Village of Garden City v Local 1588, Professional Firefighters Assn.
2013 NY Slip Op 34088(U)
October 28, 2013
Supreme Court, Nassau County
Docket Number: 5761/13
Judge: Michele M. Woodard
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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VILLAGE OF GARDEN CITY,

Petitioner,

-against-

LOCAL 1588, PROFESSIONAL FIREFIGHTERS ASSOCIATION,

Respondent.

---x

MICHELE M. WOODARD
J.S.C.
TRIAL/IAS Part 8
Index No.: 5761/13
Motion Seq. Nos.: 01 & 02

DECISION AND ORDER

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In motion sequence number one, the Village of Garden City petitions the Court for a judgment pursuant to CPLR §7503(b) staying arbitration of Case No. 13 300 00912 13 presently pending before the American Arbitration Association ("AAA") whereby the respondent Local 1588, Professional Firefighters Association ("PFFA") seeks to arbitrate the petitioner Village of Garden City's ("Village") lay-off of six firefighters on April 6, 2013 and its assignment of bargaining unit work to volunteers.

In motion sequence number two, the respondent PFFA moves for a judgment compelling arbitration of its grievance along with an award of attorney's fees and costs.

The facts pertinent to the determination of this matter are as follows:

The Village eliminated six paid firefighter positions, laid off the six least senior firefighters and demoted a Fire Lieutenant pursuant to the applicable provisions of the Civil Service Law on April 6, 2013. That same day, it amended its Operating Guidelines entitled "STAFFING AND ALARM RESPONSE PROCEDURE - 4 MAN STAFFING" with respect to general alarm response guidelines. More specifically, since it had reduced the staffing of paid professional firefighters, the Village authorized volunteer firefighters to operate first line apparatus which are the first to be dispatched in response to a fire call. Prior to that amendment, only paid professional firefighters who were assigned to Fire Headquarters and the outlying firehouses were authorized to operate first line apparatus.

In response to these actions, the PFFA filed a contractual grievance pursuant to the parties collective bargaining agreement ("CBA") on April 11, 2013. In its grievance, the PFFA maintained that the lay-off of the firefighters violated their CBA and that the new Operating Guidelines were violative of both an award by Barbara Deinhardt in AAA case No. 13 300 175 012 as well as their CBA. More specifically, it maintained that the new guidelines' transfer of paid firefighters' duties to volunteer firefighters was an improper transfer of bargaining unit work to volunteer firefighters and accordingly violated their CBA. Via correspondence dated April 17, 2013, the Village responded that its decision to lay-off firefighters was not subject to arbitration under their CBA. The PFFA nevertheless demanded arbitration on April 25, 2013 and requested that the AAA appoint an arbitrator. The Nature of the Grievance in the Demand for Arbitration is denominated a "Contract Interpretation" and is described as "the termination of six named Firefighters without just cause on April 6, 2013" and "the transfer of bargaining unit work of terminated Firefighters to volunteers in violation of the Deinhardt Award and the CBA." This proceeding ensued.

Initially the court rejects the PFFA's reliance on the Deinhardt award as controlling here and

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requiring arbitration. In *Matter of Professional Firefighters Association of Nassau County, Local 1588, International Association of Fire Fighters, AFL-CIO v Village of Garden City* (Sup Ct Nassau County, June 21, 2013, Diamond, J. index No. 600927/13), the PFFA challenged the Village's assignment of bargaining work to non-bargaining members. More specifically, it challenged the Village's dispatch of a volunteer driver/operator with apparatus Engine 147 in response to alarm # 287 on April 5, 2012, as violative of the PFFA's exclusivity over driving and operating all first due apparatus of the Garden City Fire Department and as violative of their CBA, Standard Operating Procedures, and prior awards and agreements. When that matter came up for arbitration before Barbara Diehardt, the parties' stipulation specifically limited her to determining "whether the [Village] violated the **collective bargaining agreement** by assigning bargaining unit work to non-bargaining unit employees...." Deinhardt, however, concluded that the Village violated the parties' CBA **based upon its violation of a past agreement**, more specifically, a January 2002 agreement codified in a Standard Operating Procedure manual negotiated between the Village and the firefighters which was confirmed by the subsequent agreements with the chiefs that the professional firefighters have exclusive jurisdiction over first line apparatus.

The Deinhardt award was vacated by order of this court dated June 21, 2013. See, *Matter of Professional Firefighters Association of Nassau County, Local 1588, International Association of Fire Fighters, AFL-CIO v Village of Garden City, supra*. This court found that Deinhardt, as arbitrator, exceeded her authority which was strictly limited by the parties' stipulation. This court held that Diehardt "did not squarely address the issue" presented as "she did not establish the necessary connection between the Village's violation of agreements and past practices and the parties' CBA." Accordingly, the PFFA cannot at this juncture rely on the Diehardt decision to establish that the Village

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violated their CBA by reassigning work to volunteer firefighters.

CPLR §7501 provides that:

> "a written agreement to submit any controversy thereafter arising or any existing controversy to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award. In determining any matter arising under this article, the court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute ."

"There is a strong public policy favoring arbitration, and courts interfere as little as possible with the freedom of parties to submit their disputes to arbitration" (*American Independent Ins. Co. v Art of Healing Medicine, P.C.* 104 AD3d 761, 762 [2d Dept 2013], citing *Matter of Smith Barney Shearson v Sacharow,* 91 NY2d 39, 49 [1997]; *Shah v Monpat Constn., Inc.*, 65 AD3d 541, 543[2d Dept 2009]).

"Pursuant to CPLR §7503(b), a petition to stay arbitration may be granted on the limited grounds that a valid agreement to arbitrate was not made or has not been complied with, or that the claim sought to be arbitrated is barred by the statute of limitations. In addition, case law recognizes limited instances where arbitration is prohibited on public policy grounds" (*American Independent Ins. Co. v Art of Healing Medicine, P.C., supra, at p.* 762, citing *Matter of City of New York v Uniformed Fire Officers Assn., Local 854, IAFF, AFL–CIO*, 95 NY2d 273, 280 [2000], *see also, Town of Orangetown v Rockland County Policemen's Benevolent Ass'n* 105 AD3d 861 [2d Dept 2013]). "The threshold question of whether a matter is subject to arbitration must be determined from the terms of the agreement containing the arbitration clause" (*Matter of A.F.C.O. Metals [Local Union 580 of Intl. Assn. of Bridge, Structural and Ornamental iron Workers, AFL-CIO],* 87 NY2d 222, 226 [1995]). " 'The agreement to arbitrate must be express, direct, and unequivocal as to the issues or disputes to be

submitted to arbitration' " *(Matter of A.F.C.O. Metals [Local Union 580 of Intl. Assn. of Bridge, Structural and Ornamental Iron Workers, AFL-CIO], supra, at p. 226, quoting Gangel v DeGroot*, 41 NY2d 840, 841 [1977]; *see also, Bowmer v Bowmer*, 50 NY2d 288, 293-294[1980]).

The parties' CBA provides for arbitration of "grievances" which are defined as "a dispute arising out of the interpretation, application, performance or construction of the terms of [the CBA] or any alleged breach thereof including matters of discipline." The CBA specifically provides that "the arbitrator shall have jurisdiction only over disputes arising out of grievances and shall have no power to add to, subtract from or modify in any way any terms of [the CBA]." In addition, the CBA provides that:

> "The Village has the exclusive right to manage its affairs, to direct and control its operations, and independently to make, carry out and execute all plans and decisions deemed necessary in its judgment for its welfare, advancement or best interests. Such management prerogatives shall include but not be limited to the following rights: [t]o lay off employees or discontinue their positions [and] [t]o contract for performance of any services and increase or decrease the scope thereof."

The Village goes to great ends in their attempt to establish that its actions were permitted under the parties CBA, i.e., it relies on its unfettered rights to lay off employees, discontinue their positions and to contract for the performance of services and/or increase or decrease the scope of them. However, whether the Village has the right to lay-off firefighters and reassign duties from paid firefighters to volunteer firefighters under the parties' CBA is not the issue to be determined here. Indeed, it is the propriety of the Village's exercise of those powers that the PFFA wishes to have arbitrated. The issue here is whether those issues are subject to arbitration under the parties' CBA. They are. (See, *Rothberg v. Kaufman*, 106 AD3d 975, 976 [2d Dept 2013]).

While the CBA indisputably affords the Village "the exclusive right to manage its affairs, to direct and control its operations, and independently to make, carry out and execute all plans and decisions deemed necessary in its judgment for its welfare, advancement or best interests" as well as "the...right [t]o lay off employees or discontinue their positions " and to "contract for performance of any of its services and increase or decrease the scope thereof, " the Village's retention of those powers does not *per se* remove its exercise of them from being challenged in arbitration.

The Village's reliance on *Matter of Johnson City Professional Firefighters Local 921 and Village of Johnson City* (18 NY3d 32 [2011]) is misplaced. In *Johnson*, the parties' CBA provided that "[t]he Village shall not lay-off any member of the bargaining unit during the term of this contract." The Court of Appeals denied arbitration and upheld the Village's right to layoff six firefighters on the grounds that the "no lay-off" clause relied on by the bargaining unit was "not explicit, unambiguous and comprehensive [and] there [was] nothing for the Union to grieve or for an arbitrator to decide"(*Matter of Johnson City Professional Firefighters Local 921 and Village of Johnson City, supra, at p.38).* The Court found that the clause was not sufficiently clear so as to overcome the public policy that gives municipalities wide latitude with regard to its workforce . The Court held that "before a municipality bargains away its right to eliminate positions or terminate or layoff workers for budgetary, economic or other reasons, the parties must explicitly agree that the municipality is doing so and the scope of the provision must evidence that intent" *(Matter of Johnson City Professional Firefighters Local 921 and Village of Johnson City, supra, at p. 37-38*). The Court noted that "[a]bsent compliance with these requirements, a municipality's budgetary decisions will be routinely challenged by employees, and its ability to abolish positions or terminate workers will be subject to the whim of arbitrators" *(Matter of Johnson City Professional Firefighters Local 921 and Village of Johnson City, supra, at p. 37-38).*

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Here, the firefighters are not relying on a "no lay off clause," therefore public policy does not prohibit arbitration as it did in *Johnson.*

The Villages reliance on *Civil Service Employess, Inc., Local 1000, AFSCME, AFL-CIO v Garden City Union Free School District* (27 PERB P3029 [1994]) and *County of Livingston* (26 PERB P3074 [1993]) is similarly misplaced. While those decisions were favorable to the municipalities, the matters nevertheless were arbitrated.

The Village's petition to permanently stay arbitration is ***denied***.

The PFFA's motion to compel arbitration is ***granted***.

This constitutes the Decision and Order of the Court.

DATED: October 28, 2013
Mineola, N.Y. 11501

ENTER:

MICHELE M. WOODARD
J.S.C.
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