Liberty Mar. Corp. v District No. 1, Pac. Coast Mar. Engineers' Beneficial Assn., AFL-CIO
2018 NY Slip Op 31701(U)
July 16, 2018
Supreme Court, New York County
Docket Number: 656258/2017
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 39

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LIBERTY MARITIME CORPORATION,

Petitioner,

- v -

DISTRICT NO. 1, PACIFIC COAST MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO,

Respondent.

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INDEX NO. 656258/2017

MOTION SEQ. NO. 001

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 3, 4, 5, 6, 7, 8, 9, 10, 16, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 53, 54, 55, 56, 60, 63, 64

were read on this application to/for Vacate - Decision/Order/Judgment/Award.

HON. SALIANN SCARPULLA:

Petitioner Liberty Maritime Corporation ("Liberty") petitions to vacate or modify an arbitration award issued in an arbitration proceeding between Liberty and Respondent District No. 1, Pacific Coast District Marine Engineers' Beneficial Association, AFL-CIO ("MEBA"). MEBA opposes vacatur/modification and cross-petitions for confirmation and judgment on the arbitration award.

Background

Liberty is a vessel management company that operates bulk carriers and vessels in international commerce. MEBA is a labor organization that represents employees in the U.S. maritime industry.

Liberty and MEBA were parties to a collective bargaining agreement ("CBA"), which remained in effect until September 30, 2011 or until the parties reached an impasse in negotiations for a successor agreement. The parties failed to negotiate a successor agreement before September 30, 2011, and MEBA thereafter filed a grievance against Liberty for breaching the CBA. The parties submitted to arbitration pursuant to the terms of the CBA, and the arbitrator was asked to decide whether the parties "were [] at impasse as of September 30, 2011[.] If not, what shall be the remedy?"

On December 2, 2015, after a hearing and briefing, the arbitrator issued an initial decision that the parties were not at impasse as of September 30, 2011, and that the CBA remained in effect. Consequently, the arbitrator directed the parties to continue to adhere to the terms and conditions of the CBA until a successor agreement or impasse was reached. The arbitrator also provided the parties an opportunity "to agree upon an appropriate remedy concerning potential damages [for Liberty's failure to adhere to the CBA.]"

The parties were unable to reach an agreement concerning damages. MEBA sought, among other damages, fringe benefit contributions, while Liberty opposed such damages on the basis that the benefit plans were not parties to the arbitration and MEBA's members suffered no actual loss. The arbitrator resolved the issue in a supplemental award, dated September 6, 2016, and determined that "[h]ad [Liberty] not illegally terminated the [CBA], it would have been contractually mandated to continue to pay membership dues to [MEBA] . . . [and] [i]t would also have been required to make contractual payments to fringe benefit plans . . .."

In a final award dated October 1, 2017, the arbitrator found that, as of April 17, 2017, the parties were "no longer able to resolve any of their outstanding issues" and therefore, the parties had reached an impasse. In addition, and in accordance with the supplemental award, the arbitrator directed Liberty to: (1) pay $104,651.34 in union membership dues; (2) pay $47,786.00 in contributions to the American Maritime Congress; and (3) make the following fringe benefit contributions - $690,973.28 to the Money Purchase Benefit Fund, $3,789,375.50 to the Medical Fund, $143,358.00 to the Future Retirees Contribution Account, $35,839.50 to Drug Testing, $378,878.44 to the Training Fund, $378,878.44 to the Joint Employment Committee, $9,849,451.98 to the Vacation Plan, and $590,986.82 to the Vacation Tax. The arbitrator also awarded interest on each category of damages, consistent with 28 U.S.C. 1961 (the "Arbitration Award").[1]

Liberty then filed this petition to vacate or modify the Arbitration Award. At or around the same time, the Benefit Plans filed a complaint against Liberty in the Eastern District of New York for delinquent contributions, seeking, at minimum, the amount the arbitrator awarded in contributions to the Benefit Plans ("EDNY Action").[2] In the EDNY

[1] In his supplemental award the arbitrator noted that MEBA sought $30,649,005.60 in damages. In the final Arbitration Award, the arbitrator awarded MEBA a little more than half the amount MEBA sought.

[2] Plaintiffs in the EDNY Action are the same benefit plans receiving contributions in the Arbitration Award, specifically: (1) MEBA Pension Trust – Money Purchase Benefit Plan; (2) MEBA Medical and Benefits Plan; (3) MEBA Training Plan; (4) MEBA Vacation Plan; (5) Joint Employment Committee; and (6) American Maritime Congress (collectively, "Benefit Plans"). MEBA Pension Trust – Defined Benefit Plan is also a plaintiff in the EDNY Action, although contributions to that plan were not raised in the arbitration.

Action the Benefit Plans allege that Liberty "has vigorously disputed the amounts that [] MEBA has claimed to be owed by [Liberty] as a result of the [a]rbitrator's decision, including, *inter alia*, the contributions that are owed to [the Benefit Plans]."

In its petition, Liberty asks that I vacate the Arbitration Award as irrational and against public policy, or modify the Arbitration Award to no more than $695,638.16, reflecting the union membership dues for $104,651.34 and Vacation Tax for $590,986.82. Liberty argues that the Arbitration Award is otherwise improper to the extent it directs payment of fringe benefit contributions. MEBA opposes the petition and cross-petitions to confirm the Arbitration Award.

Discussion

"Judicial review of an arbitrator's award is extremely limited." *Pearlman v Pearlman*, 169 A.D.2d 825, 826 (2d Dep't 1991). Vacatur of an arbitration award pursuant to CPLR 7511(b)(1)(iii) is appropriate "only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power" *Town of Babylon v Carson*, 111 A.D.3d 951, 953 (2d Dep't 2013).

Liberty argues that the Arbitration Award is irrational because the arbitrator directed payment of fringe benefit contributions despite finding MEBA's members suffered no harm. Liberty's argument ignores that, while the arbitrator found that *not every single* member of MEBA suffered from MEBA's abandonment of the CBA, MEBA, including the Benefit Funds, did suffer damages from Liberty's failure to comply with the CBA, and MEBA was entitled to be restored to the position it would have been in had Liberty complied with the CBA.

Putting a party in the same position it would have been in had the other party complied with a contractual obligation is a well-recognized remedy for breach of contract. Because the arbitrator relied on an established damages remedy in the Arbitration Award, I am "bound by an arbitrator's factual findings, interpretation of the contract and judgment concerning remedies[.]" *In re Professional, Clerical, Tech., Employees Ass'n (Bd. of Educ. for Buffalo City School Dist.)*, 103 AD3d 1120, 1122 (4th Dep't 2013).[3]

Moreover, Liberty's contention that the Arbitration Award is irrational because it decides the rights of a non-party, *i.e.*, the Benefit Plans, mischaracterizes the arbitrator's determination. Rather than determine the *rights* of a non-party, the arbitrator determined Liberty's *obligations* pursuant to the CBA. There is no dispute that Liberty is a party to the arbitration and that MEBA is entitled to enforce the terms of the CBA. *Compare* CBA Section 2(A) ("All disputes relating to the interpretation or performance of this Agreement shall be determined in accordance with the provisions [of the Grievance Procedure and Arbitration] Section"), *with In re Town of Scriba*, 129 A.D.3d 1596, 1597 (4th Dep't 2015) ("It is well established that an arbitrator has broad discretion to determine a dispute and fix a remedy [ ] and that any contractual limitation on that discretion must be contained, either explicitly or incorporated by reference, in the arbitration clause itself"). Although Liberty correctly notes that part of the Arbitration

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[3] Liberty also argues that the Arbitration Award is irrational because no proof supports the arbitrator's determination that the parties were at impasse on April 17, 2017. Here again, I may not overturn the arbitrator's factual determination on that issue because there is a reasonable basis for the arbitrator's finding.

Aware consists of payments to be made to Benefit Plans and not MEBA, whether MEBA may receive those payments is a separate issue discussed below.

Liberty argues that the Arbitration Award violates strong public policy embodied in § 302 of the Labor Management Relations Act ("LMRA"), which prohibits employers from paying money directly to labor organizations. *See* 29 U.S.C. § 186. LMRA § 302 provides exceptions to that general prohibition, however, including LMRA § 302(c)(2), which exempts payments made in satisfaction of an arbitration award. LMRA § 302 provides in relevant part that:

> [t]he provisions of this section shall not be applicable . . . (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress . . .."

29 U.S.C. § 186(c)(2).

According to Liberty, the exception found in LMRA § 302(c)(2) does not apply here. Instead, the more particularized exception for payments to trust funds pursuant to LMRA § 302(c)(5) applies, and Liberty argues that MEBA does not satisfy that exception's requirements.[4] As support, Liberty cites *Intl. Longshoremen's Ass'n, AFL-CIO v Seatrain Lines, Inc.,* 326 F.2d 916, 920 (2d Cir. 1964).

Seatrain involved a dispute between an employer and a union which occurred during the negotiation of a collective bargaining agreement. The union objected to the

[4] LMRA § 302 (c)(5) exempts contributions paid to certain union trust funds if such funds satisfy the exception's statutory criteria. *See* 29 U.S.C. § 186(c)(5).

employer using automation that would reduce workforce and consequently membership dues. As the parties continued to negotiate, the employer agreed to pay a certain amount into a trust fund, and the union demanded it directly receive part of the trust fund money to account for its alleged continuing losses of union dues. The employer rejected the union's demand as a violation of LMRA § 302, and the union sued.

The district court in *Seatrain* dismissed the union's complaint because there was no justiciable controversy. The Second Circuit reversed the justiciable controversy holding, and also held that the payment demanded by the union was not a "compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute," under LMRA § 302(c)(2). Instead, the Second Circuit held, the payment at issue should be scrutinized under the more particularized exception of LMRA § 302(c)(4). The Second Circuit was careful to note, however, that "[w]e need not now attempt to define in detail the area in which Section 302(c)(2) affords immunity." *Seatrain,* 326 F.2d at 920; *see also New York Tel. Co. v Communications Workers of Am. Local 1100, AFL-CIO Dist. One*, 256 F.3d 89, 92 (2d Cir. 2001) ("[*Seatrain* stands for the proposition that] when . . . an employer agrees to pay a union a sum in lieu of union dues, the particularized exception to consult is § 186(c)(4), which allows employers to deduct union dues from employees' wages and pay those dues to a union, provided however that the employees authorize the deduction in writing.")

The holding in *Seatrain* is inapplicable here. The payments in lieu of union dues made by the employer in *Seatrain* did not result from an arbitration award. Unlike in *Seatrain*, here the parties participated in an agreed-upon arbitration proceeding

concerning their CBA, the arbitrator fully adjudicated the contractual dispute under the CBA and issued a monetary award to MEBA consistent therewith.

When an arbitrator makes a monetary award based on obligations under a collective bargaining agreement after a full arbitration proceeding, payment of the award is covered by LMRA § 302(c)(2)'s exemption for an "award of an arbitrator." This result makes sense, particularly given New York's strong public policy of non-intervention in arbitration awards between unions and employers. *See generally Westchester County Correction Officers' Benev. Ass'n v County of Westchester*, 100 A.D.3d 644, 645 (2d Dep't 2012) ("[E]ven 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'").

I note that the Arbitration Award specifies the precise amount MEBA is directed to distribute from the Arbitration Award to each of the Benefit Plans. MEBA avers in support of its cross-petition to confirm the Arbitration Award that it will distribute the monetary damages awarded strictly in accordance with the Arbitration Award.[5] Under these circumstances, the Arbitration Award does not violate LMRA's general prohibition against payments from employers to unions, payment of the Arbitration Award is permitted under LMRA § 302(c)(2), and the Arbitration Award is not violative of public policy.

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[5] Indeed, the Benefit Plans instituted the EDNY Action in response to Liberty's alleged efforts to thwart payment of the Arbitration Award, and consequent avoidance of its obligations under the CBA to the Benefit Plans.

I also reject Liberty's argument that the Arbitration Award is punitive and for that reason violates public policy. As discussed above, the arbitrator found Liberty breached the CBA and awarded damages arising from that breach. There is nothing punitive about the arbitration process or an award based on a long-established remedy for breach of contract.

Lastly, I have considered Liberty's argument that the award must be vacated due to the arbitrator's misconduct and find it unavailing. Having rejected all of Liberty's contentions, I deny its petition to vacate and/or modify, and I confirm the Arbitration Award pursuant to CPLR 7511(e). Accordingly, "judgment shall be entered upon the confirmation of [the] award." CPLR 7514(a).

In accordance with the foregoing, it is

ORDERED that the petition to vacate or to modify the Arbitration Award is denied in its entirety; and it is further

ORDERED and ADJUDGED that the cross-petition to confirm is granted, and the arbitration award in the matter captioned *Marine Engineers Beneficial Association v Liberty Maritime Corporation*, American Arbitration Association Case Number 01-15-0002-3240, dated October 1, 2017, is confirmed; and it is further

ORDERED that the Clerk of this court is directed to enter judgment in favor of the respondent, District No.1, Pacific Coast Marine Engineers' Beneficial Association, AFL-CIO, and against the petitioner, Liberty Martine Corporation, in the sum of $16,010,143.30 plus interest from the date of the award at the federal rate under 28 U.S.C. § 1961.

This constitutes the decision and order of the Court.

7/16/18
DATE

SALIANN SCARPULLA, J.S.C.

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION		
		GRANTED		DENIED		GRANTED IN PART	X	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		DO NOT POST				FIDUCIARY APPOINTMENT		REFERENCE