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Attorneys for Plaintiff

HOBOKEN MUNICIPAL EMPLOYEES ASSOCIATION,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: HUDSON COUNTY
	:	
Plaintiff,	:	DOCKET NO.:
	:	
v.	:	
	:	CIVIL ACTION
CITY OF HOBOKEN,	:	
	:	VERIFIED COMPLAINT
Defendant.	:	
	:	
	:	

The Plaintiff, Hoboken Municipal Employees Association, by way of Verified Complaint state as follows:

JURISDICTION

This Court has jurisdiction in this matter pursuant to the provisions of **N.J.S.A. 2A:24-7 et seq.**

FIRST COUNT

1. At all times hereinafter mentioned, the Plaintiff was and still is a public employee organization and is the duly recognized majority representative of all non-uniformed employees of the City of Hoboken as listed in Appendix A of the Collective Bargaining Agreement, in accordance with the provisions of **N.J.S.A. 34:13A-1, et seq.**, and the rules and regulations of the

Public Employment Relations Commission (hereinafter "PERC") promulgated in accordance therewith.

2. At all times hereinafter, mentioned Defendant was and still is a public employer within the meaning and intendment of **N.J.S.A. 34:13A-1 et seq.**, and the rules and regulations promulgated in accordance therewith and is the employer of all employees represented by the Plaintiff.

3. At all times hereinafter mentioned, the Plaintiff and the Defendant were parties to a collectively negotiated labor agreement, the most recent of those agreements covers the period from January 1, 2018 through December 31, 2024. This agreement contains in Article XXI, a multi-step grievance procedure for the purpose of resolving disputes arising between the parties, with binding arbitration in accordance with the rules and regulations of the Public Employment Relations Commission ("PERC") as the terminal procedure if the dispute was not resolved. (Exhibit B of Certification of Marcia Mitolo).

4. Annmarie Sacco was hired by the City of Hoboken on September 7, 2003 and is a union member of the Hoboken Municipal Employees Association. (Exhibit A, page 14, of Certification of Marcia Mitolo).

5. As a member of the union, Ms. Sacco is entitled to a number of negotiated benefits under the contract, including

salary increases, sick and vacation benefits, health benefits, etc.

6. Article I, Section 1 of the collective negotiated agreement states as follows:

The City recognizes the Association as the sole and exclusive bargaining agent for the purpose of establishing wages, benefits and other conditions of employment for all non-uniformed employees in the bargaining unit as listed in Appendix A.(Exhibit B, page 2, of Certification of Marcia Mitolo).

7. Article XIV of the collective negotiated agreement sets forth various schedules for longevity pay depending on the employee's hire date and years of service. Section 2 defines "service" in relevant portion as "exclusive full-time service to the City of Hoboken." (Exhibit B, page 23, of Certification of Marcia Mitolo).

8. Article XVI, Section 2 of the collective negotiated agreement provides for employees hired prior to November 15, 2016, to receive terminal leave benefits for retiring employees. Article XVI, Section 5 states that "[a]ny employee hired on or after November 15, 2016, shall not be entitled to Terminal Leave." (Exhibit B, page 25, of Certification of Marcia Mitolo).

9. On or about January 15 2020, the City of Hoboken submitted to Civil Service Commission a "layoff plan" seeking to layoff dozens of employees effective May 7, 2020. (Exhibit A, page 15, of Certification of Marcia Mitolo).

10. On or about May 1, 2020, Ms. Sacco, a seventeen-year employee of the City of Hoboken, was notified that she would be laid off from her permanent position of Keyboarding Clerk 1. (Exhibit A, page 15, of Certification of Marcia Mitolo).

11. At the time of her layoff, Ms. Sacco was earning \$57,000, and was entitled to 12% longevity, terminal leave, and 25 vacation days, which was based and calculated on her length of service with the City of Hoboken. (Exhibit A, page 15, of Certification of Marcia Mitolo).

12. Ms. Sacco was previously laid off from employment with the City of Hoboken on or about late 2008 to early 2009. She was placed on the special reemployment list and was rehired on December 6, 2010. (Exhibit A, page 13, of Certification of Marcia Mitolo).

13. Following her rehire from the special reemployment list on December 6, 2010, Ms. Sacco was paid her pre-layoff salary and all benefits of employment, including sick, vacation, longevity, and terminal leave, were calculated from her original September 7, 2003 hire date. (Exhibit A, page 13, of Certification of Marcia Mitolo).

14. Ms. Sacco was placed on the special reemployment list pursuant to N.J.A.C. 4A:8-2.3 following the May 7, 2020 layoff. (Exhibit A, page 15, of Certification of Marcia Mitolo).

15. Approximately seven months later, on December 2020, Ms. Sacco received a Certification from Civil Service for her prior permanent position of Keyboarding Clerk 1. (Exhibit A, page 16, of Certification of Marcia Mitolo).

16. Upon receiving the certification, Ms. Sacco contacted the City advising them that she would be happy to return to work. (Exhibit A, page 16, of Certification of Marcia Mitolo).

17. Ms. Sacco was advised by then Personnel Officer Michael Kraus that her return to work seven months after the layoff would make her a "new hire." (Exhibit A, page 16, of Certification of Marcia Mitolo).

18. As a "new hire" Ms. Sacco's salary was reduced to \$43,000, with no longevity, terminal leave, or pre-layoff sick and vacation day entitlements. (Exhibit A, page 16, of Certification of Marcia Mitolo).

19. Ms. Sacco returned to her former position on January 4, 2021, and promptly contacted then union president Diane Carreras, who filed a grievance on her behalf. (Exhibit A, page 17, of Certification of Marcia Mitolo).

20. The matter was heard before Arbitrator Elizabeth McGoldrick pursuant to the rules promulgated by PERC, Docket No. AR-2021-355. (Exhibit A, page 17, of Certification of Marcia Mitolo).

21. The parties disagreed as to the framing of the issue. Accordingly, the Plaintiff proposed the issue in dispute to be framed as follows:

Did the City violate the collective bargaining agreement by refusing to properly compensate and provide benefits to the Grievant, an employee hired from a Civil Service Special Reemployment list, in accordance with her years of service with the City of Hoboken? If so, what shall be the remedy?

The City proposed that the issue be framed as follows:

Did the City properly determine the Grievant's salary upon rehiring her from a Special Reemployment List? If not, what shall be the remedy? (Exhibit A, page 3, of Certification of Marcia Mitolo).

22. The arbitrator failed to make a determination as to what the appropriate issue was and how it should be framed and considered both statements of the issue.

23. On July 3, 2024, the arbitrator issued the following Award:

The City violated the Agreement when it compelled the Grievant to accept vacation benefits as if she were a new hire, without crediting her past years of service. The City is ordered to make Ms. Sacco whole by reinstating vacation leave benefits consistent with her entire years of service, as discussed above, and according to the vacation benefit schedule in the Agreement, retroactively to January 2021.

The City did not violate the Agreement by assigning her a new salary rate or refusing to give her longevity or terminal leave benefits in January 2021. (Exhibit A, page 23, of Certification of Marcia Mitolo).

24. Specifically, the arbitrator held as follows:

The agreement is silent as to what salary level shall be assigned to employees rehired from CSC special reemployment lists. It contains a range of salaries by title, including an initial salary rate, but no term requiring a particular "new hire" salary level. A review of the parties' practices show that the City has discretion, within the negotiated range, to determine starting salary ranges. After the initial rate is determined, the Agreement specifies subsequent rates. (Exhibit A, page 18, of Certification of Marcia Mitolo).

25. Regarding longevity and terminal leave, the arbitrator held as follows:

The Agreement contains no term identifying how longevity and terminal leave benefits are to be handled when employees return to work for the City from special reemployment lists. (Exhibit A, page 22, of Certification of Marcia Mitolo).

26. No documentation was submitted by the employer that rebutted the fact that employees rehired from the special reemployment list have never been considered "new hires" by the City.

27. Employees rehired from the special reemployment list have historically been returned to employment with wages and benefits that matched their original date of hire with the City of Hoboken.

28. The Arbitrator exceeded her authority by ignoring the clear and unambiguous language of Article 1 of the collective negotiated agreement that recognizes the Association as "the sole and exclusive bargaining agent for the purpose of establishing

wages, benefits and other conditions of employment for its members.”

28. The Arbitrator exceeded her authority by ignoring the clear and unambiguous language of Article XIV of the collective negotiated agreement which defines “service” in relevant portion as “exclusive full-time service to the City of Hoboken.”

29. The Arbitrator exceeded her authority by ignoring the clear and unambiguous language of Article XVI, which provides for employees hired prior to November 15, 2016, to receive terminal leave benefits for retiring employees.

30. The Arbitrator ignored the clear language of the agreement and reached a different result that was bargained for by the parties.

31. Assuming arguendo that the language of the collective bargaining was not clear and unambiguous, the Arbitrator failed to apply the well-established test to determine whether a past practice did in fact exist.

32. The Arbitrator violated the elements of N.J.S.A. 2A:24-8 by making a mistake of law which requires that the Award be vacated.

WHEREFORE the Plaintiff, Hoboken Municipal Employees Association, hereby demands judgment against the Defendant for the following relief:

a. An Order modifying the arbitration award in PERC Docket

AR-2021-355, and;

- b. An Order directing the Defendant to cease unilaterally establishing wages and benefits for employees represented by the Hoboken Municipal Employees Association, and;
- c. Such other relief as the Court deems just and proper.

LIMSKY MITOLO

By: *Marcia J. Mitolo*
Marcia J. Mitolo

Dated: September 16, 2024

DESIGNATION OF TRIAL COUNSEL

Marcia J. Mitolo, Esq., of the law firm of Limsky Mitolo, attorneys for the Plaintiff, Hoboken Municipal Employees Association, is hereby designated as trial counsel in the within action.

LIMSKY MITOLO

By: *Marcia J. Mitolo*
Marcia J. Mitolo

Dated: September 16, 2024

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned hereby certifies, on information and belief as follows that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding. No other action or arbitration proceeding is contemplated. I further certify that to the best of my knowledge no other parties need be joined in this matter at this time. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the said statements are willfully false, I am subject to punishment.

LIMSKY MITOLO

By: *Marcia J. Mitolo*
Marcia J. Mitolo

Dated: September 16, 2024

VERIFICATION

I have read the foregoing Verified Complaint and on my own personnel knowledge, I know that the facts set forth therein are true to the best of my knowledge and that those facts are incorporated herein.

Clinton Wheeler
Clinton Wheeler

Dated: 9/25/2024