Matter of Sheriff Officers Assoc., Inc. v County of Nassau
2012 NY Slip Op 30837(U)
March 26, 2012
Sup Ct, Nassau County
Docket Number: 453/12
Judge: Karen V. Murphy
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Short Form Order

SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 11 NASSAU COUNTY

PRESENT:

Honorable Karen V. Murphy
Justice of the Supreme Court

______________________________________x

In the Matter of the Application of

SHERIFF OFFICERS ASSOCIATION, INC., CORRECTION CORPORALS EUGENE O'BRIEN, FRED CANGERO, LINDA GUAGLIARDO, JAMES MCCANN, and all other similarly affected "correction corporals",

Petitioner(s),

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

-against-

COUNTY OF NASSAU, EDWARD P. MANGANO, as the County Executive, COUNTY OF NASSAU SHERIFF'S DEPARTMENT, and MICHAEL SPOSATO, as Sheriff of the County of Nassau Sheriff's Department,

Respondent(s).

______________________________________x

Index No. 453/12

Motion Submitted: 1/24/12
Motion Sequence: 001

The following papers read on this motion:

Notice of Motion/Order to Show Cause........................X
Answering Papers...X
Reply...
Briefs: Plaintiff's/Petitioner's.......................................XX
Defendant's/Respondent's.................................

In a proceeding pursuant to CPLR Article 78 to set aside and annul the abolition of certain job titles known as corrections corporals, the petitioners Sheriff Officers Association,

Inc., *et., al.*, move by order to show cause for, *inter alia*, a preliminary injunction enjoining the respondents County of Nassau, *et., al.*, from demoting certain correction corporals to the title of correction officer.

In September of 2010, the Nassau County Legislature adopted Local Law 181-2010, by which it approved the County budget for the 2011 fiscal year. Subsequently, the Legislature adopted Local Law 160-2011, pursuant to which the 2012 budget was adopted.

In late December of 2011, however, and in response to the budgetary crisis confronting the County, the Legislature enacted Local Laws 16-2011 and 198-2011 (*see also*, ***Local Law 6-2011[2]***). In substance, Local Law 198-2011 permits the County Executive to make amendments to both the 2011 and 2012 budgets by, *inter alia*, authorizing the termination of certain County job titles (*see also*, ***County Law § 204***).

Local Law 16-2011 contains a brief statement of legislative intent, which advises, among other things, that after consulting with the Nassau Interim Finance Authority ["NIFA"], the County was required to achieve stated "Budgetary Savings" ($75 million), to be obtained either through layoffs or negotiated labor concessions, and that since the involved labor unions did not "come forward with the required and mandated savings," the elimination of certain job titles was therefore required (***Local Law 16-2011[1]***). The job titles subject to abolition were specifically identified and listed in an "Exhibit A" attached as an appendix to Local Law 198-2011. Among the jobs to be abolished, were some 48 "correction corporals" then employed by the Nassau County Sheriff. The correction corporals were also members of the petitioner Sheriff Officers Association (the "Sheriffs Association").

With respect to the job terminations, section 1 of Local Law 198-2011 provides, in part, that "[t]he positions listed . . . in Appendix A to this Ordinance . . . shall be deemed abolished effective no later than December 29, 2011, provided that no appropriation for compensation for positions listed in Appendix "A" shall be deemed rescinded with respect to compensation for services performed prior to the effective date of" the abolishment of the listed positions.

Section 3 of the ordinance, however, empowers the County Executive to stay "individual line items" in Appendix A through the issuance of an executive order, *i.e.,* it permits the County Executive to exempt certain job titles from the terminations list, at least temporarily and pending further Legislative review. Specifically, section 3 states, *inter alia*, that "[n]othing contained herein shall limit the stay [issued by the County Executive] to an individual line and this shall be interpreted as permitting a stay applicable to individual job

titles. The stay shall remain in full force and effect until such time as this Legislature has the opportunity to review and approve" any stays issued (*see also*, ***Local Law 16-2011[3], at 3***).

The petitioner Sheriffs Association asserts that after Local Laws 16-2011 and 198-2011 were enacted, the County Executive never issued a stay relating to the 48 "correction corporals" titles to be abolished. The County respondents contend, however, that County Executive Edward P. Mangano did, in fact, issue two executive orders staying the abolition of some, but not all, of the listed "correction corporals" titles; namely: (1) a purported executive order allegedly issued on or about December 28, 2011, staying the termination of an unspecified number of correction corporals titles; and (2) a subsequent stay order issued in early January, 2012, which amended the first order by reducing the number of titles abolished to 30 (out of the 48 in total listed in Appendix "A").

It bears noting that the County has not actually produced the written executive orders staying the subject, correction corporals positions. Instead, they have submitted an affidavit made by the Nassau County Acting Director of Human Resources, Melissa Gallucci, who has averred that the executive orders were in fact issued by County Executive Mangano.

According to the Sheriffs Association, prior to the December 29, 2011 deadline, the County affirmatively implemented in some fashion, certain lay offs and/or demotions affecting some 399 other County employees. The County purportedly did nothing in an affirmative sense to "implement" the abolition of the involved, "correction corporals" titles although 30 job titles not covered by the executive "stay" orders were, in fact, later (allegedly after December 29, 2011) abolished.

Significantly, while the foregoing correction corporals titles were abolished, none of the affected officers were actually terminated from their employment; rather, they were instead "demoted" to the lesser title of "correction officer" (County Objections in Law, at 5). The petition alleges, however, that the 30 officers in question were "on a promotion list for correction sergeant."

Thereafter, the petitioner Sheriffs Association, together with the affected correction corporals, commenced the within proceeding pursuant to CPLR Article 78 to set aside and annul as illegal, the County's abolition of the 30 job titles in question.

The verified petition contains a single count, which alleges, *inter alia*, that the demotions made pursuant to the involved Local Laws violated the doctrine of "legislative equivalency" and were therefore illegal and void. In sum, the doctrine of legislative equivalency provides that existing legislation can be "repealed or modified only by a

legislative act equal to the procedure used to enact it" (***Matter of Brunswick Smart Growth, Inc. v. Town Bd. of Town of Brunswick***, 51 A.D.3d 1119, 1120, 856 N.Y.S.2d 308; ***Matter of Babor v. Nassau County Civ. Serv. Commn.***, 297 A.D.2d 342, 343, 746 N.Y.S.2d 395 (2d Dept., 2002) *see also*, ***County Law § 204; Matter of Torre v. County of Nassau***, 86 N.Y.2d 421, 426, 657 N.E.2d 486, 633 N.Y.S.2d 465 [1995]).

In support of their claims, the petitioners contend that Local Law 198-2011 provides the exclusive means by which the listed job title terminations could be lawfully accomplished. The petitioners then assert, in effect, that section 1 of Local Law 198-2011 is not self-executing or automatic in its application; rather, the petitioners contend, in effect, that affirmative and/or additional enabling conduct by the County was required in order to actually implement the legislatively conferred power to abolish those titles.

At the same time, the petitioners contend that pursuant to section 1 of Local Law 198-2011, the time within which the terminations could be lawfully implemented was temporally circumscribed, *i.e.*, they argue that the power to terminate the listed positions could not be exercised after the statutorily imposed deadline of December 29, 2011 (*see*, ***Local Law 198-2011[1]***).

The petitioners then allege that there was never any official, implementing act or conduct by which the County affirmatively abolished the 48 correction corporals titles prior to the foregoing, December, 2011 deadline. Accordingly, since the legislative authority to abolish the listed titles definitively expired on December 29, 2011, the petitioners contend that their job titles were, therefore, never legally abolished. Finally, the petitioners claim in sum that because the listed positions were originally funded by Legislative ordinance and since the legislatively conferred power to abolish the listed titles expired before the County actually terminated those positions, the doctrine of "legislative equivalency" applies and therefore requires the adoption of new legislation, not enacted here, expressly authorizing any further terminations.

Contemporaneously with the commencement of the subject proceeding, the petitioners also moved by order to show cause for relief staying the demotions and/or job title terminations. Upon submission of the petitioners' papers, the Court struck the temporary restraining order contained in the order to show cause and directed the parties to submit additional papers in support of their respective positions.

Those submissions are now before the Court, including the County respondents' objections in point of law for dismissal of the proceeding. Upon review of the opposing claims and arguments presented, the Court agrees that petition should be denied and the proceeding dismissed.

In opposition to the petitioners' claims, the County relies on an opposing construction of the relevant, statutory language; namely, the County contends in essence, that section 1 of Local Law 198-2011 is self-executing and requires no further action by the County, since it expressly provides that the subject job titles "shall be deemed abolished effective no later than December 29, 2011 . . . .") (***Local Law 198-2011[1]***). The County asserts that County Executive Mangano did not violate the law by allegedly authorizing post-deadline terminations; instead, and if anything, he actually reduced the number of statutorily authorized terminations by invoking his "stay" powers, as contained in the very same enactment (***Local Law 198-2011[1],[3]***).

A review of the statutory language supports the conclusion that the County's interpretation of the disputed Local Law is persuasive.

With respect to questions of statutory construction, it is the duty of the Court to "'is to ascertain and give effect to the intention of the Legislature'" (***Yatauro v. Mangano,*** 17 N.Y.3d 420, 426, 955 N.E.2d 343, 931 N.Y.S.2d 36 (2011), *quoting from*, ***DaimlerChrysler Corp. v. Spitzer***, 7 N.Y.3d 653, 660, 860 N.E.2d 705, 827 N.Y.S.2d 88 (2006) *see*, ***Nostrom v. A.W. Chesterton Co.***, 15 N.Y.3d 502, 507, 940 N.E.2d 551, 914 N.Y.S.2d 725 (2010); ***Roberts v. Tishman Speyer Props., L.P.***, 13 N.Y.3d 270, 286, 918 N.E.2d 900, 890 N.Y.S.2d 388 (2009); ***People v. Santi***, 3 N.Y.3d 234, 243, 818 N.E.2d 1146, 785 N.Y.S.2d 405 [2004]). "The statutory text is the clearest indicator of legislative intent and courts should construe unambiguous language to give effect to its plain meaning" (***DaimlerChrysler Corp. v. Spitzer, supra***; ***Majewski v. Broadalbin–Perth Cent. School Dist.***, 91 N.Y.2d 577, 583, 696 N.E.2d 978, 673 N.Y.S.2d 966 (1998) *see also*, ***Crucible Materials Corp. v. New York Power Authority***, 13 N.Y.3d 223, 229, 918 N.E.2d 107, 889 N.Y.S.2d 517 (2009); ***People v. Finley***, 10 N.Y.3d 647, 654-655, 891 N.E.2d 1165, 862 N.Y.S.2d 1 [2008]). Nevertheless, "courts should construe [statutes] to avoid objectionable, unreasonable or absurd consequences" and also give effect and meaning to the entire, statutory enactment (***People v. Finley, supra***; ***Friedman v. Connecticut Gen. Life Ins. Co.***, 9 N.Y.3d 105, 115-116, 877 N.E.2d 281, 846 N.Y.S.2d 64 (2007); ***Long v. State of New York***, 7 N.Y.3d 269, 273, 852 N.E.2d 1150, 819 N.Y.S.2d 679 [2006]). Significantly, Civil Service Law § 204 "empowers the legislative arm of a county government to establish and abolish positions" through the enactment of "local law[s] . . . ." (***Matter of Torre v. County of Nassau, supra***.

Upon applying these principles to governing statutory language, the Court agrees that the County respondents did not act in excess of their authority or violate the principle of legislative equivalency. More specifically, the Local Law's operative language is contained in section 1, which states, *inter alia*, that the listed titles "*shall be deemed abolished* effective no later than December 29, 2011 [emphasis added]). The ordinary meaning of the phrase "shall be deemed abolished" is clear in its intended import and effect. Specifically, that

language provides that the specified titles, which were actually attached to, made part of, the statutory enactment itself, were terminated in self-executing fashion no later than December 29, 2011.

Although the provision contains language that provides that the terminations would become effective "no later than" December 29, 2011, this phrase is reflective of the fact that up until that date, the County Executive is empowered to stay the abolishment of certain job titles through the issuance of an executive order (*see*, ***Local Law 198-2011[3]***). There is no other provision or procedure in the Local Law that suggests or requires that resort to affirmative executive action would be necessary before the specified terminations would become effective. Rather, the remedy created by the legislation as drafted, is complete without the necessity or need for additional or enabling conduct or further action (*cf.*, ***Matter of Gould v. Board of Educ. of Sewanhaka Cent. High School Dist.***, 81 N.Y.2d 446, 451, 616 N.E.2d 142, 599 N.Y.S.2d 787 [1993]).

The only relevant portion of the Local Law, which confers a type of discretionary authority upon a third party with respect to the terminations, is section 3, which as noted above, provides, *inter alia*, that "[n]othing contained herein shall limit the stay [issued by the County Executive] to an individual line and this shall be interpreted as permitting a stay applicable to individual job titles" (***Local Law 198-2011[3]***).

The manner in which the Local Law is framed, including the specific listing of abolished jobs, indicates that the stay provision was intended to confer a measure of executive flexibility in connection with the otherwise impending terminations abolished by operation of law pursuant to section 1. Section 3 does not, however, refer to or require any affirmative, enabling conduct by the County Executive as a prerequisite to the termination of the listed job titles. Rather, it merely authorizes the County Executive to exempt or carve out exceptions from, the Legislatively enumerated list of abolished positions, at least temporarily, and until Legislative has the opportunity to subsequently review, approve or disapprove the stays issued. The fact that the County Executive is authorized to stay job terminations prior to the December 29, 2001 deadline, does not establish that a corresponding executive action was therefore required to formally legalize or implement the terminations effected by Local Law 198-2010 [1] and there is no language which so provides.

The petitioners' opposing construction of the Local Law is lacking in merit. Assuming that the County may have elected to act prior to December 29, 2011, by formally "laying off" other listed job titles, this does not alter the conclusion that the legislation was self-executing in effect and that the job titles were nevertheless deemed substantively abolished, unless otherwise stayed by applicable executive order. The Second Department's holding in ***Suffolk***

County Assn. of Mun. Employees v. County of Suffolk, 175 A.D.2d 202, 572 N.Y.S.2d 344 (2d Dept., 1991), relied on by the petitioners, is inapposite. There, the Suffolk County Legislature failed to approve a proposed, employee layoff resolution drafted by the County Executive, after which the County Executive proceeded with the layoffs anyway, absent the required Legislative approval. (175 A.D.2d at 203).

Lastly, the portion of Local Law 198-2011[1], which refers to salary or compensation appropriations for abolished titles, does not support the petitioners' claims. The language in question merely provides, in inconclusive fashion, that compensation appropriations for listed/abolished titles "shall [not] be deemed rescinded" with respect to services performed prior to the effective date of that particular title's abolishment.

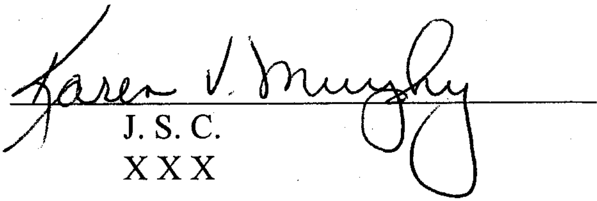
The Court has considered the petitioners' remaining contentions and concludes that they are lacking in merit.

Accordingly, it is,

ORDERED that the petition is denied and the proceeding is dismissed on the merits.

The foregoing constitutes the Order of this Court.

Dated: March 26, 2012
Mineola, N.Y.



J. S. C.
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ENTERED

MAR 29 2012

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