

**Matter of Triborough Bridge & Tunnel Auth. v
Triborough Bridge & Tunnel Auth. Bridge and
Tunnel Officers Benevolent Assn.**

2007 NY Slip Op 30076(U)

March 12, 2007

Supreme Court, New York County

Docket Number: 0403038

Judge: Marcy S. Friedman

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SCANNED ON 3/13/2007
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. Marcy S. Friedman
Justice

PART 57

Index Number : 403038/2006

TRIBOROUGH BRIDGE

INDEX NO. _____

vs

TRIBOROUGH BRIDGE & TUNNEL

MOTION DATE _____

Sequence Number : 001

MOTION SEQ. NO. _____

VACATE

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ motion to/for _____

PAPERS NUMBERED

1

2

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Memos of Law

M1, M2, M3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~ *proceeding*

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER.**

UNFILED JUDGMENT

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

Dated: 3-12-07

Marcy Friedman
Hon. Marcy S. Friedman ^{J.S.C.}

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - - PART 57

In the Matter of the Application of
TRIBOROUGH BRIDGE AND
TUNNEL AUTHORITY,

Petitioner,

Index No.: 403038/06

For an Order Pursuant to CPLR Article 75
Vacating an Arbitration Award
- against -

DECISION/ORDER

TRIBOROUGH BRIDGE AND TUNNEL
AUTHORITY BRIDGE AND TUNNEL
OFFICERS BENEVOLENT ASSOCIATION,
Respondent.

Present: HON. MARCY FRIEDMAN
Justice, Supreme Court

In this special proceeding brought pursuant to CPLR 7511, petitioner Triborough Bridge and Tunnel Authority (“TBTA”) seeks an order vacating an arbitration award by Arthur A. Riegel, dated June 24, 2006, which was issued following an arbitration between the parties held pursuant to a collective bargaining agreement.

The underlying facts in this proceeding are not in dispute. On March 8, 2004, Bridge and Tunnel Officer (“BTO”) Anthony Tavormina, assigned to work at the Verrazano-Narrows Bridge, was denied an opportunity to work an eight-hour overtime shift, which was to commence at 11:00 p.m., one hour after he had finished working 14 hours. His request to work the overtime shift was denied by his supervisor on the basis that there must be a four-hour break between a regular shift and an overtime shift. On behalf of BTO Tavormina, respondent Triborough Bridge and Tunnel Authority Bridge and Tunnel Officers Benevolent Association (“BTOBA” or “Union”) filed a grievance against TBTA for improperly denying BTO Tavormina the overtime

shift and requiring a four-hour break. Following denial of the grievance and a subsequent appeal by the Union to the TBTA, the grievance was submitted to arbitration. After a hearing, Arbitrator Riegel issued a decision finding that BTO Tavormina was improperly denied an overtime shift on March 8, 2004, and directing the TBTA to cease and desist from requiring a four-hour break between the end of a regular shift and the start of a voluntary eight-hour overtime shift. The TBTA then brought this petition seeking to vacate the arbitration award on the grounds that the award violates public policy, is irrational, and exceeds a specific limitation on the arbitrator's power.

It is well settled that a party who participates in an arbitration may vacate an award solely on the grounds set forth in CPLR 7511(b). (Rochester City School Dist. v Rochester Teachers Assn., 41 NY2d 578 [1977].) “Where a dispute has been arbitrated pursuant to a broad arbitration agreement between the parties, the resulting award may not be vacated unless it is violative of a strong public policy, is totally irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power.” (Matter of Town of Callicoon [Civil Serv. Employees Assn.], 70 NY2d 907, 909 [1987]. See Matter of Silverman [Benmor Coats], 61 NY2d 299, 308 [1984].)

The Court of Appeals has repeatedly advised that “the scope of the public policy exception to an arbitrator's power to resolve disputes is extremely narrow.” (United Fedn. of Teachers, Local 2 v Board of Educ., 1 NY3d 72, 80 [2003]; Matter of New York City Tr. Auth. v Transport Workers Union of Am., 99 NY2d 1, 7 [2002].) Thus, a court will intervene for reasons of public policy only in “cases in which public policy considerations, embodied in statute or decisional law, prohibit, in an absolute sense, particular matters being decided or certain relief

being granted by an arbitrator. Stated another way, the courts must be able to examine an arbitration * * * award on its face without engaging in extended factfinding or legal analysis, and conclude that public policy precludes its enforcement.” (Matter of New York City Tr. Auth. v Transport Workers Union of Am., 99 NY2d at 7, quoting Matter of Sprinzen [Nomberg], 46 NY2d 623, 631 [1979][emphasis in original].)

Moreover, “[j]udicial restraint under the public policy exception is particularly appropriate in arbitrations pursuant to public employment collective bargaining agreements” in view of “[t]he critical role of collective bargaining agreements’ grievance/arbitration machinery in stabilizing labor relations.” (Matter of New York City Tr. Auth. v Transport Workers Union of Am., 99 NY2d at 7.) As the Court of Appeals has explained,

[I]n labor disputes, arbitrators are mutually chosen by labor and management because of their particular expertise and insight into the relationship, needs of the parties, conditions existing in the specific bargaining unit, and the parties’ “trust in [the arbitrator’s] personal judgment to bring to bear considerations which are not expressed in the contract . . . The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because the [judge] cannot be similarly informed.”

(Id. at 8 [internal citation omitted].) “The narrowness of the public policy exception, as applied to the arbitration process under collective bargaining agreements, is designed to ensure that courts will not intervene in this stage of the collective bargaining process in pursuit of their own policy views, or because they simply disagree with the arbitrator’s weighing of the policy considerations.” (Id.)

Here, petitioner claims that its statutory duty under Public Authorities Law § 553(9) to manage and control its facilities authorizes it to implement the requirement of a four-hour break

between shifts in order to protect the public safety by preventing BTOs from working excessive hours and becoming sleep-deprived. Petitioner further contends that the arbitrator, by determining that petitioner must stop requiring a four-hour break between two eight-hour shifts, has sanctioned a situation that would compromise the safety of the public and has improperly interfered with the TBTA's authority. Respondent contends that there is nothing in the rules and regulations which mandates a *four-hour break between shifts*, that there was a longstanding past practice of requiring a one-hour break between shifts, and that the standards for vacating the arbitrator's award have not been met.

Petitioner does not show that the arbitrator's decision violated public policy. Notably, in support of its argument that the award should be vacated on public policy grounds, petitioner relies on the First Department's decision in Matter of New York City Tr. Auth. v Transport Workers Union of Am. (279 AD2d 474), which vacated arbitrators' awards as violative of public policy where the arbitrators reduced disciplinary sanctions imposed by the New York City Transit Authority on employees who violated safety rules. Petitioner fails to disclose, however, that the Appellate Division decision was reversed by the Court of Appeals decision, quoted at length above, on precisely the grounds for which petitioner relied on the case. The standards set forth in the Court of Appeals decision are controlling here. Petitioner fails to demonstrate that anything in the Public Authorities Law authorized the TBTA to supercede the arbitrator's determination. (99 NY2d at 10.) Nor does petitioner offer any evidentiary support for its assertion that requiring a four-hour break between two eight-hour shifts will result in safer conditions.

Further, petitioner's four-hour break requirement appears inconsistent with its own written policies. Although the contract contains specific procedures for the allocation of

overtime, it contains no provision for any required breaks between shifts. The 1986 Memo (Memorandum, Ex. F to Gallo-Kotcher Aff. in Support of Petition), on which petitioner relies, also does not require a four-hour break and, contrary to petitioner's contention, it does not demonstrate that a four-hour break is necessary to ensure compliance with the directives in the memorandum. Rather, while the written memorandum discourages "more than 12 hours (8 hours regular tour and 4 hours overtime) of consecutive work" and prohibits "more than 16 hours of consecutive work * * * unless specifically authorized," on its face, it does not prohibit two consecutive eight-hour shifts.

Petitioner's claim that the arbitrator's decision violated public policy is also undercut by the arbitrator's finding that there was a past practice requiring only a one-hour break between two eight-hour shifts. Petitioner fails to show that this finding was "totally irrational" or exceeded a specifically enumerated limitation on the arbitrator's power. For an arbitration award to be "totally irrational," there must be "no proof whatever to justify the award" (Peckerman v D & D Assoc, 165 AD2d 289, 296 [1st Dept 1991]), or the award must give a "completely irrational construction to the provisions in dispute and, in effect, [make] a new contract for the parties." (Matter of Rockland County Bd. of Coop. Educ. Servs. v BOCES Staff Assn., 308 AD2d 452, 453 [2d Dept 2003], quoting Matter of Natl. Cash Register Co. [Wilson], 8 NY2d 377, 383 [1960]).

Here, in reaching his determination that there was a past practice of allowing one-hour breaks between shifts, the arbitrator considered all the evidence presented, including testimony offered by the parties' respective witnesses, which can provide a sufficient basis for determining that a past practice existed. (See Matter of Troy Police Benevolent & Protective Assn. [City of

Troy], 271 AD2d 926 [3d Dept 2000]. The arbitrator's finding therefore was not irrational. (See id.)

Moreover, an arbitration award made after all parties have participated * * * will not be overturned merely because the arbitrator committed an error of fact or of law." (Matter of MVAIC v Aetna Cas. & Sur. Co., 89 NY2d 214, 223 [1996]; Hackett v Millbank, Tweed, Hadley & McCloy, 86 NY2d 146, 155 [internal citations omitted][1995].) "[I]t is not the function of this Court to 'second-guess' the factual findings made or legal conclusions reached by the arbitrator." (Matter of New York State Correctional Officers Union [State of New York], 255 AD2d 54, 58 [3d Dept 1999], affd sub nom Matter of New York State Correctional Officers & Police Benevolent Assn. v State of New York, 94 NY2d 321; Matter of Sprinzen [Nomberg], 46 NY2d at 632.)

Finally, petitioner submits no authority that the determination of whether a past practice existed is not a proper determination for the arbitrator. This is not a case in which the arbitrator considered past practices to the exclusion of express provisions of the collective bargaining agreement regarding permissible overtime work. (Compare Matter of New York City Tr. Auth. v Patrolmen's Benevolent Assn., 129 AD2d 708 [2d Dept 1987]. See Matter of Vil. of Spring Valley v Policemen's Benevolent Assn., 271 AD2d 615 [2d Dept 2000].) The court has considered petitioner's remaining contentions and finds them to be without merit.

Accordingly, it is ORDERED that the petition is denied.

This constitutes the decision, order and judgment of the court.

Dated: New York, New York
March 12, 2007



MARCY FRIEDMAN, J.S.C.

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