Matter of Triborough Bridge & Tunnel Auth. v Bridge & Tunnel Officers Benevolent Assn.
2015 NY Slip Op 32515(U)
December 17, 2015
Supreme Court, New York County
Docket Number: 650639/15
Judge: Alice Schlesinger
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

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

----------X

In the Matter of the Application of

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, Index No. 650639/15

Petitioner,

For an order pursuant CPLR article 75 vacating an arbitration award, Mot. Seq. 001

-against-

BRIDGE AND TUNNEL OFFICERS BENEVOLENT ASSOCIATION,

Respondent.

----------X

SCHLESINGER, J:

This proceeding arises from a dispute between the Triborough Bridge and Tunnel Authority ("Petitioner" or "the Authority") and the Bridge and Tunnel Officers Benevolent Association ("Respondent" or "the Union"), a collective bargaining unit which represents permanent/full-time Bridge and Tunnel Officers ("BTOs") in the Authority's employ. The Authority seeks to vacate an arbitration award issued by Arbitrator Earl R. Pfeffer on December 9, 2014 in favor of Respondent ("the Award").

For the reasons set forth below, the court denies the Authority's petition, and confirms the Award.

The Authority oversees the operation of several bridges and tunnels throughout New York City. The two bridges at issue herein, the Marine Parkway-Gil Hodges Memorial Bridge and the Cross Bay Veterans Memorial Bridge (the "Rockaways Facility"), connect Brooklyn and Queens to the Rockaway Peninsula, a popular summer destination. Since at least 1969, and under the terms of the Collective Bargaining

Agreement ("CBA") between the Authority and the Union, the Authority has recruited "Seasonal BTOs" or "Seasonals" to cope with the increase in traffic seen during the summer months. The Union does not represent the interests of the seasonal BTOs.

In 2012, the Union filed two grievances (one regarding each bridge) alleging that the Authority had violated the terms of the CBA by improperly staffing the bridges with seasonals. The grievances proceeded to arbitration. Arbitrator Pfeffer, a mutually selected arbitrator, received evidence and heard testimony in a hearing spanning 14 days between March 2013 and June 2014. After reviewing thousands of pages of testimony and another thousand pages of exhibits, Arbitrator Pfeffer issued the Award in a 60-page decision. In essence, the Arbitrator found that the Authority's use of the Seasonals for toll collection to cover the absences or vacancies of permanent BTOs improperly encroached on the overtime opportunities guaranteed to permanent BTOs by the CBA.

At the outset of the Award, the Arbitrator interpreted two separate provisions of the CBA. The first provision states that the past practices of the Authority and the Union are themselves a part of the agreement between the parties. The second provision provides that certain "working conditions" of seasonal BTOs remained to be "worked out." Award at 39-40. Based on his understanding of these two provisions, the Arbitrator thereafter recounted approximately 40 years of past practices and made findings of fact. The Arbitrator also relied on prior interpretations of the CBA in other arbitration proceedings. Based on this cumulative analysis the Arbitrator determined that the Authority's use of the Seasonals violated the CBA.

Thereafter, the Authority filed the instant petition seeking vacatur of the Award

based on two grounds: (1) that the Arbitrator exceeded his authority under the CBA; and (2) that the Award was irrational in that it was not supported by the record.[1]

As to the first ground, the Authority first cites a CBA provision stating that arbitrators have "no power to add to, subtract from, modify or amend" the agreement. (CBA Art. X, Sec. 3; Ex. A at 17). Expanding on this broad claim, the Authority contends that the Award violates another clause in the CBA which provides that "[t]he Authority has the right to determine when overtime is necessary" (CBA Art. VIII, Sec. 3; Ex. A at 10). Here, the Authority claims that the Award essentially guarantees overtime to permanent BTOs to which they would otherwise not be entitled. Thus, to the Authority, the Arbitrator failed to interpret this provision in accordance with its unambiguous meaning and therefore exceeded his authority by improperly altering the CBA's terms.

As to the second basis for vacatur, the Authority asserts that when the Arbitrator relied on past practices (*i.e.*, those used since 1969) to interpret the CBA, he "rewrote history and conjured up past practices that were never shown to exist." (Petitioner Mem. in Supp. at 20). Further, the Authority takes the position that the Arbitrator imposed limitations on the Authority's use of Seasonals without citing the CBA. (Petitioner Mem. in Supp. at 12). In this vein, the Authority contends that the CBA sets forth only the following three limitations on the use of Seasonals, with which the Authority complied: (1) Seasonals can only work at the two bridges involved here; (2) the Authority can only hire Seasonals to work between April and September; and (3) the New York City Civil

[1] The court notes that the Authority does not claim that the Award violates public policy, one of the grounds for vacating an arbitration award under Article 75 of the CPLR.

Service Commission can limit the total number of Seasonals hired each year (currently set at 60). See CBA Art. XIX, Sec. 2, C.; Ex. A at 35.

In opposition, the Union points to the standard of review on petitions to vacate an arbitration award, characterizing the court's role as "extremely limited." (Respondent Mem. in Opp. at 12). The Union then criticizes the Authority's reliance on the arbitration record rather than the Award itself, arguing that citation to the record is an improper attempt at engaging this court in a review of the merits. Furthermore, the Union asserts that the Arbitrator did not exceed his authority because, as the Award demonstrates, he explicitly considered (and rejected) each of the Authority's arguments, basing his conclusions on either the CBA's text, the evidence adduced at the lengthy arbitration hearing (including evidence of past practices), or both. With further respect to past practices, the Union maintains that same are integral to the understanding of the Arbitrator's decision because the CBA provides that "[t]his agreement plus past practices . . . shall constitute the entire agreement of the parties" (CBA Art. XXIV, Sec. 4; Ex. A at 43).

Further, the Union argues that the Award was also based on the Arbitrator's analysis of Article XIX of the CBA, which provides that "working conditions . . . for [Seasonals]" should be "worked out" at some future date. (CBA Art. XIX, Sec 1; Ex. A at 35). Thus, in the Union's view, the Arbitrator determined that past practices constituted evidence of the fact that the parties had "worked out" the working conditions of Seasonals. Finally, the Union points to support in the record for the Arbitrator's conclusions of fact with respect to these past practices, including citations to testimony of former managers, various positions the Authority took in prior arbitrations, and

significant changes in the recruiting and use of Seasonals implemented by the Authority in 2012.

In reply, the Authority primarily repeats the positions set forth in its original brief, but attempts to clarify that it does not seek a review on the merits. Rather the Authority contends it seeks a determination as to whether there is "any factual support whatsoever for the Arbitrator's ruling" (Reply Mem. at 1). The Authority also notes in reply that the Arbitrator used a monthly schedule from April 2011 to extrapolate past practices back 40 years, and that this analysis was irrational and insufficient to establish a binding past practice.

Discussion

It is well settled in New York that a judge's role in reviewing an arbitration award "is not to decide the appropriateness or the wisdom of the award or whether the judges of a court would have rendered the same award had they acted as arbitrators but, rather, to ascertain whether the arbitrator who did make the award exceeded his powers or so imperfectly executed them as to require its vacatur." *States Marine Lines, Inc. v. Crooks*, 13 NY2d 206, 212 [1963]. Indeed, even where an arbitrator evinces an "egregious disregard" for the facts or the law, the award is not reviewable. *Angel Fabrics, Ltd. v. Cravat Pierre, Ltd.*, 51 AD2d 951, 952 [1976] *lv denied* 39 NY2d 711 [1976]. In the absence of a provision in the arbitration clause requiring adherence to substantive principles of law or evidence – there is no such clause in the instant CBA -- the arbitrator "may do justice as he sees it, applying his own sense of law and equity to the facts as he finds them to be." *Silverman v. Benmor Coats, Inc.*, 61 NY2d 299, 308

[1984]. Furthermore, [i]It is well settled that 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 Falzone*, 15 NY3d 530, 534 [2010]. As noted above, the Authority invokes only the latter two grounds. But both are unavailing.

The Award here is not irrational. The Arbitrator's conclusions find ample support in the voluminous record generated before him. The Award relied on two provisions of the CBA itself: one provision which says that the "working conditions" of seasonal BTOs were to be "worked out," and another provision that says that past practices are part of the agreement between the Authority and the Union. Award at 39-40. Also, the Arbitrator noted that Seasonals are not represented by the Union and the Union does not bargain on their behalf. Award at 40. In his conclusion that "work[ing] out" the working conditions of seasonal BTOs was necessarily a bargain between the Union and the Authority, the Arbitrator determined that this provision "refers to the utilization of Seasonals as it affects Permanent Bridge and Tunnel Officers." Award at 41. The Arbitrator then wrote that because there is no language in the CBA governing the form the "working out" would take, he would rely on past practices to inform his understanding of the seasonal BTOs' working conditions, which he did. Award at 41. This interpretation of the CBA – precisely the Arbitrator's function – is a reasonable interpretation rooted in the text of the CBA.

Nor is there anything irrational in the Arbitrator's use and analysis of past practices. The Arbitrator engaged in a comprehensive review of scheduling documents used at the Rockaways Facility, along with testimony from the Authority's Director of

Scheduling as part of an analysis of the scheduling procedures in place at the Rockaways Facility in 2012 and prior. Award at 44-51. Then the Arbitrator compared testimony from the Facility's Operations Superintendent in 2011/2012 to an Operations Superintendent from 1999, making explicit findings of credibility along the way. Award at 52-53. Furthermore, the Arbitrator undertook an analysis of prior arbitration awards in an effort to maintain a continuity of CBA interpretation. Award at 42-43. The Authority's position notwithstanding, there is a sufficient, rational basis supporting the Award such that its vacatur would undermine the long held preference for deferring to arbitrators in labor disputes. *See N.Y. City Transit Auth. v. Transp. Workers Union of Am.*, 99 NY2d 1, 6 [2002] (favoring "a policy supporting arbitration and discouraging judicial interference with either the process or its outcome").

The Authority's second position, that the Arbitrator exceeded an enumerated limitation of his power, is likewise without merit. As described above, the Authority contends that the Arbitrator's Award created new rights for Seasonal BTOs that are not explicitly found in the text of the CBA and thus constituted an improper alteration of the CBA's terms. The Award here is the result of the arbitration process specifically contemplated by the CBA, which reads in pertinent part: "the Authority and [the Union] agree to final and binding arbitration for all issues arising out of the interpretation and application of the parties' agreement, with the proviso that the arbitrator shall have no power to add to, subtract from, modify or amend any of the provisions of the Agreement . . ." (CBA Art. X, Sec. 3; Ex. A at 17). The Arbitrator rejected the Authority's assertion that the only limitations on the use of Seasonals were set forth in Article XIX of the CBA. Rather, the Arbitrator interpreted two CBA provisions, prior arbitration awards,

and thousands of pages of testimony and documentary evidence. He then came to a reasoned conclusion that the Authority's 2012 staffing practices at the Rockaways Facility violated the CBA. Such interpretation is the province of the Arbitrator, and it is not for this court to disturb his findings. Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied in its entirety, and the instant proceeding dismissed with prejudice. Additionally, the Award of Arbitrator Earl R. Pfeffer dated December 9, 2014 is confirmed pursuant to CPLR § 7510. Settle judgment on notice by filing in Room 119 with proof of service by regular mail and e-filing.

DATED: December 17, 2015

DEC 17 2015

J.S.C.
ALICE SCHLESINGER