

Joseph v MTA Bridges & Tunnels

2012 NY Slip Op 32831(U)

November 27, 2012

Sup Ct, New York County

Docket Number: 104186/12

Judge: Peter H. Moulton

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MOULTON
Justice

PART 40B

JOSEPH, WAYNE, ET AL.

INDEX NO. 104186/12

- v -

MOTION DATE _____

MTA BAIDERS + TUNNEL

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion—

*petition is denied, the
proceeds is dismissed, per the
Ct's written decision of 11/27/12*

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 11/27/12

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT : STATE OF NEW YORK
COUNTY OF NEW YORK : PART 40B

----- X
WAYNE JOSEPH, AS PRESIDENT OF THE BRIDGE :
AND TUNNEL OFFICERS BENEVOLENT ASSOCIATION, :
and the BRIDGE AND TUNNEL OFFICERS :
BENEVOLENT ASSOCIATION :

Petitioners,

: Index No.:
104186/12

Pursuant to Article 75 of the Civil
Practice Law and Rules

-against-

MTA BRIDGES AND TUNNELS (TRIBOROUGH BRIDGE
AND TUNNEL AUTHORITY),

Respondent.

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141B).

Moulton, J.:

Petitioners in this labor dispute are the Bridge and
Tunnel Officers Benevolent Association ("BTOBA"), a union that
represents all Bridge and Tunnel Officers employed by respondent
MTA Bridges and Tunnels (Triborough Bridge and Tunnel Authority)
("TBTA"), and Wayne Joseph, the union's president. Petitioners
seek a preliminary injunction barring respondent from transferring
any BTOBA members from their jobs at the Henry Hudson Bridge to
other locations pending the resolution of an arbitration held
pursuant to the parties' collective bargaining agreement. The TBTA
cross-moves to dismiss.

Two unions that also have members working at the Henry
Hudson Bridge seek to permissively intervene on the basis that any
preliminary injunction will adversely affect their members' work
assignments. At oral argument on the motions, respondent consented

to the intervention motions. Petitioners have submitted papers in opposition to the proposed interveners' motions.

BACKGROUND

The TBTA is a public authority and a subsidiary of the Metropolitan Transit Authority. The TBTA is responsible for maintaining the bridges, tunnels, and toll plazas located in New York City. TBTA and BTOBA are parties to a collective bargaining agreement that expired on May 17, 2009. The parties are currently in negotiations concerning a new collective bargaining agreement.

The instant dispute arises from the TBTA's decision to transfer all Bridge and Tunnel Officers at the Henry Hudson Bridge to other assignments. The transfer arises from the TBTA's decision to implement a system of totally automated electronic tolling at the bridge.

BTOBA has filed a grievance over the transfer, claiming it is barred by the parties' collective bargaining agreement, which the union avers remains in effect until the finalization of a new collective bargaining agreement. The grievance will be heard in binding arbitration. BTOBA asserts, inter alia, that as a result of the transfer exclusive bargaining unit work of its members is being allocated to non-BTOBA employees. BTOBA points to four assignments that it claims will now be performed either by employees with a Civil Service position of Sergeant, or by

maintenance workers or subcontractors. TBTA denies that these jobs were ever exclusively assigned to BTOBA's members.

BTOBA brought this proceeding on by order to show cause, seeking a temporary restraining order blocking the transfer of its members from the Henry Hudson Bridge pending the resolution of the parties' arbitration. The court declined to sign the temporary restraining order and scheduled the motion for a preliminary injunction for oral argument.

Two proposed interveners moved to intervene as respondents prior to oral argument. The first of these, The Triborough Bridge and Tunnel Superior Officers Benevolent Association ("SOBA") is a union that represents all sergeants and lieutenants employed by the TBTA. The second proposed intervener is District Council 37, AFSCME, AFL-CIO and its affiliated local 1931 ("DC 37"), which represents employees at the Henry Hudson Bridge (and at other TBTA facilities) with the title "maintainer." Maintainers provide certain towing and snow removal duties at TBTA facilities.

DISCUSSION

A. The Intervention Motions

Both proposed interveners seek to join this lawsuit to be heard in opposition to petitioners' request for a preliminary injunction. Neither claims that it should be allowed to

participate in the arbitration, as the arbitration arises solely from the collective bargaining agreement between TBTA and BTOBA. However, proposed interveners argue that their own members' work assignments will be disrupted by any reversal of the move of BTOBA's members from the Henry Hudson Bridge. They also argue that this dispute is properly brought before the Public Employees Relations Board ("PERB") - an argument that is not raised by the TBTA in its opposition to petitioners' motion.

Both the proposed interveners have alleged sufficient facts to demonstrate that they have defenses that relate to the petitioners' request for relief. They have demonstrated that they have an interest in the outcome of petitioners' application for a preliminary injunction. As labor unions, they may not have the same interests as management (TBTA), although they are aligned in opposition to the proposed preliminary injunction. Petitioners have offered no colorable claim that the intervention will delay this proceeding or prejudice petitioners in any way. (CPLR 1013; see Berkoski v Board of Trustees of Incorporated Village of Southampton, 67 AD3d 840.) Accordingly, the intervention motions of SOBA and DC 37 are granted and both parties shall be denominated as respondents.

B. Motion for a Preliminary Injunction

CPLR 7502(a) provides in relevant part:

The supreme court in the county in which an arbitration is pending ... may entertain an application for ... a preliminary injunction in connection with an arbitration that is pending .. only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without such provisional relief.

In addition to this showing, a party seeking a preliminary injunction must also demonstrate the standard three elements required for a preliminary injunction by CPLR Article 63. (See Erber v Catalyst Trading, LLC, 303 AD2d 165.) Accordingly, petitioners must also demonstrate a probability of success on the merits, danger of irreparable injury in the absence of a preliminary injunction, and a balance of the equities in their favor. (Aetna Ins. Co. v Capasso, 75 NY2d 860; CPLR 6312.)

Petitioners are unable to carry this burden. First, they have failed to show that any arbitral award in their favor would be "rendered ineffectual" without provisional relief. (CPLR 7502[c].) Second they fail to make the related showing that they will suffer irreparable harm in the absence of a preliminary injunction.

BTOBA does not clearly articulate how any award would be rendered ineffectual in the absence of a preliminary injunction. If it prevails at arbitration BTOBA members can be reinstated to their positions at the Henry Hudson Bridge, and any lost overtime wages

or seniority can be restored. There are a variety of effective remedies available to petitioners if they prevail at the arbitration.

Petitioners also fail to demonstrate irreparable harm. BTOBA states that its members will suffer irreparable harm from the interruption of their regular work schedules, and possible loss of overtime and seniority. As noted above, any lost overtime and seniority can be reinstated if petitioners prevail in the arbitration. The inconvenience to petitioner's members' schedules, though no doubt real, would be temporary, lasting only a matter of months, if petitioners prevail at arbitration. Courts have found that adverse employment action up to termination does not amount to irreparable harm. (E.g. Abramo v HealthNow NY, 305 AD2d 1009.)

Petitioners claim that the union itself will suffer irreparable harm in that TBTA's decision to transfer members in the midst of negotiations for a new collective bargaining agreement will cause the union to lose respect and authority with members. This conclusory assertion does not establish irreparable harm. The union is fighting the transfer. If it prevails at arbitration, it appears just as plausible that BTOBA's reputation will be enhanced. Overstreet v El Paso Disposal (625 F3d 844), the primary case cited by petitioners in support of their irreparable harm argument, presents a completely different set of facts than the case at bar. The union in Overstreet had only recently been certified when the

employer in that case engaged in a scorched earth campaign of unfair labor practices. The court found in that case that the employer's bad faith behavior had caused some members of the union to sign a petition stating that they no longer wished to be represented by the union. In that case the union had demonstrated actual harm to its reputation caused by the illegitimate acts of the employer. There is no such showing in the case at bar.

CONCLUSION

The intervention motions of The Triborough Bridge and Tunnel Superior Officers Benevolent Association and District Council 37, AFSCME, AFL-CIO, Local 1931 are granted. These parties shall be added to this proceeding as parties respondent. The motion for a preliminary injunction by petitioners is denied. As this prayer for preliminary injunctive relief is the sole purpose of this proceeding, respondent's motion to dismiss the proceeding is granted. Accordingly, it is ORDERED and ADJUDGED that the petition is denied and this proceeding is dismissed.

DATE: November 27, 2012



J.S.C.

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