Detectives Endowment Assn. v City of New York
2019 NY Slip Op 30218(U)
January 22, 2019
Supreme Court, New York County
Docket Number: 654958/17
Judge: Robert R. Reed
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 43

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DETECTIVES ENDOWMENT ASSOCIATION, UNIFORMED FIRE OFFICERS ASSOCIATION, LIEUTENANT BENEVOLENT ASSOCIATION, SANITATION OFFICERS ASSOCIATION, CORRECTION CAPTAINS ASSOCIATION, ASSISTANT DEPUTY WARDENS/DEPUTY WARDENS ASSOCIATION, and UNIFORMED SANITATION CHIEFS ASSOCIATION,

Index No. 654958/17

Plaintiffs,

- against -

THE CITY OF NEW YORK, ROBERT W. LINN AS COMMISSIONER OF LABOR RELATIONS,

Defendants.

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ROBERT R. REED, J:

Defendants The City of New York (the "City") and Robert W. Linn, as Commissioner of Labor Relations ("Commissioner"), move, pursuant to CPLR 3211(a)(1) and (7) to dismiss the Complaint in this action.

BACKGROUND

Plaintiffs Detectives Endowment Association, Uniformed Fire Officers Association, Lieutenant Benevolent Association, Sanitation Officers Association, Correction Captains Association, Captains Endowment Association, Assistant Deputy Warden/Deputy Wardens Association, and Uniformed Sanitation Chiefs Association commenced this action seeking a declaratory judgment for promissory estoppel and a permanent injunction restraining defendants from deviating from the pattern of salary increases agreed to by the parties when entering into collective bargaining

agreements with nonparty Police Benevolent Association (the "PBA"). The Complaint includes the following factual allegations.

Plaintiffs are eight municipal unions that represent senior officers within the City's corrections, fire, police, and sanitation departments. These unions comprise the Uniformed Superior Officers Coalition (the "Coalition"), which, as a group, engages in collective bargaining negotiations with the City on behalf of their members.

The City employs the members of plaintiffs' unions, and enters into collective bargaining agreements with the unions to establish the terms of employment for union members. Commissioner represents the City in collective bargaining negotiations.

In November 2014, plaintiffs engaged in collective bargaining negotiations with defendants. Plaintiffs assert that during the negotiations, the Commissioner induced them to accept a schedule of retroactive and prospective salary increases by promising that, in future negotiations with the PBA, he would adhere to the same pattern of salary increases that he agreed to with plaintiffs. PBA is not a part of the Coalition.

Plaintiffs also state that they were reluctant to enter into collective bargaining agreements with defendants before the PBA or other uniformed entry level unions did so. Plaintiffs assert that they were concerned that, as with past negotiations, the

City would reach favorable contract settlement terms for veteran members of those unions, such as wage and benefit increases over the life of the labor contracts that would be funded by savings generated through a reduction of wages and benefits for entry level officers, and then insist that plaintiffs also adopt similar terms with concessions.

Plaintiffs further assert that, to overcome their reluctance, the Commissioner promised to do "everything possible to protect [the] deal" and to "defend to the death" the Coalition's pattern of salary increases when negotiating with the PBA (*see* Palladino Affid, Affirm in Opp; NYSCEF Doc. No. 19). In addition, plaintiffs state that they reasonably relied on defendants' promise in entering into a Uniform Superior Officers Coalition Economic Agreement ("Coalition Economic Agreement")(Leighton Affirm, Exh. B; NYSCEF Doc. No. 8) and subsequent collective bargaining agreements.

Plaintiffs also assert that defendants initially adhered to the promise during collective bargaining negotiations with the PBA in 2014 and 2015. However, plaintiffs claim that, in February 2017, defendants betrayed the promise by entering into a collective bargaining agreement with the PBA that included a wage increase for veteran police officers that was 2.25% higher than the pattern of salary increases secured by plaintiffs. Plaintiffs assert that the PBA collective bargaining agreement reduced entry level pay or benefits for newly hired police

officers and used the savings to fund wage increases for veteran police officers.

Plaintiffs state that, when they complained, defendants informed them that they had to adhere to the negotiated pattern of salary increases or fund wage increases with additional concessions. Plaintiffs also assert that, since they do not represent officers in entry level positions, they cannot generate significant savings by reducing entry level pay rates. Plaintiffs maintain that defendants leveraged the PBA as a tool to force plaintiffs into a disadvantageous position necessitating manifestly unjust concessions.

Plaintiffs bring this action seeking to hold defendants to the alleged promise. The Complaint includes claims for a declaratory judgment for promissory estoppel, pursuant to CPLR 3001, based on defendants' alleged betrayal of the promise made during collective bargaining negotiations (count 1), and an injunction to restrain defendants from requiring plaintiffs to fund wage increases with additional concessions (count 2).

Defendants now seek to dismiss the Complaint.

DISCUSSION

On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*see* CPLR 3026; *Leon v Martinez*, 84 NY2d 83, 87 [1994]). The Court must accept the facts alleged in the complaint as true, accord the plaintiff the benefit of every favorable inference, and determine whether the

facts as alleged fit within any cognizable legal theory (*Leon v Martinez, supra*).

Under CPLR 3211(a)(1), "dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claim as a matter of law" (*id.*). In asserting a motion under CPLR 3211(a)(7), however, the Court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint, and "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (*id.*, quoting *Guggenheimer v Ginsburg*, 43 NY2d 268 [1977]).

As stated, the Complaint asserts claims for a declaratory judgment for promissory estoppel based on defendants' alleged betrayal of the promise made during collective bargaining negotiations, and an injunction to restrain defendants from requiring plaintiffs to fund wage increases with additional concessions promissory estoppel and an injunction. In seeking dismissal, defendants also argue that the Court lacks jurisdiction to entertain plaintiffs' claims and, in any event, the claims fail to state viable causes of action.

Defendants argue that the Court lacks jurisdiction to adjudicate plaintiffs' promissory estoppel claim given the existence of the Coalition Economic Agreement and the explicit grievance and arbitration provisions in plaintiffs' separate collective bargaining agreements. Defendants maintain that

plaintiffs' claims must be resolved in accordance with the existing collective bargaining agreements, which mandate arbitration of contractual disputes between the parties.

It is well established that, when an employer and a union enter into a collective bargaining agreement that creates a grievance procedure, an employee subject to that agreement may not sue the employer directly for breach of that agreement, but must proceed, through the union, in accordance with the contract (*Matter of Board of Educ., Commack Union Free Sch. Dist. v Ambach*, 70 NY2d 501, 508 [1987][internal citations omitted]). In determining the parameters of a collective bargaining agreement and the types of complaints required to be grieved pursuant thereto, the provisions of such agreement will govern (*Matter of Moses v Rensselaer County*, 262 AD2d 697, 699-700 [3d Dept 1999]).

Here, the Coalition Economic Agreement, dated December 9, 2014, among the parties, states, in part:

> "WHEREAS, the undersigned parties desire to enter into collective bargaining agreements, including this [Coalition Economic Agreement] and agreements successor to existing unit agreements ... to cover the employees represented by the Unions ... and,
> WHEREAS, the undersigned parties intend by this [Coalition Economic Agreement] to cover all cost-related matters and to incorporate the terms of the [Coalition Economic Agreement] into the Separate Unit Agreements,
> NOW, THEREFORE, it is jointly agreed as follows:
> ...
> The term of each Separate Unit Agreement shall be eighty-four (84) months from the

> expiration date of the Predecessor Separate Unit Agreements.
> ...
> The cost related terms of the Predecessor Separate Unit Agreements shall be continued as modified pursuant to this [Coalition Economic Agreement]"

(*id.*). In entering into the Coalition Economic Agreement, the parties agreed, among other things, to specified wage increases for the members of the unions in the Coalition (*see id.*).

Section 3 of the Coalition Economic Agreement states that "[n]o party to this [Coalition Economic Agreement] shall make further cost-related demands during the term of this [Coalition Economic Agreement] or during the negotiations for the applicable Separate Unit Agreement except as provided for in Section 8" (*id.*). In addition, §8 states:

> "A. Each member of the [Coalition] shall have a committee to discuss their own individual unit's non-economic issues (both employer and employee). Such non-economic issues shall be cost-neutral.
>
> B. The parties may mutually agree to additional savings needed to fund any additional economic proposals.
>
> C. The committees shall have 4 months to come to ay agreements and at the end of the 4 month period, the discussions will end and any mutually agreed upon terms shall be codified in a Letter Agreement. The parties may mutually agree to extend the 4 month period"

(*id.*).

The submissions also include a copy of the collective bargaining agreement between Sanitation Chiefs Association and

the City (*see* Collective Bargaining Agreement between Sanitation Chiefs Association and the City, Leighton Affirm, Exh C; NYSCEF Doc. No. 9). It is undisputed that the various collective bargaining agreements between the other unions in the Coalition and the City contain similar grievance provisions.

Article XI of the Sanitation Chiefs Association collective bargaining agreement, entitled Grievance Procedure, defines the term "grievance" to mean:

> "(a) A dispute concerning the application or interpretation of this collective bargaining agreement;
>
> (b) A claimed violation, misinterpretation or misapplication of the rules or regulations, written policy or orders of the Employer applicable to the agency which employs the grievant affecting terms and conditions of employment; provided disputes involving the Personnel Rules and Regulations of the City of New York shall not be subject to the grievance procedure or arbitration; and
>
> (c) A claimed assignment of employees to duties substantially different from those stated in their job specifications"

(*id.*). The agreement also outlines the steps of the grievance procedure (*see id.*).

On review of these collective bargaining agreements, the court finds that the allegations in the Complaint do not fit within the definition of a grievance within the parties' collective bargaining agreements. Although the Coalition Economic Agreement expressly covers "all cost-related matters," §§3 and 8 of the agreement specifically exclude mutual agreements

between the parties regarding "additional savings needed to fund any additional economic proposals." Moreover, contrary to defendants' position, claims based on the alleged betrayal of a mutual agreement made during collective bargaining negotiations do not involve a "dispute concerning the application or interpretation of this collective bargaining agreement"; a "claimed violation, misinterpretation or misapplication of the rules or regulations, written policy or orders of the Employer ... affecting terms and conditions of employment," or a "claimed assignment of employees to duties substantially different from those stated in their job specifications" (Collective Bargaining Agreement between Sanitation Chiefs Association and the City, *supra*). "[A] party cannot be compelled to submit to arbitration unless the agreement to arbitrate expressly and unequivocally encompasses the subject matter of the particular dispute (*Gerling Global Reins. Corp. v Home Ins. Co.*, 302 AD2d 118, 123 [1st Dept 2002]). Thus, the court finds that the Coalition Economic Agreement and the grievance procedures outlined in the collective bargaining agreements do not present a barrier to the court entertaining plaintiffs' claims.

Defendants also contend that the court lacks jurisdiction over plaintiffs' claims because the allegations amount to a claim for improper labor practices, which must be resolved in a proceeding before the New York City Board of Collective Bargaining (the "BCB").

It is beyond dispute that public employers must negotiate in good faith regarding the terms and conditions of members' employment (*see* Civil Service Law §204[2]). A public employer's refusal to negotiate in good faith with the duly recognized or certified representative of its public employees constitutes improper employment practice (*see* Civil Service Law §209-a[1][d]; *Matter of City of New Rochelle v New York State Pub. Empl. Relations Bd.*, 101 Ad3d 1438, 1440 [3d Dept 2012]).

Here, however, defendants' characterization of plaintiffs' claim as one for improper labor practices belies the allegations in the Complaint. Plaintiffs do not allege that defendants refused to negotiate in good faith. Rather, plaintiffs' consistently maintain that the Commissioner made the promise to preserve the pattern of salary increases during good faith collective bargaining negotiations, and initially adhered to the promise, but eventually betrayed it while negotiating with the PBA, long after the negotiations with plaintiffs had ended. As such, defendants' assertion that the court lacks jurisdiction over plaintiffs' claims is untenable.

Defendants further argue that the Complaint fails to state a valid cause of action for promissory estoppel. A cause of action for promissory estoppel must allege a promise clear and unambiguous in its terms, reasonable and foreseeable reliance, and injury caused by the reliance (*see Urban Holding Corp. v Haberman*, 162 AD2d 230, 231 [1st Department 1990]).

Here, the Complaint expressly alleges that the Commissioner clearly and unambiguously promised that, if the Coalition reached agreements with the City before the PBA, then he would do "everything possible to protect [the] deal" and "defend to the death" the Coalition's pattern of salary increases without seeking any concessions. The Complaint also alleges that the Coalition reasonably relied on the Commissioner's promise in entering into the Coalition Economic Agreement and subsequent collective bargaining agreements with the City, and that the Coalition unions suffered injury by relying on the Commissioner's promise because they negotiated and received a lower rate of wage increase than the PBA for the current contract terms. Construed in the light most favorable to plaintiffs, the first count in the Complaint alleges facts sufficient to survive a motion to dismiss.

Furthermore, the existence of the collective bargaining agreements between the parties does not preclude plaintiffs' claim for promissory estoppel, as the breach alleged in the Complaint is not governed by the agreements, and plaintiffs allege a duty independent of the agreements (*see, Coleman & Assocs. Enters., Inc. v Verizon Corporate Servs. Group, Inc.*, 125 AD3d 520, 521 [1st Dept 2015]).

Plaintiffs also request injunctive relief, restraining defendants from demanding that plaintiffs pay for a 2.25% wage rate increase in any negotiations between the parties, and

directing defendants to provide plaintiffs with a 2.25% wage rate increase in acknowledgment of the duties and responsibilities that plaintiffs' superior officers bear in the performance of their duties. However, the claim for injunctive relief is subsumed under and duplicative of the claim for promissory estoppel. The claim for injunctive relief arose from the same facts and do not allege distinct and different damages from the claim for promissory estoppel (*see Town of Wallkill v Rosenstein*, 40 AD3d 972, 974 [2d Dept 2007]). Thus, the claim for injunctive relief is dismissed.

Accordingly it is

ORDERED that defendants' motion is granted to the extent that the second count, for injunctive relief, is dismissed and the motion is otherwise denied; and it is further

ORDERED that defendants are directed to serve an answer to the Complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 412, 60 Street, New York, New York, on February 21, 2019, at 9:30 AM.

Dated: January 22, 2019

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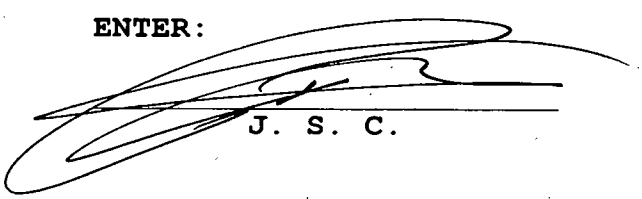

J. S. C.