

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

2007 NY Slip Op 33523(U)

October 11, 2007

Supreme Court, New York County

Docket Number: 0110880/2006

Judge: Charles J. Tejada

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: CHARLES J. TEJADA

PART 50N

Index Number : 110880/2006  
BRIDGE & TUNNEL OFFICERS  
vs  
TRIBOROUGH BRIDGE & TUNNEL  
Sequence Number : 001  
MODIFY ORDER/JUDGMENT

INDEX NO. 110880/06  
MOTION DATE 12/4/06  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

\_\_\_\_\_ on this motion to/for \_\_\_\_\_

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

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

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

PAPERS NUMBERED

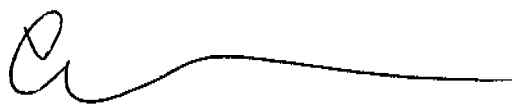
Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

\_\_\_\_\_ motion is decided in accordance  
with accompanying memorandum decision.

**FILED**  
OCT 30 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: OCT 11 2007

  
\_\_\_\_\_  
CHARLES J. TEJADA J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
In the Matter of the Application  
THE BRIDGE AND TUNNEL OFFICERS  
BENEVOLENT ASSOCIATION,

Index No. 110880/2006

Petitioner,

**DECISION & ORDER**

for an order modifying an arbitration award under  
Article 75 of the CPLR

-v-

THE TRIBOROUGH BRIDGE AND TUNNEL  
AUTHORITY,

Respondent.

**FILED**  
OCT 30 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

-----X  
**TEJADA, CHARLES, J.:**

Upon the foregoing papers, it is ordered that the Petitioners' motion, pursuant to Civil Practice Law and Rules (CPLR) §7511(c), seeking to modify arbitration Opinion and Awards dated January 6, 2006 ("January Award") and May 3, 2006 ("May Award") is denied as to the January Award and granted as to the May Award.

Specifically, petitioner requests, pursuant to CPLR Section 7511(c), "that the arbitration award should be modified stating that all affected officers are granted the same relief as had been granted the two representative officers who testified on behalf of all the officers (Skepner and Latorre) listed in the January Award; and that the May Award be vacated as inconsistent with the January Award and because said Award "modified the negotiated CBA agreement of the parties and therefore exceeded his (the arbitrator's) jurisdiction and authority."

Respondent argues that modification of the January Award is unwarranted since:

“The Arbitrator reminded the parties that, in addressing the Union’s grievance concerning the January 20, 2005 change in policy, the remedy provided for in the Individual Awards would have extended to other similarly situated officers, e.g., officers who, after having received permission to take unpaid FMLA Leave, found that their annual leave banks were retroactively charges as a result of the January 20, 2005 change in policy. Gallo Affirm., ¶35.” (Respondent’s Supplemental Memorandum of Law, Page 9).

Thus, respondent concedes that the January Award applies to all “similarly situated officers.” Further, respondent argues that the May Award should not be modified as it does not “add to, subtract from, modify or amend any of the provisions of that (Collective Bargaining Agreement [CBA]).”

It is well settled that “[t]he role of the courts in addressing the disposition of disputes which have been submitted to binding arbitration pursuant to a collective bargaining agreement is limited” (*Matter of New York State nurses Assn. [Mount Sinai Hosp.]*, 275 AD2d 538, 540, [2000]; see e.g. *Matter of New York City Tr. Auth. v. Transport Workers Union of Am.*, 99 NY2d 1, 6-7, [2002]; *Matter of New York State Correctional Officers & Police Benevolent Assn. v. State of New York*, 94 NY2d 321, 326 [1999]). A court cannot substitute its judgment for that of an arbitrator or conform the award to its sense of justice even where an arbitrator makes errors of law or fact (see *Matter of New York State Correctional Officers & Police Benevolent Assn. v. State of New York*, *supra* at 326; *Matter of Sprinzen [Nomberg]*, 46 NY2d 623, 629, [1979]).

However, a court, may, pursuant to CPLR §7511(c), modify an arbitration award based on three narrow grounds: (1) “the award contains a miscalculation or a mistake in the description of any person, thing or property”; (2) “the award addresses matters not submitted to arbitration, and the award can be corrected without affecting the merits of the decision on the issues that

were submitted”; or (3) “the award is imperfect in a manner or form, not affecting the merits of the controversy.” If an error is substantial, it must be corrected by the arbitrators upon a rehearing under CPLR §7511(d) or by a new arbitration after the award has been vacated under CPLR §7511(b).

In this case, the petitioner has not met its burden as to the January Award but has met its burden as to the May Award.

The record before this Court reveals that the parties entered into a CBA which included Article X, otherwise known as “Grievance Procedure.” Section 3 of Article X, states in part, that: “As a third and terminal step in the grievance procedure the Authority and the Association agree to the final and binding arbitration for all issues arising out of the interpretation and application of the parties’ agreement with the proviso that the arbitrator shall have no power to add to, subtract from, modify or amend any of the provisions of the Agreement...”

A review of the record before this Court reveals no evidence that the arbitrator added to, subtracted from, modified or amended any of the provisions of the CBA as to the January Award. First, consistent with the parties’ contractually agreed upon arbitration provision, the arbitrator’s actions support an interpretation of the relevant portions of the CBA regarding the employees’ annual leave and its application, if any, to the family medical leave. Moreover, there appears to be no dispute as to the January Award’s applicability to all “similarly situated officers”. Given that the arbitration was unquestionably brought on behalf of “similarly situated officers” and that the award states, in part, that “for those days restored to the grievant, their family medical leave absences should be converted to unpaid status”, the requested modification is unnecessary.

However, as to the May Award the petitioner has established that the award addressed

matters not submitted for arbitration which could be corrected without affecting the merits of the decision on the issues that were submitted for arbitration and that the award violated the CBA's "proviso that the arbitrator shall have no power to add to, subtract from, modify or amend any provisions of the (CBA) Agreement."

The record shows that after making the award as to the issue brought for arbitration, namely "that (prior to May 15, 2006) the authority has unjustly forced unit members to use annual leave outside of their contractually bided seniority base vacation period," that the arbitrator made an unsolicited award to cover the use of annual and other leave categories for family medical leave to be effective May 15, 2006.

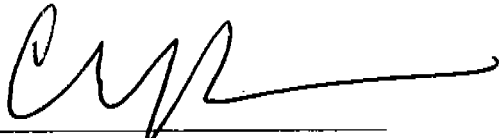
Given the grievance before the arbitrator, the May Award modified the CBA with respect to provisions and sections related to annual leave and family medical leave. The May Award dictated to the parties how annual and other leave would be applied to family medical leave. This award gave each party rights and responsibilities which directly altered CBA negotiated terms, conditions, rights and responsibilities. Thus, it not only addressed matters not submitted for arbitration but it also violated the CBA's Article X

Consequently, petitioner's motion to modify the arbitrator's Opinion and Awards is denied as to the January Award and granted as to the May Award and it is hereby ordered that the May Award be vacated without affecting the merits of the January Award.

This constitutes the decision, opinion and order of this Court.

Dated: October 11, 2007

**FILED**  
OCT 30 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

  
\_\_\_\_\_  
J.S.C.