

Matter of County of Greene v Civil Serv. Empl. Assn., Local 1000, AFSCME, AFL-CIO
2009 NY Slip Op 31468(U)
July 7, 2009
Supreme Court, Columbia County
Docket Number: 09-0669
Judge: Joseph C. Teresi
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STATE OF NEW YORK

SUPREME COURT

COUNTY OF GREENE

Application of the
COUNTY OF GREENE and GREG SEELEY,
SHERIFF, GREENE COUNTY,

Petitioners,

For an Order Pursuant to Article 75 of the
CPLR, Staying Arbitration of a Certain
Controversy,

DECISION and ORDER
INDEX NO. 09-0669
RJI NO. 19-09-4238

-against-

CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., LOCAL 1000, AFSCME, AFL-CIO, GREENE
COUNTY UNIT 7000-01, GREENE COUNTY
LOCAL #820,

Respondents.

Supreme Court Greene County All Purpose Term, June 25, 2009
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

Petitioners commenced this CPLR Article 75 proceeding seeking to stay arbitration.

Respondents answered, oppose the petition, and cross move to compel arbitration . Because

Respondents set forth an arbitrable controversy under CPLR §7503(a), their motion is granted and the petition dismissed.

It is undisputed that petitioners and respondents are parties to a collective bargaining agreement (hereinafter “CBA”). Nor is it contested that Scott Moore, a CSEA member, tested positive for marijuana use while working as a corrections officer for petitioners. Mr. Moore’s employment was thereafter terminated, prompting him to file a grievance and demand for arbitration. Petitioners then commenced this proceeding to stay arbitration.

Whether a particular grievance is arbitrable must be analyzed under the threshold two part Liverpool test. (In re City of Johnstown [Johnstown Police Benevolent Ass'n], 99 NY2d 273 [2002]; Matter of Acting Supt. of Schools of Liverpool Cent. School Dist. (United Liverpool Faculty Assn.), 42 NY2d 509 [1977]; Matter of Board of Educ. of Watertown City School Dist., (93 NY2d 132, 137 [1999]). Neither party argues that the first part of the Liverpool test, prohibition of arbitration because of “statutory, constitutional or public policy” concerns, applies to the instant dispute. (Johnstown, supra at 278). Rather, this action focuses on the second part of the Liverpool test, namely “whether the CBA contemplated arbitration as a means of resolving the instant dispute.” (Matter of New York State Off. of Alcoholism & Substance Abuse Servs. (Ortiz), 62 AD3d 1118 [3d Dept. 2009]).

“In determining whether the parties agreed to arbitrate this particular dispute and bearing in mind the broad public policy in favor of arbitrating public sector employment disputes... we must only ascertain whether there is a reasonable relationship between the subject matter of the dispute and the general subject matter of the CBA”. (Id. supra at 523).

CBA Article 30 sets forth the “substance abuse testing procedures for corrections

officers.” CBA Article 30 Section 1.2 states that “[a]ny employee employed in the Sheriff’s Office who subsequently tests positive, and fails to comply with the following procedures, shall be subject to termination. The Sheriff’s decision shall be final and not reviewable.” (hereinafter “Section 1.2”) While CBA Article 30 specifies the drug testing procedures required, it does not provide a disciplinary protocol upon an employee’s positive drug test result.

In contrast to Section 1.2's restrictive language, CBA Article 15 provides respondent’s members a broad right to appeal and arbitrate “disciplinary action”. CBA Article 15 states that “[n]o employee... shall be disciplined except for just cause [and]... shall be served with a written notice of the action and the reason for it.” If respondents disagree with the disciplinary action they “may appeal”, and if “not satisfied” with the appeal they “may elect to submit the matter to arbitration”. (CBA Article 15)

The general subject matter of this CBA, specifically Articles 30 and 15, provides policies and procedures for drug testing employees and a separate process for employee discipline.

The subject matter of this dispute, as framed by the Respondent’s Demand for Arbitration, “is to appeal the disciplinary action when the county terminated the employee...” While it is clear that Section 1.2's “not reviewable” language precludes respondents from challenging the Sheriff’s decision to terminate, the respondents’ Demand for Arbitration seeks to challenge the “disciplinary action” as a whole. It is not limited to the Sheriff’s decision alone. The subject matter of this dispute is the generalized “disciplinary action” taken against Mr. Moore.

In comparing the subject matter of the dispute with the general subject matter of the CBA, a reasonable relationship exists between the two. CBA Article 30 does not specifically

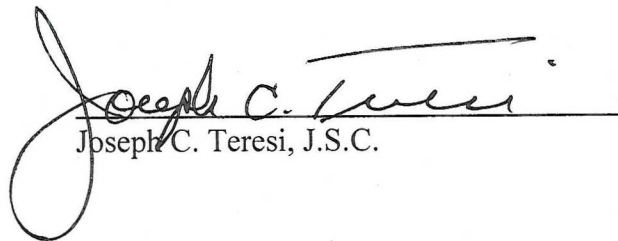
preclude review of the “disciplinary action” arising from a positive drug test. Nor does it exclude the application of CBA Article 15's provisions. Moreover, Section 1.2's specific limitation is not determinative in this threshold analysis because it does not control the “general” subject matter of the CBA. Rather, it is a specific provision of the CBA for which “the arbitrator will... make a more exacting interpretation of [its] precise scope”. (Matter of City of Ithaca (Ithaca Paid Fire Fighters Assn., IAFF, Local 737), 29 AD3d 1129, 1132 [3d. Dept 2006] quoting Watertown, supra). On this record, respondents have demonstrated a “reasonable relation” between the subject matter of the dispute and the subject matter of the CBA.

Accordingly, Respondents’ motion is granted and the petition is dismissed.

This Decision and Order is being returned to the attorneys for the Respondents. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Greene County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
July 7, 2009


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Petition, dated April 29, 2009, Verified Petition, dated April 29, 2009, with attached exhibits A-F; Affirmation of Dionne Wheatley, undated; Affidavit of Michael Spitz, dated April 23, 2009.
2. Verified Answer, dated June 17, 2009; Notice of Cross Motion, dated June 17, 2009, Affirmation of Kara Hilburger, dated June 17, 2009, Affidavit of Scott Moore, dated June 16, 2009, with attached Exhibits 1-2, and Affidavit of Timothy Vallee, dated June 16, 2009;
3. Reply of Dionne Wheatley, dated June 23, 2009;
4. Reply of Kara Hilburger, dated June 24, 2009.