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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3351-22**

TOWNSHIP OF HAMILTON,

Plaintiff-Appellant,

v.

**PBA LOCAL 66 AND
PBA LOCAL 66A,**

Defendants-Respondents.

Argued May 9, 2024 – Decided June 26, 2024

Before Judges Natali and Puglisi.

On appeal from the Superior Court of New Jersey,
Chancery Division, Mercer County, Docket No. C-
0012-23.

Elissa Grodd Schragger argued the cause for appellant
(Hamilton Township Department of Law, attorneys;
Elissa Grodd Schragger, on the briefs).

David B. Beckett argued the cause for respondents
(Beckett & Paris, LLC, attorneys; David B. Beckett, on
the brief).

PER CURIAM

Plaintiff Township of Hamilton appeals from the Law Division's June 1, 2023 order denying its application for an order to show cause that sought to vacate the November 8, 2022 arbitrator's award in favor of defendants PBA Local 66 and PBA Local 66A. We affirm.

Defendants PBA Local 66 and 66A provide union representation to the police officers and superior officers, respectively, employed by plaintiff. Plaintiff entered into separate Collective Negotiation Agreements (CNAs) with each defendant covering the period January 1, 2020, through December 31, 2024.

As a result of the COVID-19 pandemic, which emerged three months into the contract period, the federal government enacted the Families First Coronavirus Response Act, (FFCRA), Pub. L. No. 116-127, 134 Stat. 178 (2020). Contained within the FFCRA was the Emergency Paid Sick Leave Act (EPSLA), Pub. L. No. 116-127, §§ 5101-5111, 134 Stat. 178, 195-201 (2020) (codified at 29 U.S.C. § 2601 note). EPSLA required certain employers, including plaintiff, to provide their employees with eighty additional hours of paid sick leave for COVID-related absences (COVID leave) for the remainder of calendar year 2020.

Upon EPSLA's sunset after December 31, 2020, plaintiff voluntarily extended the timeframe under which its employees, including defendants, could avail themselves of COVID leave regardless of vaccination status. On September 7, 2021, after discussions between the parties, plaintiff issued a memorandum to all Township employees advising they were required to submit proof they were "fully vaccinated^[1] as defined by the CDC [Centers for Disease Control]" in order to be entitled to COVID leave. Any unvaccinated employees who contracted COVID or had to quarantine because of exposure to the virus were required to utilize their own benefit time. This revised policy allowed medical and religious exceptions, which are not at issue here. Defendants did not object to or file a grievance of the September 2021 amendment.

On December 17, 2021, without any prior discussion between the parties, plaintiff issued a second policy amendment (the booster policy) that required all employees to have received a booster shot in order to use COVID leave. The booster policy explained the change was based on "mounting evidence" from the CDC that "the [vaccine] protection provided against the virus and infections

¹ According to the record, the CDC defined "fully vaccinated" as two weeks after the second dose of a two-dose series, such as the Pfizer or Moderna vaccines, or two weeks after a single-dose vaccine such as the Johnson & Johnson vaccine.

from variants may wane over time." The booster policy was to take effect on December 27, 2021, which gave employees a ten-day window in which to receive the booster shot. However, the memo was not uploaded to defendants' distribution site for its officers until Sunday, December 19, 2021, reducing the amount of time police officers had to comply with the booster requirement, which was further impacted by the fact it was implemented during the holiday season.

On December 20, 2021, plaintiff held a conference call to discuss the booster policy with leadership of the employees' unions, including defendants. During the call, the president of PBA Local 66 expressed the union's concern that the policy went into effect without any prior bargaining between the parties. The president sought a two-week delay of the implementation of the policy so that officers had sufficient opportunity to get a booster shot, but that request was denied.

On December 27, 2021, counsel for defendants sent an email to plaintiff reiterating the unions' concerns the booster policy violated contract terms, was not supported by CDC guidance, and had unintended consequences. Although defendants offered to meet to discuss their concerns, plaintiff declined to respond.

On January 3, 2022, defendants filed a grievance, which plaintiff denied three weeks later. Defendants then filed a request to arbitrate before the Public Employment Relations Commission (PERC).

During the PERC arbitration hearing, defendants' witnesses testified as to four particular police officers who were required to quarantine shortly after the booster policy came into effect. According to defendants, the officers were fully vaccinated but did not have sufficient time to obtain a booster before they were exposed to COVID, and plaintiff denied their requests to use COVID leave because they had not obtained a booster shot. Defendants also emphasized that police officers could not work remotely and were therefore required to take time off from work to quarantine, unlike other Township employees who were able to work remotely while quarantining. Defendants argued that this negative impact would not have occurred if there had been the opportunity to discuss and negotiate the timing of implementation of the booster policy.

Plaintiff's health officer testified the Township considered guidance from the CDC and New Jersey Department of Health throughout the pandemic and implemented the booster mandate based on the CDC's December 2021 guidance for booster shots due to the emergence of COVID variants. Plaintiff's personnel officer conceded the Township did not negotiate the booster amendment with

defendants. Plaintiff's business administrator explained the booster policy was implemented to encourage employees to obtain a booster shot out of a concern for "an anticipated uptick in COVID cases during the upcoming holiday season." Plaintiff contended it was not required to negotiate the booster policy because paid COVID leave was an "incentive rather than a negotiated contractual benefit."

After hearing testimony and considering the written submissions from both parties, on November 8, 2022 the arbitrator issued his opinion and award in favor of defendants. The arbitrator noted the CNAs did not provide for COVID leave but both CNAs contained identical provisions that "[a]ll benefits, terms and conditions of employment presently enjoyed by [e]mployees hereunder that have not been included in this Agreement shall be continued in full force and effect." The CNAs further provided all "[p]roposed new rules or modifications of existing rules governing working conditions shall be negotiated with the PBA before they are established."

The arbitrator found that, even if the September 2021 policy was implemented without prior negotiations and defendants did not challenge it at that time, "this [did] not relieve the Township of its obligations under the [CNAs] to negotiate a subsequent change to an existing benefit once

[defendants] expressly . . . notified the Township that [they] demanded to negotiate over the [booster] policy."

Because plaintiff's unilateral implementation of the booster policy violated the CNAs, the arbitrator sustained the grievance and awarded defendants' requested remedy of requiring the Township to "sit down with union representatives and negotiate these issues, rather than unilaterally deny leave time" to defendants' members who contracted COVID or were required to quarantine.

On February 7, 2023, plaintiff filed an application for an order to show cause seeking to vacate the arbitrator's award. After considering the parties' arguments, Judge Patrick J. Bartels denied the order to show cause and issued a comprehensive and well-reasoned written opinion explaining his decision. Plaintiff appeals, arguing the arbitrator's decision should have been vacated because it improperly added a term to the CNAs and exceeded his powers, and because it made a mistake of law. We disagree and affirm.

"Judicial review of an arbitration award is very limited." Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4, 11 (2017) (quoting Linden Bd. of Educ. v. Linden Educ. Ass'n ex rel. Mizichko, 202 N.J. 268, 276 (2010)). "To foster finality and 'secure arbitration's speedy and inexpensive nature,' reviewing

courts must give arbitration awards 'considerable deference.'" Borough of Carteret v. Firefighters Mut. Benevolent Ass'n, Loc. 67, 247 N.J. 202, 211 (2021) (quoting Borough of E. Rutherford v. E. Rutherford PBA Loc. 275, 213 N.J. 190, 201 (2013)).

"As the decision to vacate an arbitration award is a decision of law, this court reviews the denial of a motion to vacate an arbitration award de novo." Minkowitz v. Israeli, 433 N.J. Super. 111, 136 (App. Div. 2013) (quoting Manger v. Manger, 417 N.J. Super. 370, 376 (App. Div. 2010)). "[A]n arbitrator's award resolving a public sector dispute will be accepted so long as the award is 'reasonably debatable.'" Borough of Carteret, 247 N.J. at 211 (quoting Borough of E. Rutherford, 213 N.J. at 201). Using 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.'" Borough of E. Rutherford, 213 N.J. at 201-02 (quoting Middletown Twp. PBA Loc. 124 v. Twp. of Middletown, 193 N.J. 1, 11 (2007) (citation omitted)).

There are, however, four statutory bases for vacating an arbitration award:

- (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 . . . or in refusing to hear evidence . . . 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.

[N.J.S.A. 2A:24-8.]

Additionally, an award may be vacated if it is "contrary to existing law or public policy." Middletown Twp., 193 N.J. at 11 (citation omitted). However, courts read this public policy exception narrowly. Borough of E. Rutherford, 213 N.J. at 202. "Public policy is ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests." Id. at 202-03 (internal citation omitted). Even with this public policy exception, the "deferential 'reasonably debatable' standard still governs." Id. at 203.

Plaintiff first contends the judge erred in not vacating the arbitrator's award because the arbitrator added a term to the CNAs, which exceeded his powers. Plaintiff points out COVID leave was not a "benefit, term or condition of the CNAs," but rather a federal requirement that terminated at the end of


2020; and argues the Township's voluntary extension of it was an "incentive for the health, safety and welfare of its employees."

Given our deferential review of the arbitrator's interpretations, findings, and conclusions, we are persuaded the award determination was reasonably debatable. The arbitrator considered both parties' arguments and applied the evidence and testimony in the record. He found the September 2021 policy was discussed prior to its implementation and, even if it had not been, the plain language of the CNAs required negotiation prior to changing an existing benefit. We find unavailing plaintiff's attempts to cast post-December 2020 COVID leave as "a gift, a kindness, a gesture of hope." It was, as the arbitrator found, a policy establishing a benefit and therefore plaintiff was required to negotiate the booster policy before implementing it. We likewise reject plaintiff's contention that COVID leave was not an "existing benefit" because it was not in effect when the CNAs were executed. The arbitrator found that COVID leave is a "working condition" under the CNA, and therefore "any new rules or modifications" to it must be negotiated.

We also reject plaintiff's argument the judge erred in not vacating the arbitrator's award because it was contrary to public policy.² Despite the Township's well-intended reasons for extending employees' use of COVID leave contingent on their obtaining a booster shot, the Township was nevertheless required to negotiate it with defendants.³ Because defendants were not provided enough time to comply with the booster policy, four union members were negatively impacted by it. However, the arbitrator's decision only restored the employees' expended sick time, and COVID leave is no longer in effect in the Township. As the judge found, there is no long-term ramification of the issues raised in this matter. For these reasons, we agree the arbitrator's award did not violate public policy.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

² Plaintiff relies on an unpublished opinion from the Western District of Louisiana in support of its argument EPSLA is not an employee benefit. Unpublished and foreign decisions are not precedential and cannot be cited by this court, and counsel did not confirm compliance with the requirement that all contrary unpublished opinions known to counsel were also served on the court and opposing counsel. See Rule 1:36-3.

³ Although defendants' merits brief argued the booster policy was contrary to CDC guidance, they conceded at oral argument their objection to it was limited to the timing of its implementation.