City of New York v Social Serv. Empls. Union Local 371
2014 NY Slip Op 33691(U)
February 21, 2014
Supreme Court, New York County
Docket Number: 451071/13
Judge: Michael D. Stallman
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. MICHAEL D. STALLMAN PART 21
Justice

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS, RAHUL N. MERCHANT, as Commissioner of the New York City Department of Information Technology and Telecommunications, THE NEW YORK CITY MAYOR'S OFFICE OF LABOR RELATIONS, and JAMES F. HANLEY, as Commissioner of The New York City Mayor's Office of Labor Relations,

Petitioners,

- v -

SOCIAL SERVICE EMPLOYEES UNION LOCAL 371, DISTRICT COUNCIL 37, AFSCME, AFL-CIO, and ANTHONY WELLS, as the President of SOCIAL SERVICE EMPLOYEES UNION LOCAL 371, DISTRICT COUNCIL 37, AFSCME, AFL-CIO,

Respondents.

INDEX NO. 451071/13

MOTION DATE 11/27/13

MOTION SEQ. NO. 001

FILED
MAR 14 2014
COUNTY CLERK'S OFFICE
NEW YORK

The following papers, numbered 1 to 2, 10-16 were read on this Article 75 petition to vacate arbitration award

Petition; Notice of Petition	No(s). 1; 2
Answer; Exhibits A; B; C; D; E; F	No(s). 10; 11; 12; 13; 14; 15; 16

Upon the foregoing papers, this petition is decided in accordance with the annexed memorandum decision and judgment.

Dated: 2/21/14
New York, New York

_____, J.S.C.

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

1. Check one:..... X CASE DISPOSED ___ NON-FINAL DISPOSITION
2. Check if appropriate:..... PETITION IS: ___ GRANTED X DENIED ___ GRANTED IN PART ___ OTHER
3. Check if appropriate:..... ___ SETTLE ORDER ___ SUBMIT ORDER
___ DO NOT POST ___ FIDUCIARY APPOINTMENT ___ REFERENCE

HON. MICHAEL D. STALLMAN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21

----------X

In the Matter of the Arbitration of Certain Controversies Between

SOCIAL SERVICE EMPLOYEES UNION LOCAL 371, on behalf of its 18 laid-off members,

Petitioner,

- against -

CITY OF NEW YORK and NEW YORK CITY DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS,

Respondents.

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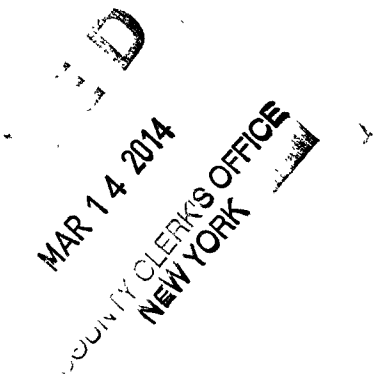
Index No. 652168/2013

Special Proceeding #1

Decision and Order



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In the Matter of the Application of

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS, RAHUL N. MERCHANT, as Commissioner of the New York City Department of Information Technology and Telecommunications, THE NEW YORK CITY MAYOR'S OFFICE OF LABOR RELATIONS, and JAMES F. HANLEY, as Commissioner of The New York City Mayor's Office of Labor Relations,

Petitioners,

For a Judgment and Order Pursuant to Article 75 of the Civil Practice Law and Rules,

- against -

SOCIAL SERVICE EMPLOYEES UNION LOCAL 371, DISTRICT COUNCIL 37, AFSCME, AFL-CIO, and ANTHONY WELLS, as the President of SOCIAL SERVICE EMPLOYEES UNION LOCAL 371, DISTRICT COUNCIL 37, AFSCME, AFL-CIO,

Respondents.

----------X

Index No. 451071/2013

Special Proceeding #2

Decision and Order

HON. MICHAEL D. STALLMAN, J.:

Social Service Employees Union Local 371 (SSEU) seeks to confirm an arbitration award dated April 5, 2013, which sustained a grievance that SSEU filed against the City of New York and New York City Department of Information Technology and Telecommunications (DOITT). The City of New York and DOITT oppose the petition to confirm the award and also commenced a separate proceeding in *City of New York v Social Service Employees Union Local 371*, index no. 451071/2013 to vacate the award. This decision addresses both petitions and special proceedings.

BACKGROUND

On April 1, 2008, SSEU and the City of New York entered into the Social Services Related Titles Collective Bargaining Agreement (SSRT CBA), whereby they agreed in Article VI of the SSRT CBA that any claims arising out of or relating to the SSRT CBA would be settled in accordance with a four step grievance procedure. (SSEU Petition to Confirm Award, index no. 652168/2013 [SSEU Petition] Ex. A, at 48-51.) The final step of the grievance procedure is binding arbitration under the Rules of the New York City Office of Collective Bargaining (OCB). (*Id.* at 50.) In addition, SSEU and DOITT are parties to the Citywide Collective Bargaining Agreement between the City of New York and District Council 37, AFSCME, AFL-

CIO (the Citywide CBA). (SSEU Petition Ex. B.)

On October 4, 2011, SSEU filed at Step III of the grievance procedure (which provides that a grievance involving groups of employees may be filed at Step III thereby eliminating Step I and Step II of the grievance procedure), alleging that DOITT wrongfully laid off eighteen employees in the title of Community Coordinator by failing to comply with Article XVII, Section 1(b) of the Citywide CBA. The provision requires that:

> "Within such 30 day period designated representatives of the Employer will meet and confer with the designated representatives of the appropriate union with the objective of considering feasible alternatives to all or part of such scheduled layoffs, including but not limited to:
>
> i. the transfer of employees to other agencies with retraining, if necessary, consistent with Civil Service law but without regard to the Civil Service title.
>
> ii. the use of Federal and State funds whenever possible to retain or re-employ employees scheduled for layoff,
>
> iii. the elimination or reduction of the amount of work contracted out to independent contractors; and
>
> iv. encouragement of early retirement and the expediting of the processing of retirement applications.

(*Id.* at 47.)

On October 17, 2011, SSEU submitted a Request for Arbitration to the OCB because the grievance was not resolved at Step III of the grievance procedure.

Pursuant to the terms of the SSRT CBA, on August 18 and December 17, 2012, an arbitration hearing was held before Arbitrator Mattye M. Gandel on the question, "Did the City/[DOITT] violate Section 1(b) of the Citywide [CBA] by laying off eighteen (18) Community Coordinators effective October 7, 2011? If so what shall be the remedy?" (SSEU Petition Ex. C [Award], at 1.)

On April 5, 2013, Arbitrator Gandel issued her Opinion and Award, stating,

> "1. The City/DOITT violated Article XVII Section 1(b) of the Citywide [CBA] by laying off eighteen (18) Community Coordinators effective October 7, 2011.
>
> 2. The Grievants shall be reinstated to their former positions with full back pay, less unemployment benefits or other earnings.
>
> 3. The Arbitrator shall retain jurisdiction for sixty (60) days solely as to the remedy, if necessary.
>
> 4. The Grievance is sustained."

(Award at 13.)

On June 19, 2013, SSEU commenced this Article 75 proceeding to confirm the arbitration award dated April 5, 2013 because DOITT failed to reinstate the eighteen laid off employees. On June 25, 2013, the City of New York and DOITT along with Rahul N. Merchant, the Commissioner of DOITT, the New York City Mayor's Office of Labor Relations (OLR), and James F. Hanley, the Commissioner of the OLR (collectively, the City), filed a separate petition against the SSEU and its president,

Anthony Wells (collectively, the Union) to vacate the arbitration award dated April 5, 2013 (index no. 451017/13). Both petitions were fully submitted on November 27, 2013.

DISCUSSION

The City argues that SSEU's petition to confirm the award should be dismissed and the award should be vacated because (1) the arbitrator's determination is inherently inconsistent and therefore irrational; (2) the award violates a strong public policy; and (3) the award exceeds the arbitrator's enumerated powers.

> "Collective bargaining agreements commonly provide for binding arbitration to settle contractual disputes between employees and management. In circumstances when the parties agree to submit their dispute to an arbitrator, courts generally play a limited role. Courts are bound by an arbitrator's factual findings, interpretation of the contract and judgment concerning remedies. A court cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one. Indeed, even in circumstances where an arbitrator makes errors of law or fact, courts will not assume the role of overseers to conform the award to their sense of justice.
>
> Despite this deference, courts may vacate arbitral awards in some limited circumstances. A court may vacate an award when it violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on an arbitrator's power under CPLR 7511 (b) (1)"

(*Matter of New York State Correctional Officers and Police Benevolent Assn. v State of New York*, 94 NY2d 321, 326 [1999] [internal citations omitted].)

The City contends that it was inconsistent that, on the one hand, the arbitrator concluded that there was a failure to meet and "confer . . . with the objective of considering feasible alternatives to all or part of [the] scheduled layoffs" (Award at 13) as required by Article XVII Section 1(b) of the Citywide CBA, yet found, on the other hand, the following:

> (1) The City has no "onus . . . to come up with feasible alternatives" (*Id.* at 12);
>
> (2) "[T]here was no requirement for the parties to have come to an agreement" (*Id*); and
>
> (3) At a meeting on September 22, 2011, the parties discussed an alternative in the form of a "suggestion to avert the layoff [that] was made by the Union [but] it was rejected by [DOITT] . . ." (*Id.* at 4).

The City particularly points to the alleged inherent inconsistency that the award notes that the parties met on September 22, 2011 concerning an alternative proposed by the Union to the layoffs, but then the award found that there was a failure to confer.

"[A]n arbitrator's award, so long as it stays within the bounds of rationality, may not be vacated for errors of law or fact." (*Szabados v Pepsi Cola Bottling Co. of New York, Inc.*, 191 AD2d 367 [1st Dept 1993] [internal quotation marks omitted].) Here, there is support in the record for the arbitrator's conclusions such that it cannot be said that the award is irrational. Neither should the award be vacated on the basis

of the arbitrator's finding that the meeting of September 22, 2011 did not satisfy the City's obligation under Article XVII Section 1(b) of the Citywide CBA. The arbitrator considered and evaluated testimony from representatives of the parties who attended the September 22, 2011 meeting, as well as prior meetings, and found that none of the meetings were sufficient to meet the requirement of the Citywide CBA. The "arbitrator's interpretation of the parties' contract is impervious to judicial challenge even where the apparent, or even plain, meaning of the words of the contract has been disregarded. Thus, the [C]ourt may not, as [the City] would have it do, reassess the evidence and second guess the arbitrator's determination." (*Id.* at 367-368 [internal quotation marks omitted].)

The City further contends that the award violates strong public policy because it usurps the power of the City to decide which positions to eliminate. However, nothing in Article XVII Section 1 limits the discretion or authority of the City to eliminate positions; rather, the provision provides a procedure to which the City must adhere when determining that positions must be eliminated. The arbitrator did not find that the City was precluded or limited from determining that layoffs were required, the number of layoffs required or even who should be laid off. Instead, the arbitrator found that the City violated the procedure to confer with the Union before such scheduled layoffs, which was specifically delineated in the Citywide CBA.

The City's argument that the arbitrator exceeded her enumerated powers because the award reverses layoffs and grants back pay is without merit. Article XV, Section 2 of the Citywide CBA, states, in pertinent part:

> "The arbitrator's decision, order or award shall be limited to the application and interpretation of this Agreement, and the arbitrator shall not add to, subtract from or modify this Agreement. The arbitrator's award shall be final and binding and enforceable in any appropriate tribunal in accordance with Article 75 of the Civil Practice Law and Rules. An arbitrator may provide for and direct such relief as the arbitrator deems necessary and proper, subject to the limitations set forth above and any applicable limitations of the law."

(SSEU Petition Ex. B., at 43.)

The award finding a violation of Article XVII Section 1(b) and directing reinstatement and back pay of the eighteen terminated employees was within the authority conferred to the arbitrator by the Citywide CBA. "[I]t is not for the courts to interpret the substantive conditions of the contract or to determine the merits of the dispute." (*United Fedn. of Teachers, Local 2, AFT, AFL-CIO v Bd. of Educ. of City School Dist. of City of New York*, 1 NY3d 72, 82-83 [2003] [internal quotation marks omitted].) Moreover, courts have upheld awards directing reinstatement of employees. (*See Matter of New York City Tr. Auth. v Transport Workers' Union of Am., Local 100, AFL-CIO*, 99 NY2d 1 [2002]; *Matter of New York City Tr. Auth. v Transport Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332 [2005]; *City School Dist. of the City of N.Y. v McGraham*, 17 NY3d 917, 920 [2011]; *Matter of*

Local 333, United Mar. Div., Intl. Longshoreman's Assn., AFL-CIO v New York City Dept. of Transp., 35 AD3d 211 [1st Dept 2006].) Thus, "the arbitrator did not exceed [her] powers in fashioning the remedy of reinstatement because [she] did not add to, subtract from, or modify the collective bargaining agreement." (*Matter of City of Peekskill v Local 456, Intl. Bhd. Of Teamsters*, 49 AD3d 730, 731 [2d Dept 2008].)

CONCLUSION

Accordingly, it is hereby

ADJUDGED that SSEU's petition to confirm the award (index no. 652168/2013) is granted and the opinion and award dated April 5, 2013 is confirmed; and is further

ADJUDGED that the City's petition to vacate the opinion and award dated April 5, 2013 (index no. 451071/2013) is denied.

Dated: February 24, 2014
New York, New York

ENTER:

J.S.C.

FILED
MAR 14 2014
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NEW YORK

Norman Goodman
CLERK