Sheriff Officers Assn., Inc. v County of Nassau
2007 NY Slip Op 33785(U)
November 19, 2007
Supreme Court, Nassau County
Docket Number: 2520-07/
Judge: Daniel Martin
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DANIEL MARTIN
Acting Supreme Court Justice

TRIAL/IAS, PART 31
NASSAU COUNTY

SHERIFF OFFICERS ASSOCIATION, INC., JOHN DUER, BRIAN SULLIVAN, PHILLIP ZORN, RICHARD CLARKE, and THOMAS DESTEFANO.

Plaintiffs.

- against -

Sequence No.: 001 & 002
Index No.: 012520/07

THE COUNTY OF NASSAU, THE COUNTY OF NASSAU CIVIL SERVICE COMMISSION, THE COUNTY OF NASSAU SHERIFF'S DEPARTMENT, and EDWARD REILLY, as Sheriff of the County of Nassau Sheriff's Department.

Defendants.

The following named papers have been read on this motion:

	Papers Numbered
Notice of Motion and Affidavits Annexed	
Orders to Show Cause and Affidavits Annexed	X
Answering Affidavits	X
Replying Affidavits	

Plaintiffs move for a preliminary injunction enjoining the defendants herein from assigning civilian employees to supervise inmates in the kitchens located at the Nassau County Correction Center (hereinafter "N.C.C.C.") pending determination of the instant action. Non-party Civil Service Employees Association, Inc. AFSCME, Local 1000, AFL-CIO, by its Nassau Local 830 (hereinafter "CSEA") moves for an order granting non-party movant leave to intervene herein as a party defendant.

Plaintiff Sheriff Officers Association, Inc.(hereinafter "ShOA") is an incorporated Labor Union which represents uniformed corrections officers employed by defendant County of Nassau Sheriff's Department. The individual plaintiffs named herein are correction officers represented by ShOA. Plaintiffs allege that on July 3, 2007 defendants removed all correction officers from security posts at N.C.C.C.'s kitchens and have required civilian employees to perform the duties

of the officers therein. As a result of the removal of correction officers from the kitchens, plaintiffs assert that defendants have 1) breached a contract in the form of a stipulation which provided that defendant County of Nassau would not permanently assign employees of N.C.C.C. who do not have designated civil service titles of "correction officer" to perform duties by those designated as correction officers; 2) a violation of Labor Law §27-a which requires defendants to provide plaintiffs with a workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees and which will provide reasonable and adequate protection to the lives, safety or health of its employees"; 3) a breach of the Collective Bargaining Agreement's requirement that the County provide SHOA employees with a safe work place; and 4) a violation of Civil Service Law §61(2) which prohibits employees of one title from performing the duties of employees with another title.

Plaintiffs commenced the instant action and assert the following causes of action in their complaint: 1) breach of contract/stipulation; 2) violation of Labor Law §27-a; 3) violation of Civil Service Law §61(2); 4) violations of the County's own class specifications; and 5) breach of the collective bargaining agreement. Plaintiffs now move for a preliminary injunction which enjoins defendants from assigning civilian employees to supervise inmates in the kitchens at N.C.C.C. during the pendency of the instant action. Non-party CSEA, the bargaining unit for the cooks and supervisors who plaintiffs allege have been improperly supervising inmates in the kitchens at N.C.C.C. moves for an order granting it leave to intervene herein as a party defendant and permitting CSEA to answer or otherwise move with respect to the complaint.

As no party has opposed CSEA's motion, the court grants same. CSEA is granted leave to intervene as a party defendant herein and shall answer or move with respect to the complaint within twenty days of service of a copy of this order with notice of entry.

The court shall now decide plaintiffs' motion for a preliminary injunction. In order to succeed on a motion for a preliminary injunction, plaintiffs must prove 1) a likelihood of success on the merits; 2) irreparable injury in the absence of the relief sought; and 3) that a balancing of the equities favors granting the relief requested. Aetna Insurance Company v. Capasso, 75 N.Y.2d 860 (1990); J.A. Preston Corporation v. Fabrication Enterprises, Inc., 68 N.Y.2d 397 (1986); Grant v. Sgroi, 52 N.Y.2d 499 (1983).

In support of their position that there is a likelihood they will succeed on the merits plaintiffs first assert that defendants have breached a contract between ShOA and the defendants herein in the form of a stipulation in the action Murphy, et. al. v. County of Nassau, et. al., (Nassau County Supreme Court Index No. 3242/92). Said stipulation provides at paragraph 2:

> "Joseph Jablonsky, as Sheriff, agrees not to permanently assign employees of the N.C.C.C. who do not have the designated civil service title of correction officer to perform duties ordinarily performed by those employees designated as correction officers. However, the defendants, including the Sheriff, reserve the right to assign such employees of the N.C.C.C. who do not have the designated title of correction officer to

perform the duties of a correction officer on a temporary, emergency basis, in accordance with the relevant Nassau County Civil Service class specification sheets for each employee and the New York State Civil Service Law."

Plaintiffs further assert that defendants have violated Labor Law §27-a by assigning the civilian employees to supervision of inmates in the kitchen areas at N.C.C.C. Labor Law §27-a requires every employer to "furnish to each of its employees, employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to its employees and which will provide reasonable and adequate protection to the lives, safety or health of its employees..." In support of this position plaintiffs first point out that in the Murphy case referenced above, plaintiffs therein, corrections officers employed at the N.C.C.C. maintained an action seeking to preclude the County from assigning civilian employees to various civilian posts in N.C.C.C. In an order dated March 12, 1992 which denied defendants' motion to dismiss, the Hon. Marvin E. Segal recognized that plaintiffs therein had a viable claim for injunctive relief based upon defendants' unlawful contravention of plaintiffs' statutory and contractual right to a safe work place.

Plaintiffs also argue that proof that defendants' assignment of civilian employees to the supervision of inmates in kitchen areas violates the Labor Law is demonstrated by an incident which occurred on April 2, 2006 in which an inmate at the Erie County Correctional Facility escaped from that facility's kitchen while supervised by civilian kitchen staff. After the escape the inmate killed a police officer and injured two others. The New York State Commission of Correction, in a report issued in August, 2006 concluded, *inter alia*, that the Erie facility failed to maintain recommended direct supervision over inmates in the kitchen facility which requires uniformed trained officers.

Plaintiffs also assert that defendants have breached the Collective Bargaining Agreement, section 14 which provides " [t]he County agrees to endeavor to provide safety standards for the protection of employees' well-being, commensurate within this context, to provide and maintain safe and healthful working conditions and to initiate and maintain operating practices that will safeguard employees." The Erie case referenced above should indicate, urge plaintiffs, how removal of corrections officers could create an unsafe condition at N.C.C.C. and therefore a breach of section 14 of the CBA.

Further, plaintiffs assert that defendants have violated Civil Service Law §61(2) which provides:

"No person shall be appointed, promoted, or employed under any title not appropriate to the duties to be performed and, except upon assignment by proper authority during the continuance of a temporary emergency situation, no person shall be assigned to perform the duties of any position unless he has been duly appointed, promoted transferred or reinstated to such position in accordance with the provisions of this chapter and the rules prescribed thereunder. No credit shall be granted in a promotion examination for out-of-

title work."

Plaintiffs argue that in determining whether defendants have violated this section of the Civil Service Law, the court must review whether the duties performed by the civilian employees are substantially similar to those in plaintiffs' job description. Said job description provides that the officer is required to, *inter alia*, "conduct counts, check names, and escorts and supervises inmates to an from cell blocks, recreational activities, infirmary, showers, visitors' areas, work assignments, court, etc., to prevent disorder, fighting or breaches of security." Correction Law §120(1) requires correction officers to maintain custody and control over inmates at all times except under certain circumstances when a police officer or peace officer as defined by Criminal Procedure Law §2.10 may so do.

Lastly, plaintiffs claim that the civilian employees are acting outside of the scope of their own job descriptions by providing security in the kitchen areas. These employees, under their job descriptions are only authorized to perform the duties of corrections officers on a temporary, emergency basis. It is undisputed that the civilian employees were permanently assigned to maintenance of supervision, care and custody over inmates at the kitchen facilities.

In opposition to that branch of the motion in which plaintiffs are required to set forth a likelihood of success on the merits defendants first assert that the stipulation of settlement upon which plaintiffs rely for their position that defendants breached a contract with plaintiff does not pertain to civilian correction center cooks. Defendants therefore claim that as the document is unambiguous as to which civilian employees are covered thereby, plaintiffs may not assert a breach of same based upon the use of civilian employees in the kitchens.

Defendants also contend that plaintiffs fail to demonstrate a likelihood of success on the merits based upon a violation of Labor Law §27-a's statutory requirement that employees be provided with a safe work place as well as the CBA's requirement that corrections officers be provided with "safe and healthful" working conditions . First, assert defendants, any claim by plaintiffs that to not require uniformed officers to supervise inmates in the kitchen areas results in an unsafe workplace is speculative. Defendants point to certain differences between the situation at hand and that in the Erie County situation. Essentially, defendants claim that the lack of corrections officers in that facility was found to be one of twenty-six factors that resulted in the prisoner's escape and the ultimate tragedy that occurred.

With regard to plaintiff's claims regarding the civilian employees' performing work out of title or performing the work of corrections officers, defendants assert, without citing any authority, that plaintiffs lack the standing to raise these issues. Regardless, defendants point out that the subject civilian employees' job descriptions all include a "security function" and between 1985 and 2000 performed these duties without a correction officer assigned to the kitchens.

Further, contend defendants, as the sheriff has the discretion of how to run the facility. Plaintiffs lack the standing to maintain this action. Edward Reilly, the Nassau County Sheriff

avers that on July 3, 2007 the correction officer assigned to the kitchen areas was removed so as to enable the sheriff to make additional officers available to work in the housing and transportation units at the facility. The result is that safety and security are ensured at N.C.C.C. in a more cost effective manner. Mr. Reilly avers that he complied with 9 NYCRR 7003.4(b)(2)(I) which authorizes the chief administrative officer of a correctional facility to permit "'facility staff members primarily responsible for duties other than the care and custody of prisoners', i.e., civilian staff-to supervise inmates 'participating in activities outside facility housing areas.'" Furthermore, avers Mr. Reilly, the State Commission of Correction which is authorized to oversee all correctional facilities in New York by Correction Law §41 determined in a staffing analysis of N.C.C.C. that the facility's cook staff in the kitchens was sufficient and that no correction officers were required in either kitchen.

Lastly, asserts defendants, courts are not permitted to interfere in the management, maintenance and control over correctional facilities, such being reserved by the Corrections Law to the Commission of Corrections. In support of this position defendants cite New York State Inspection, Security & Law Enforcement Employees v. Cuomo, 64 N.Y.2d 233 (1984) in which the Court of Appeals held that courts did not have the authority to review the Commissioner of Corrections' decision to close a correctional facility in a matter in which the corrections officers assigned to other facilities alleged that same would create dangerous conditions at their facilities in violation of Labor Law §27-a. The court therein reasoned that the decision to close such a facility was a policy decision left to a political division of government and for the court to review such a decision in the absence of a demonstrable emergency or extraordinary circumstances would require the court to engage in an *ultra vires* act.

Plaintiffs have failed to demonstrate a likelihood of success on the merits. First, plaintiffs have failed to demonstrate a likelihood of success on the merits on their breach of contract cause of action based upon the stipulation in the Murphy case set forth above. As set forth in that stipulation the County agreed not to assign employees to perform duties "ordinarily" performed by correction officers.

The interpretation of a contract is a matter of law and as such is within the province of the court. W.A. Olson Enterprises, Inc. v. Agway, Inc., 55 N.Y.2d 659 (1981); Automotive Management Group, Ltd. v. SRB Management Co., Inc., 239 A.D.2d 450, 658 N.Y.S.2d 54 (2nd Dep't 1997).

The contract is "...to be interpreted so as to give effect to the intention of the parties as expressed in the unequivocal language employed." Automotive Management Group, Ltd., supra at 55.; Morlee Sales Corp. v. Manufacturers Trust Co., 9 N.Y.2d 16, 210 N.Y.S.2d 516 (1960). "[C]lear, complete writings should generally be enforced according to their terms." Automotive Management Group, Ltd., supra at 55; Wallace v. 600 Partners Co., 86 N.Y.2d 543, 634 N.Y.S.2d 669 (1995).

When the contract is ambiguous and "...determination of the parties' intent depends upon

the credibility of extrinsic evidence or a choice among inferences to be drawn from extrinsic evidence, then the issue is one of fact." Amusement Business Underwriters v. American International Group, Inc., 66 N.Y.2d 878, 498 N.Y.S.2d 760, 489 N.E.2d 729 (1985). See, also, Icon Motors, Inc. v. Empire State Datsun, Inc., 178 A.D.2d 463, 577 N.Y.S.2d 309 (2nd Dep't 1991). Whether the contract is ambiguous is to be determined by the court. Amusement Business Underwriters, supra.

The court finds the term "ordinarily" to be so ambiguous as to require parole evidence in order to determine the parties' intent at the time of execution. Based upon the record herein, the court is not willing to find that the parties concluded that among the duties ordinarily performed by correction officers at N.C.C.C. was the supervision of inmates in the kitchen. In his affidavit in opposition David Rodenburg, a correction kitchen supervisor employed at N.C.C.C. since 1985, avers that from 1985 until 2000 there was no correction officer assigned to supervise inmates working in the center's kitchens. Thus, it appears to the court that such work was not ordinarily performed by corrections officers and therefore was not contemplated by the parties at the time they drafted the contract which in this case is the stipulation.

Neither have plaintiffs demonstrated a likelihood of success on the merits on their claim based upon defendants' failure to provide a safe work place in violation of Labor Law §27-a and the CBA. Labor Law §27-a(3) requires employers to provide its employees with "employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees and which will provide reasonable and adequate protection to the lives, safety or health of its employees." The CBA provides at paragraph 14 that the County agrees to provide ShOA members with "safety standards for the protection of employees' well being" and "maintain safe and healthful working conditions and to initiate and maintain operating practices that will safeguard employees." As set forth above, plaintiffs primarily rely upon the report issued in the wake of the Erie County escape which concluded, inter alia, that the escape was partly due to the lack of uniformed officers in the kitchen area. It should be noted, as pointed out by defendants that there are twenty-five other findings made by the Commission which it believed contributed to the happening of the incident.

Plaintiffs' reliance upon the Erie incident is unavailing. As set forth above, Labor Law §27-a requires defendants to keep plaintiffs' workplace free from recognized hazards that are likely to cause death or harm. In this instance plaintiffs point to a single, isolated incident at another facility without demonstrating to the court at all how the conditions extent at the particular facility at issue herein, N.C.C.C., presented a danger likely to cause harm or death. Neither is this court constrained to follow the recommendations made by the Commission in its report based upon the Erie incident. Such is not binding authority upon this court and further, is based upon an analysis of a different facility.

Neither have plaintiffs met their burden of demonstrating that defendants have violated Civil Service Law §61(2) which prohibits defendants from appointing, promoting or employing individuals to perform duties for which they do not have the proper civil service title, nor for

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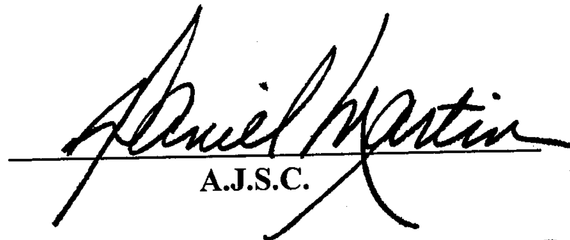
their claim that the civilian employees are acting outside of their job descriptions. The section of the correction officers' job description on which plaintiffs rely for this position is number 6 which provides that the officers' duties include: "counts, checks names and escorts and supervises inmates to and from cell blocks, recreational activities, infirmary, showers, visitors' area, work assignments, court, etc. to prevent disorder, fighting or breaches of security." Such specifically deals with those times in which the officers escort prisoners to and from certain locations. Nothing therein indicates that the corrections officers must continuously and directly supervise the prisoners. Further, at least three of the job descriptions for the civilian employees involved herein, correctional center kitchen supervisor, correctional center assistant cook and correctional center cook I all require security duties at all times.

Lastly, the chief administrative officer is authorized pursuant to 9 NYCRR §7003.4(b)(2)(i) to assign facility and staff members primarily responsible for duties other than the care and custody of prisoners to provide supervision "other than active supervision" to prisoners outside of facility housing areas.

Accordingly, based upon the foregoing, it is hereby determined that plaintiffs have failed to meet their burden of demonstrating a likelihood of success on the merits.

The motion for a preliminary injunction is therefore denied.

So Ordered.



A.J.S.C.

Dated: November 19, 2007

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