the terms of the Agreement.

Reversed and remanded for the entry of a judgment confirming the arbitrator's award of September 5, 2009.

All Citations

Not Reported in A.3d, 2012 WL 1622670

Footnotes

1 The Association's brief describes a Senior Secretary as "the lowest-level secretarial position," an Administrative I Secretary as "the intermediate-level secretarial position," and an Administrative II Secretary as "the highest-level secretarial position."

2 SASI is an acronym for the Board's computer-based Student Administration/Student Information system used to compile and maintain student registration and enrollment data.

3 Actually, at Step 3 of the grievance procedure, the Association obtained a since-unchallenged ruling that the Board

> Is directed to compensate the senior secretaries assigned to schools who perform student registration duties as per the memorandum dated September 2007 issued by the Assistant Superintendent for Student Services directing them to perform these duties because of the high volume of work. The time period requiring compensation will be during September 2007 when the schools experienced a high volume of student registration. They shall receive the salary difference between the Administrative II and Senior Secretary.

4 Article 20, entitled "Promotions," reads in full as follows:

> A. A promotion shall be defined as taking place when an individual applies and is appointed for a position which is rated higher than the one held prior to such application. When promoted, an employee shall move to the appropriate guide for the position at the employee's current guide step.

B. Only when a regularly employed secretary is instructed by an administrator to assume the responsibilities of a higher level secretary within the unit for more than twenty (20) working days, will the Board pay him at the employee's same step on the appropriate guide to the position being filled, prorated from the initial date through the date on which he is relieved.

C. Continuation in the same position, absent reclassification, shall not result in a promotion.

5 During this period, the Association moved for leave to appeal the Law Division's decision regarding the order to show cause, which we denied.

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