

Drennen v Lipke

2007 NY Slip Op 33683(U)

November 13, 2007

Supreme Court, Erie County

Docket Number: 0001473/2007

Judge: John A. Michalek

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

MICHAEL DRENNEN, as President of the American
Federation of State, County, and Municipal Employees,
Local 650, AFL-CIO

Plaintiff

vs.

Index No. 2007-1473

BRIAN J. LIPKE, Chairman of the Buffalo Fiscal
Stability Authority;
THE BUFFALO FISCAL STABILITY AUTHORITY;
CITY OF BUFFALO;
BYRON BROWN, Mayor of the City of Buffalo;
BUFFALO BOARD OF EDUCATION; and
INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 409,

Defendants.

In the Matter of the Application of

ROBERT P. MEEGAN, JR., Individually and as
President of the Buffalo Police Benevolent Association
and BUFFALO POLICE BENEVOLENT ASSOCIATION

Petitioners,

vs

Index No. 2007-1474

BYRON W. BROWN, as Mayor of the City of
Buffalo; CITY OF BUFFALO; and BUFFALO
FISCAL STABILITY AUTHORITY,

Respondents.

JOSEPH E. FOLEY, Individually and as President of the Buffalo Professional Firefighters Assoc., Inc., Local 282, IAFF, AFL-CIO-CLC, and the BUFFALO PROFESSIONAL FIREFIGHTERS ASSOC., INC., LOCAL 282, IAFF, AFL- CIO-CLC

Petitioners

vs.

Index No. 2007-2628

BYRON BROWN, Mayor of the City of Buffalo, New York, the CITY OF BUFFALO, NEW YORK, the BUFFALO FISCAL STABILITY AUTHORITY

Respondents

BUFFALO TEACHERS FEDERATION, INC., NYSUT, BUFFALO EDUCATIONAL SUPPORT TEAM, NYSUT, TRANSPORTATION AIDES OF BUFFALO, NYSUT, AFSCME LOCAL 264, PROFESSIONAL, CLERICAL AND TECHNICAL EMPLOYEES ASSOCIATION,

Plaintiffs,

vs.

Index No. 2007-7646

BUFFALO BOARD OF EDUCATION FOR THE CITY SCHOOL DISTRICT OF THE CITY OF BUFFALO

Defendant.

MEMORANDUM DECISION AND ORDER

MICHALEK, JOHN A.

The key issue before the Court on these applications is the meaning of “No retroactive pay adjustments of any kind shall accrue or be deemed to accrue during the period of wage freeze, and

no such additional amounts shall be paid at the time a wage freeze is lifted”. **New York Public Authorities Law Section 3858 (2) (c) (iii)**

While Petitioners acknowledge that employees would not be entitled to receive any back wages for the pay adjustments which would take effect, Petitioners do seek adherence to the terms of the parties’ previously negotiated Collective Bargaining Agreements now that the wage freeze has been lifted, from the date of lifting, forward. Petitioners assert that benefit rights have not been cancelled.

According to Respondents, granting all wage increases required under the Collective Bargaining Agreements would be an impermissible “accrual of pay adjustment” under the above cited clause and would cause the City to suffer financially.

The constitutionality of the Buffalo Fiscal Stability Control Authority and its actions, i.e., their effect on the parties’ previously negotiated Collective Bargaining Agreements, has been challenged in Federal District Court and sustained by the Second Circuit Court of Appeals. Relevant to the issues before this Court at this time, is the fact that the Federal Courts found that prior Union concessions made as part of the Collective Bargaining Agreements continue to be binding on the parties. Both Petitioners and Respondents point to the Federal Courts’ actions as well as to representations made by the various parties relative to those actions in support of their present positions before this Court.

Petitioners’ Case

According to petitioners, the statute is clear - when the wage freeze is lifted, all wage increases of any nature are to be restored. To do otherwise, would be tantamount to a partial lifting of the wage freeze, something which is not authorized by the Buffalo Fiscal Stability Authority Act

nor permitted by that Act. Furthermore, to proceed in the manner in which Respondents propose would result in a counter-intuitive and unjust outcome in which the more seniority a union member has, the later he or she would receive the wage increase.

With respect to Respondents' argument based on the financial condition of the City, Petitioners assert the following:

- 1) The Court's only function is to interpret the statute;
- 2) Statutory interpretation does not depend on the financial status of the municipality
- 3) Analysis of the City's fiscal condition is not the role of the Court

Respondents' Case

According to Respondents, Petitioners err when they distinguish back pay from past wage increases. Respondents argue that both back pay and past wage increases were suspended, and therefore, Petitioners may receive neither the pay which was withheld during the freeze nor an immediate implementation of all wage increases, step and otherwise, upon lifting of the freeze. In short, Respondents assert that wage increases suspended as a result of the wage freeze do not accrue.

In support of their position, Respondents argue that the freeze is not being lifted in part, but rather, a mere suspension of the wage increases is being proposed. Respondents caution that a granting of all of the wage increases under the previously negotiated Collective Bargaining Agreements would constitute an impermissible "accrual of a pay adjustment" under the statute. Additionally, Respondents point to the allegedly dire fiscal consequences the City would suffer should immediate implementation of the previously negotiated wage increases be directed as advocated by Petitioners.

Court's Decision

New York Public Authorities Law Section 3858 (2) (c) (iii) is clear and unambiguous. It applies only to the wages which were lost during the wage freeze and only prohibits recoupment of monies lost during the freeze. Accordingly, Petitioners are entitled to their previously negotiated wage increase benefits going forward immediately. To interpret Section 3858 (2) (c) (iii) in the manner advanced by Respondents would result in a cancellation of the wage increases which is not authorized nor permitted by the statute. To the extent relevant to the issues presented in these matters before the Court, the Buffalo Fiscal Stability Authority Act and the Taylor Law do not conflict. Furthermore, despite this Court's prior vacatur of the arbitration award referenced in these proceedings, Petitioners are still entitled to judgment based on the wage increases in steps and longevity as provided for in the previously negotiated Collective Bargaining Agreements.

Additionally, it is the finding of this Court that the lifting of the wage freeze was effective July 1, 2007 pursuant to the decision of the Buffalo Fiscal Stability Authority on June 5, 2007.

Finally, this Court finds no merit to the assertion that Petitioners' declaratory judgment application should be converted to an Article 78 Proceeding nor to the assertion that the Plaintiffs, Buffalo Teachers Federation, et. al., failed to join the Buffalo Fiscal Stability Authority as a necessary party.

Accordingly, the relief requested by Petitioners is Granted in all respects. The Motions to Dismiss brought by Respondents are Denied in their entirety. The Motion for Summary Judgment brought on behalf of the Plaintiffs, Buffalo Teachers Federation, NYSUT, et al, is Granted. The Defendants' cross-motions for summary judgment in that matter are denied. All requests for costs, disbursements and attorneys' fees are denied.

This Decision shall constitute the Order of the Court, and shall be filed as such and served upon counsel for Respondents and Defendants.

HON. JOHN A. MICHALEK
Supreme Court Justice

DATED: November 13, 2007
Buffalo, New York

