

**Matter of Cowen v State of NY Dept. of Corr. &
Comm. Supervision**

2013 NY Slip Op 32229(U)

September 22, 2013

Sup Ct, Albany County

Docket Number: 3524-13

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of

TIMOTHY COWEN and the NEW YORK STATE
CORRECTIONAL OFFICERS AND POLICE
BENEVOLENT ASSOCIATION, INC.,
Donn Rowe, President

Petitioners,

For a Judgment Pursuant to CPLR Article 75
Confirming an Arbitration Award,

-against-

DECISION and ORDER
INDEX NO. 3524-13
RJI NO. 01-13-110503

STATE OF NEW YORK DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION,
Anthony J. Annucci, Acting Commissioner; STATE OF
NEW YORK GOVERNOR'S OFFICE OF EMPLOYEE
RELATIONS, STATE OF NEW YORK,

Respondents.

Supreme Court Albany County All Purpose Term, September 13, 2013
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

Petitioners commenced this CPLR §7510 proceeding to confirm arbitrator Paul Zonderman's Opinion and Award, dated September 11, 2012 (hereinafter respectively "Arbitrator" and "Arbitrator's Award"). Respondents oppose the petition, and cross petition to vacate the Arbitrator's Award claiming that the Arbitrator exceeded his powers. (CPLR §7511). Petitioners oppose the cross petition. Because Petitioners are entitled to confirmation and Respondents failed to demonstrate that the Arbitrator exceed his powers, the petition is granted and the cross petition is denied.

CPLR §7510 states that "[t]he court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in [CPLR] section 7511." Because it is uncontested that Petitioners have moved to confirm within one year, the mandatory nature of CPLR §7510 requires confirmation unless Respondents' establish their CPLR §7511 contention. On this record, Respondents failed to make such showing.

"In circumstances when the parties agree to submit their dispute to an arbitrator, courts generally play a limited role. An arbitrator's award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice. A court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power." (In re Ulster County Sheriff's Employees Ass'n, CWA Local 1105 [Ulster County Sheriff's Dept.], 100 AD3d 1327, 1328 [3d Dept 2012], quoting Matter of Albany Police Supervisor's Assn. [City of Albany], 95 AD3d 1491 [3d Dept 2012]).

Respondents base their vacatur claim upon neither strong public policy nor irrationality. Instead they argue that the Arbitrator exceeded his power. Respondents, however, failed to demonstrate that the Arbitrator exceed a specifically enumerated limitation.

The Arbitrator's Award first explained the underlying facts, which are uncontested in this proceeding. On August 11, 2004, Mr. Cowen was injured in a work related accident while working for the Department of Corrections and Community Supervision (hereinafter "DOCCS") as a Corrections Officer. He elected to receive benefits under the then applicable collective bargaining agreement's (hereinafter "CBA") Workers' Compensation Leave Benefit Program. Mr. Cowen did not return to work until March 2005. He worked for almost one year when he was examined, by Dr. Ferraraccio, to determine whether his Worker's Compensation case could be closed with a Scheduled Loss of Use. Dr. Ferraraccio found that Mr. Cowen had "potential for difficulties... [in] emergency situations," and DOCCS ordered him out of work beginning on March 16, 2006. Mr. Cowen was immediately examined by his treating physician, Dr. Gowan, whose March 16, 2006 report stated: there is "no reason why [Mr. Cowen] cannot continue working his current job." Mr. Cowen was then examined by a third physician, Dr. Hargraves, whose April 14, 2006 letter stated that "Mr. Cowen is able to perform the full essential duties of a Correction Officer." Thereafter, on April 16, 2006, DOCCS ordered Mr. Cowen back to work.

Upon considering such uncontested facts, the Arbitrator found that Mr. Cowen was properly placed on leave between March 16, 2006 and April 16, 2006. The Arbitrator also found that Mr. Cowen was "charged a Workers' Compensation Leave benefit of 21 days" for such time period. The Arbitrator then held that CAB Article 14.9(d) required "the restoration of [Mr. Cowen's] 'leave credits' utilized in the period from March 16th to April 16th of 2006." Such

restoration analysis was based wholly upon an interpretation of the CAB. Despite such restoration requirement, the Arbitrator noted that Mr. Cowen's "Employee Time Record" still reflected his "using 21 days of 'WC'." Due to such non-restoration, the Arbitrator's Award ordered DOCCS "to restor[e]... the leave credits so charged."

Contrary to Respondents' contention, the Arbitrator did not exceed his authority by ordering restoration. A witnesses at the arbitration hearing testified that "under CSL §71, an employee is allowed 365 cumulative days of Worker's Comp leave before employment can be terminated." The Arbitrator accepted the testimony to clarify the "using 21 days of 'WC'" notation on Mr. Cowen's "Employee Time Record." The Arbitrator at no time sought to add CSL §71 to the CAB. Rather, he merely used the testimony to explain Mr. Cowen's "Employee Time Record." Additionally, because Mr. Cowen participated in the CAB's Workers' Compensation Leave Benefit Program his "Employee Time Record" necessarily reflected only leave credits deducted under such program. As such, the Arbitrator's Award restored only Workers' Compensation Leave Benefit Program credits. Because the Arbitrator's entire analysis and rationale for restoration was premised upon his interpretation of the CAB, not CSL §71, he did not exceed his authority.

Moreover, even if the Arbitrator incorporated CSL §71 into the CAB he would not have exceed his authority. CAB Article 14.9(a) outlines the levels of payment and use of credits applicable to an individual participating in the Workers' Compensation Leave Benefit Program. As part of such structure, CAB Article 14.9(a)(3)(iii) provides an exclusion. It allows for payments "unless... the employee's services would have been terminated or would have ceased under law." Because the Arbitrator used the CSL §71 law only to the extent the witness


described it as a means for employment termination, and CAB Article 14.9(a)(3)(iii) explicitly incorporates employment termination "under law," use of CSL §71 was authorized under the CAB.

Accordingly, the cross petition is denied, the petition is granted, and the Arbitrator's Award is confirmed.

This Decision and Order is being returned to the attorneys for the Petitioners. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
September 22, 2013


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Petition, dated June 24, 2013; Petition, dated June 24, 2013, with attached Exhibits A-E.
2. Answer and Cross Petition, dated September 6, 2013, with attached Exhibits 1-6.
3. Answer to Cross Petition, dated September 11, 2013.