Local 342 Long Is. Pub. Serv. Empls., United Mar. Div., Intl. Longshoreman's Assn., AFL-CIO v Town of Huntington
2006 NY Slip Op 30578(U)
November 2, 2006
Supreme Court, New York County
Docket Number: 14522-2006
Judge: Sandra L. Sgroi

COPY

INDEX NO.14522-2006

SUPREME COURT - STATE OF NEW YORK
SPECIAL TERM, PART 19 SUFFOLK COUNTY

Present:
Hon. SANDRA L. SGROI

Mot Seq: 001 MG
002 MD
Adj Date: 9-28-06
Return Date: 7-28-06

LOCAL 342, LONG ISLAND PUBLIC SERVICE EMPLOYEES, UNITED MARINE DIVISION, INTERNATIONAL LONGSHOREMAN'S ASSOCIATION, AFL-CIO.

Petitioner,

-against-

TOWN OF HUNTINGTON,

Respondent.

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Upon the following papers numbered 1 to 27 read on this Proceeding: Notice of Petition, Petition and supporting papers 1-6; Notice of Cross Petition and supporting papers 9-15; Exhibits 7-8;16-17;24-25; Affirmation in opposition 18-23;26-27; it is,

ORDERED that the petition of the Local 342, Long Island Public Service Employees, United Marine Division, International Longshoreman's Association, AFL-CIO, for an order vacating and setting aside an order of an arbitrator is granted; and it is further

ORDERED that the cross petition of the Town to confirm the arbitration award is denied; and it is further

ORDERED that the Town of Huntington is directed reinstate Cipriano Roman and Cipriano Roman is awarded all back pay and lost benefits; and it is further

ORDERED that the issue of back pay and lost benefits shall be referred back to the arbitrator if the parties are unable to resolve the amounts of money owed Cipriano Roman and the lost benefits that should be credited to Cipriano Roman.

Enter Judgment.

The petition of the Local 342, Long Island Public Service Employees, United Marine Division, International Longshoreman's Association, AFL-CIO, (hereinafter "Local 342") seeks to vacate and set aside an order of an arbitrator on the ground that the arbitrator exceeded her powers or so imperfectly executed the award that a final and definite award upon the subject matter submitted was not made. Additionally, Local 342 requests that the employee involved, Cipriano Roman, be reinstated to his employment and awarded back pay and damages.

Cipriano Roman was hired by the Town of Huntington (hereinafter "Town") on or about April 9, 1984 as a laborer. Between September of 2001 and June 30, 2005, Roman was not employed by the Town of Huntington. On or about July 1, 2005, the Town rehired Roman. At all times that Roman was employed by the Town of Huntington, he was a member of Local 342. The collective bargaining agreement between the Town and Local 342 for 2002 thru 2005 is attached to the Petition as Exhibit "A". Article 30 of that collective bargaining agreement contains a detailed grievance and arbitration procedure that the parties to this litigation have followed.

Cipriano Roman held the position of Heavy Equipment Operator at the Town's Recycling Center at the time that he was suspended from his employment from the Town. There is no allegation that Roman was an unsatisfactory employee or was disciplined for any infractions. However, Roman and his wife also own real property located at 1480 New York Avenue, Huntington, New York and it is not disputed that this property is unrelated to Roman's employment with the Town as a Heavy Equipment Operator.

The Town has alleged that the building located on the real property at 1480 New York Avenue, Huntington, New York violates the Town Code and the New York State Building Code. There is no allegation in the record that Roman "provided any services out of the ordinary in the course of his employment, to 1480 New York Avenue" (Petition, Exhibit "B" p. 3). Further, it is not disputed that Roman has no work responsibilities with the Town of Huntington involving the enforcement of building codes or the granting of permits.

When the Town became aware of the alleged Zoning violations at1480 New York Avenue, Huntington, it suspended Roman from his employment at the Town's Recycling Center on the ground that Roman violated his duty of loyalty to the Town by engaging in conduct that gave rise to the alleged building code violations. As noted before, there is no allegation in these papers that Cipriano Roman committed any other act warranting his discipline and suspension by the Town of Huntington.

When Roman was suspended, Local 342 challenged that action, and eventually the matter proceeded to

arbitration. The decision of the Arbitrator, which is challenged herein by Local 342, stated in part:

> The Town argues that the Grievant violated his duty of loyalty to the Town by his actions. The Arbitrator agrees that if the Grievant is found to be guilty of these building code violations, he will have flagrantly violated Town rules and regulations. Since the Grievant has not had a hearing on the charges, the Arbitrator must determine whether an employee charged with such substantial wrongdoing can be suspended pending the outcome of the Town's investigation or the outcome of the judicial proceedings. I find that the Grievant can be suspended.[1]

The Arbitrator continued with her rationale for this decision:

> In this case, the charges are so severe and pervasive that they demonstrate an employee's flagrant disregard of the laws of the Town. Recycling centers, like the one at which the Grievant works, are havily regulated facilities. In order to perform his job as HEO[2], the Grievant must understand and apply the various laws and regulations which govern what may be recycled and by whom; what can be disposed of in landfills; what substances are EPA regulated, etc. The safety aspects of recycling are a regular part of the Grievant's duties. The charges against the Grievant, if proven, demonstrate serious safety violations and an utter disregard for the laws and ordinances of the municipality whose rules he is charged with enforcing while at work. The Arbitrator finds the required nexus between the Grievant's off-duty conduct (i.e., the ownership of the property with the alleged pervasive code violations), and his work responsibilities, so as to enable the Employer to discipline the Grievant for the off-duty conduct.

The scope of judicial review of a decision issued in an arbitration proceeding is extremely limited (***CPLR § 7511(b)***; ***Campbell v. New York City Transit Authority***, 32 A.D.3d 350, 821 N.Y.S.2d 27; ***Matter of United Fedn. of Teachers, Local 2, AFT, AFL-CIO v. Bd. of Educ. of City School Dist. of City of New York***, 1 N.Y.3d 72, 769 N.Y.S.2d 451, 801 N.E.2d 827) and an arbitrator's award will not be vacated "unless it is violative of a strong public policy, or is totally irrational, or exceeds a specifically enumerated limitation on his power"(***Matter of New York State Correctional Officers & Police Benevolent Assn. v. State,*** 94 N.Y.2d 321, 326, 704 N.Y.S.2d 910, 726 N.E.2d 462).

According to the Court of Appeals in ***New York City Transit Authority v. Transport Workers' Union of America, Local 100, AFL-CIO***, 6 N.Y.3d 332, 812 N.Y.S.2d 413, 845 N.E.2d 1243):

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[1]It is important to this decision that Roman has only been charged with violations of the zoning ordinance and building code (see, ***Cromwell v. Bates***, 117 A.D.2d 667, 498 N.Y.S.2d 405).

[2]The term HEO in the arbitration decision stands for "heavy equipment operator".

> An arbitrator is charged with the interpretation and application of the agreement (see ***Matter of Town of Callicoon [Civil Serv. Empls. Assn., Town of Callicoon Unit]***, 70 N.Y.2d 907, 909, 524 N.Y.S.2d 389, 519 N.E.2d 300). Courts may vacate an arbitrator's award only on the grounds stated in CPLR 7511(b). The only such ground asserted here is that the arbitrator "exceeded his power" (CPLR 7511[b][1][iii]). Such an excess of power occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power (***Matter of United Fedn. of Teachers, Local 2, AFT, AFL-CIO v. Board of Educ. of City School District of City of N.Y.***, 1 N.Y.3d 72, 79, 769 N.Y.S.2d 451, 801 N.E.2d 827; ***Matter of New York State Correctional Officers & Police Benevolent Assn. v. State of New York***, 94 N.Y.2d 321, 326-328, 704 N.Y.S.2d 910, 726 N.E.2d 462). Moreover, courts are obligated to give deference to the decision of the arbitrator (see Matter of Sprinzen [Nomberg], 46 N.Y.2d 623, 629, 415 N.Y.S.2d 974, 389 N.E.2d 456 ["An arbitrator's paramount responsibility is to reach an equitable result, and the courts will not assume the role of overseers to mold the award to conform to their sense of justice"]). This is true even if the arbitrator misapplied the substantive law in the area of the contract (see ***Matter of Associated Teachers of Huntington v. Board of Educ., Union Free School Dist. No. 3, Town of Huntington***, 33 N.Y.2d 229, 235, 351 N.Y.S.2d 670, 306 N.E.2d 791; see also ***Rochester City School Dist. v. Rochester Teachers Assn.,*** 41 N.Y.2d 578, 581, 394 N.Y.S.2d 179, 362 N.E.2d 977).

This Court has always given great deference to the decisions of arbitrators recognizing the policy of the Courts to encourage parties to proceed to arbitration and a reluctance to reverse a decision made in that forum. However, in limited circumstances, where the decision is not rational, Courts have reversed or modified arbitrators' decisions (see, ***New York City Transit Authority v. Transport Workers' Union of America, Local 100, AFL-CIO***, 306 A.D.2d 486, 761 N.Y.S.2d 678 lv to app'l den'd 1 N.Y.3d 510, 777 N.Y.S.2d 19, 808 N.E.2d 1278).

Generally, discipline may not be imposed for off-duty conduct of an employee without a clear and harmful connection or nexus to the employee's job (see, ***In re FLUOR HANFORD, INC. [Richland, Wash.] and HANFORD ATOMIC METAL TRADES COUNCIL, BOILERMAKERS LOCAL 242*** 2006 WL 893635 (Lab.Arb.), 122 Lab. Arb. (BNA) 65, 122 LA (BNA) 65). In making a determination as to whether an employee should be disciplined for non work related acts in light of the general rule restricting discipline to work related actions, an Arbitrator generally weighs the nature of the employee's employment against the alleged off-duty misconduct before deciding if the employee should be disciplined (supra).

It has been stated that "Employment classifications where this higher standard is applied are nearly unanimously limited to employees in sensitive positions of high responsibility such as teachers or treasurers, and to public safety officers such as firemen and policemen" (supra). While conviction for a serious crime may result in forfeiture of any public employment under various theories including its detrimental effect on the public trust. Roman had not been found guilty of violating the zoning code of the Town of Huntington. Employment in the public sector, in and of itself, obviously does not deprive persons of the foibles, mistakes and failures inherent in human nature, and while an employee in an at will relationship may be discharged for

essentially any or no reason, that is not true of persons such as Roman who enjoy the protections of a collective bargaining agreement and the Civil Service Law (see, ***Civil Service Law*** Article 5§§ 75 et. seq.). While certain individuals by virtue of the trust required by their position will be held to a higher standard than that imposed upon a typical employee and such an employee may be disciplined for non work related acts even prior to conviction, the nature of the employment of Roman, does not indicate that Roman's employment was sensitive or involved great responsibility. This coupled with Roman's unchallenged work record and the nature of the outside misconduct, renders the suspension of his employment by the Town of Huntington irrational (see, ***Great Atlantic & Pacific Tea Co.***, 45 LA 495, 497; ***City of Joliet***, 108 LA 7, 9; see also ***REST 3d Employment Law*** § 3.03).

While the Arbitrator in her decision has attempted to state that the off duty activities of the suspended employee are related to the job requirements and performance of the employee, there is absolutely not a shred of evidence in this record of the existence of any such relationship between the job status of Roman as a heavy equipment operator and his joint ownership with his wife of rental property(but see, ***Melzer v. Board of Educ. of City School Dist. of City of New York***, 196 F.Supp.2d 229 judgmt aff'd 336 F.3d 185 cert. den'd. , 540 U.S. 1183, 124 S.Ct. 1424, 158 L.Ed.2d 87, 72 USLW 3451, 72 USLW 3531, 72 USLW 3535, 185 Ed. Law Rep. 415, 20 IER Cases 1664, 20 IER Cases 1760). Further, there is no evidence that the type of public employment duties required of Roman justifies the imposition of any greater burden on him than that imposed on a general employee. Finally, there is no showing that the *alleged* zoning violations impacted on either Roman's ability to perform the work assigned to him by the Town as part of his employment or impacted on the ability of his co-employees to perform work for the Town if they had to associate with him(see generally, ***DAmore v. Vill. of Kenmore***, 12 A.D.3d 1129, 785 N.Y.S.2d 242; ***Calloway v. Glass***, 203 A.D.2d 800, 610 N.Y.S.2d 973).

Under this analysis, the Court has determined that the decision of the arbitrator should be set aside. Since no additional fact finding is required, the Court will further direct that Roman be reinstated with back pay and any and all lost benefits. If the Parties cannot agree as to the amount of back pay and benefits owed to Roman, that issue is referred to the arbitrator for resolution.

Dated: 11/2/06

SANDRA L. SGROI, J. S. C.