

<b>Port Auth. of N.Y. &amp; N.J. v Port Auth. Police Sergeants Benevolent Assn.</b>
2011 NY Slip Op 32627(U)
August 19, 2011
Sup Ct, NY County
Docket Number: 403068/2010
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: LUCY BILLINGS  
J.S.C.  
*Justice*

PART 44

Index Number : 403068/2010  
PORT AUTHORITY OF NY AND NJ  
vs.  
PORT AUTHORITY POLICE  
SEQUENCE NUMBER : 001  
COMPEL OR STAY ARBITRATION

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

his motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

1

Answering Affidavits — Exhibits \_\_\_\_\_

2-3

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered ~~that this motion~~ and adjudged that:

*The court denies the petition to stay an arbitration and dismisses this proceeding, pursuant to the accompanying decision. C.P.L.R. §§ 409(b), 7503(b).*

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 8/19/11

*Lucy Billings*

LUCY BILLINGS

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

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PORT AUTHORITY OF NEW YORK AND  
NEW JERSEY,

Index No. 403068/2010

Petitioner

-against-

DECISION AND ORDER

PORT AUTHORITY POLICE SERGEANTS  
BENEVOLENT ASSOCIATION,

Respondent

**UNFILED JUDGMENT**

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LUCY BILLINGS, J.S.C.:

Petitioner seeks to stay an arbitration demanded by respondent of its Grievance # 4S-10, to enforce provisions of a Memorandum of Agreement (MOA) between the parties effective January 1, 2003, as modified by an agreement dated January 29, 2009, executed by Carol Maresca on behalf of petitioner, referred to as the "Maresca Agreement." C.P.L.R. § 7503(b). The MOA as a whole governs Port Authority Police Sergeants' wages, hours, and conditions of employment. The MOA includes arbitration provisions, § XXII and Appendix G regarding the grievance arbitration procedure, and expressly excludes arbitration of disputes outside the MOA's scope, such as complaints that petitioner has restricted, impaired, removed, or abolished a practice, procedure, or policy governing a term or condition of employment not set forth in the MOA.

Petitioner claims that respondent seeks to arbitrate the applicability of a letter executed by Carol Maresca and Michael

L. Gardner to respondent's President dated January 28, 2009, the day before the Maresca Agreement, which requires petitioner to increase its Detective Sergeant positions from 15 to 16 and is referred to as the "Maresca Letter." Respondent concedes that the Maresca Letter neither modifies nor is incorporated in the MOA and therefore is not subject to its arbitration provision.

Instead, respondent's grievance and demand for arbitration claim petitioner's violation of the MOA, including the written modification of the MOA dated January 29, 2009, referred to as the Maresca Agreement. As long as respondent's grievance and arbitration demand claim a violation of employment terms incorporated in the MOA, then the dispute falls within the MOA's grievance arbitration procedure. Specifically, respondent claims petitioner's violation of procedures for filling vacancies in Detective Sergeant positions and of overtime procedures for Police Sergeants. Respondent identifies a Detective Sergeant whose retirement caused Detective Sergeant positions to fall below the agreed 16 positions more than 30 days, requiring, under § XXXIII of the MOA, that all Detective Sergeant positions be treated as included in the MOA's Appendix M, Attachment A. Under Appendix M to the MOA, petitioner employer agreed to fill a vacancy on a "regularly scheduled tour of duty," Aff. of Mark O'Neill Ex. B, at 243, following specified procedural steps, and triggering the overtime procedure in Appendix I to the MOA. Respondent alleges that petitioner failed to follow those steps and that overtime procedure.

\* 4]

Respondent thus claims specified violations of the MOA, Appendices I and M, including Attachment A to Appendix M. Respondent's claims implicate the Maresca Agreement only insofar as it increases the threshold number of Detective Sergeant positions from 15 to 16. Although petitioner points out that the MOA's grievance arbitration procedure, § XXII and Appendix G, does not expressly apply to any modifications of the MOA, the Maresca Agreement, unlike the Maresca Letter that petitioner may have mistakenly understood respondent to be referring to, expressly provides that the Maresca Agreement modifies and is incorporated in the MOA. While the MOA does not refer to future modifications, it does not bar them. Consequently, all references to 15 Detective Sergeant positions in the MOA are changed to 16 Detective Sergeant positions.

Insofar as petitioner may claim that it never signed or authorized the Maresca Agreement or that it is otherwise unenforceable, petitioner may raise those defenses before the arbitrator in the arbitral forum. Petitioner is entitled to and may expect the arbitrator's full consideration of any such unenforceability defense or other defense of nonliability for the claimed violations of the MOA. See United Fedn. of Teachers, Local 2, AFT, AFL-CIO v. Board of Educ. of City School Dist. of City of N.Y., 1 N.Y.3d 72, 83 (2003); Commerce & Indus. Ins. Co. v. Nester, 90 N.Y.2d 255, 265 (1997). Those defenses are not grounds, however, to stay the arbitration proceeding. C.P.L.R. § 7501. E.g., Silverman v. Benmor Coats, 61 N.Y.2d 299, 307

[\* 5]  
(1984); Sims v. Siegelson, 246 A.D.2d 374, 376 (1st Dep't 1998).

For the reasons set forth above, the court denies the petition to stay the arbitration and dismisses this proceeding. C.P.L.R. §§ 409(b), 7503(b). This decision constitutes the court's order and judgment denying the petition and dismissing the proceeding.

DATED: August 19, 2011

*Lucy Billings*

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LUCY BILLINGS, J.S.C.

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