Civil Serv. Empls. Assn., Inc. v Nassau Health Care Corp., A.F.S.C.M.E., Local 1000, A.F.L.-C.I.O.
2009 NY Slip Op 32932(U)
December 2, 2009
Supreme Court, Nassau County
Docket Number: 013652-07
Judge: Timothy S. Driscoll
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SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER
Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

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CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., A.F.S.C.M.E., LOCAL 1000, A.F.L.-C.I.O., by its LOCAL 830, (Part-Time Benefits)

Plaintiff(s),

-against-

THE NASSAU HEALTH CARE CORPORATION,

Defendant(s).

---x

TRIAL/IAS PART: 25
NASSAU COUNTY

Index No: 013652-07
Motion Seq. Nos: 1 and 2
Submission Date: 10/19/09

Papers Read on these Motions: [1]

Notice of Motion, Affirmations of B. Clark and P. Bee, Affidavits of R. Robinson and J. Limson and Exhibits........................x
Defendant's Memorandum of Law in Support and Exhibits..............x
Notice of Motion, Affirmation in Opposition/Support and Exhibits...x
Plaintiff's Memorandum of Law in Opposition/Support.....................x
Defendant's Reply Memorandum of Law in Support/Opposition.......x
Plaintiff's Memorandum of Law in Further Support..........................x

This matter is before the court on 1) the motion by Defendant Nassau Health Care Corporation ("NHCC") for summary judgment, filed on September 23, 2009 and 2) the motion by Plaintiff Civil Service Employees Association, Inc., A.F.S.C.M.E., Local 1000, A.F.L.-C.I.O., by its LOCAL 830 ("CSEA") for summary judgment, filed on October 2, 2009, both of which were submitted on October 19, 2009. For the reasons set forth below, the Court 1) grants

[1] This decision contains the same caption that appears in the Verified Complaint. Although that caption appears to list more than one plaintiff, the motion papers refer to "Plaintiff" in the singular, and the Court will, therefore, refer to "Plaintiff" in the singular in this decision.

[* 2]

Defendant NHCC's motion for summary judgment dismissing the verified complaint ("Complaint"); and 2) denies Plaintiff CSEA's motion for summary judgment and other relief.

BACKGROUND

A. Relief Sought

Defendant NHCC moves for an Order, pursuant to CPLR § 3212, granting it summary judgment and dismissing the Verified Complaint. Plaintiff CSEA opposes NHCC's motion.

Plaintiff CSEA moves for an Order, pursuant to CPLR § 3212, directing the entry of summary judgment in favor of Plaintiff and 1) declaring that NHCC is in violation of the parties' collective bargaining agreement ("CBA"); 2) directing NHCC to cease and desist from violation(s) of the CBA, 3) directing NHCC to compensate the adversely affected employees for all lost vacation leave resulting from NHCC's alleged violation of the CBA; and 4) awarding Plaintiff reasonable counsel fees, and other costs and expenses. NHCC opposes CSEA's motion.

B. The Parties' History

1. Relevant Provisions of the CBA

The relevant provisions of the CBA (Ex. C to D's Motion) include §§ 2-15, 42-2(a), and 44-2.1, 5.1 and 5.2 which provide as follows:

§ 2-15

"Years of actual completed service" means (1) for employees employed by NHCC on or before September 29, 2000, all public service from the original date of employment with NHCC or the County, state and/or municipal subdivision (any school district, Village, City, Town or County in New York State) to the date of termination of such public services, or (2) for employees who commenced employment with NHCC on or after September 29, 2000, their first date of employment with NHCC, provided, however, that service interrupted for a period of one year or less shall not be deemed to be a termination; however, such interruption shall not be credited as actual service to NHCC, unless otherwise required by law. Employees whose service shall be less than full-time shall have their service time pro-rated except for the purposes of longevity payments.

§ 42-2(a)

VACATION LEAVE FOR EMPLOYEES HIRED ON OR AFTER APRIL 1, 1985 SHALL BE PROVIDED AS FOLLOWS:

Upon completion of one half (½) of one year of actual completed service, an employee shall be credited with five (5) vacation days. At the completion of the employee's first anniversary, the employee shall be credited with an additional five (5) vacation days. Thereafter, the employee shall earn vacation time at the rate of one-half (½) day per bi-weekly pay period of service but not to exceed eleven (11) days in the second year and thereafter thirteen (13) days each year and additional bonus days to be earned as follows:

Years of Actual Completed Service	Additional /Bonus Vacation Days
5	2
6	3
7	4
8	5
9	6
10	7
11	8
12 or more	9

§ 44 is titled "EXCLUSIVE BENEFITS FOR CERTAIN EMPLOYEES WORKING LESS THAN FULL TIME." Part "B" of § 44 refers to "Full-Time Employees Hired on or After April 1, 1985 Working a Reduced Schedule" and provides as follows in §§ 44-2.1(a) and (b):

§ 44-2.1

All employees classified as full-time, but who work a reduced schedule and all Correctional Center Physicians, P.T., and all Correctional Center Dentists, P.T., shall receive all contract benefits to which full-time employees are entitled, on a pro-rated basis, either:

(a) Pursuant to a ratio of hours worked compared with the regular full-time schedule for all benefits not provided by Sections 27 and 42 of this Agreement; or

(b) The benefits provided by Section 42 of this Agreement except that such employees shall only receive 50% of the following entitlements:

42-2 Vacation Leave
42-5 Sick Leave
42-11 Personal Leave

Part E of § 44 of the CBA is titled "Employees Hired for a Part-Time Position On Or After April 1, 1985," and provides as follows at §§ 44-5.1 and 44-5.2:

> § 44-5.1
>
> Part-time employees shall not receive any time and leave benefits until such time as they have completed one thousand (1,000) hours of employment with NHCC. They shall, however, receive the benefits of Section 44-4.2, except they shall not receive supplemental leave at half-pay.
>
> § 44-5.2
>
> After completing one thousand (1,000) hours of employment with NHCC, employees shall receive the vacation leave benefits of Section 42-2, and the pro-rated sick leave benefits of Section 42-5.

2. Decision of the Arbitrator

This matter was previously submitted to arbitration, and the Arbitrator issued his decision on March 16, 2007 ("Arbitration Decision") (Ex. P to D's Motion) in which he found in favor of CSEA. The Arbitrator outlined the following "Undisputed Facts" in Paragraph IV of the Arbitration Decision, in which he referred to CSEA as "Union" and to NHCC as "Employer:"

> Until 1999, Nassau County owned and operated the Employer's Medical Center and related facilities when the Employer was created as a New York State public corporation. The County then transferred the Medical Center and related facilities to the Employer. All employees became employees of the Employer and the Employer assumed the CBA, but the employees remained on the County's payroll until 2002. In 2003, the Employer implemented its own payroll, but erred when programming the payroll. The Employer's payroll did not account for accrued vacation leave to part-time employees who have worked 1000 hours pursuant to CBA § 44-5.2 or to part-time employees who have completed an additional six months of actual completed service pursuant to CBA § 42-2. The Employer also credited part-time employees with vacation leave at the same rate full-time employees were credited (Employer's Brief, pp. 4-5). When the programming errors were noticed in 2005, the Employer reviewed past accrued vacation leave payments. After accounting for the 1000 hours and additional six month service requirements, where applicable, the Employer corrected the errors by crediting part-time employees at fifty per cent of the full time accrual and going forward, part-time employees were credited on a pro-rata basis. According to the Employer, some part-time employees incurred a zero balance, but the Employer did not seek repayment of expended vacation days (*Id.*, pp. 4-5).

In his Decision, the Arbitrator addressed the issue of whether NHCC violated the CBA when it failed to credit its part-time employees properly with their accrued vacation leave time pursuant to §§ 42-2 and 44-5.2 of the CBA and, if so, what the appropriate remedy was (Arb. Dec. at p. 2). At the Arbitration, CSEA took the position that accrued vacation leave under CBA § 42-2 should not be pro-rated, while NHCC submitted that part-time employees were only entitled to a "pro ration of accrued vacation leave benefits" (Arb. Dec. at pp. 3-4).

In issuing his Decision in favor of CSEA, the Arbitrator held:

> As a threshold matter, both parties are correct: the unambiguous and clear language of §§ 42-2 and § 44-5.2 should be enforced; but neither section states that vacation leave *shall* be pro-rated. Had the parties intended that vacation leave be pro-rated, that term could have been included and there is no record evidence to the contrary. Section 2-15 of the CBA states that "Employees whose service shall be less than full-time shall have their *service time* pro-rated...(emphasis added) (CBA, § 2-15, p. 7). Contrary to the Employer's argument, it appears from the plain and express language of § 2-15 of the CBA and past practice that the parties intended to prorate service time not accrued vacation leave (Employer's Brief, Exh. B, § 5.2.3). Therefore, for the reasons stated above, the Union's grievance is sustained. The Employer is directed to compensate the affected part-time employees consistent with [this Decision].

(emphasis in original)

By letter dated April 24, 2007, NHCC advised CSEA that it rejected the Arbitrator's Recommended Award. On August 6, 2007, CSEA filed the Complaint in which it seeks judgment against NHCC: 1) declaring that NHCC is in violation of the CBA; 2) directing NHCC to cease and desist from violations of the CBA; 3) directing NHCC to compensate adversely affected employees for all lost vacation leave, with interest, incurred by reason of NHCC's alleged violation of the CBA; and 4) awarding Plaintiff reasonable counsel fees and other costs and expenses. Defendant filed a Verified Answer dated August 20, 2007 in which it denied many of the allegations in the Complaint, and asserted numerous affirmative defenses including the defense that Plaintiff fails to state a claim upon which relief can be granted.

C. The Parties' Positions

NHCC submits that 1) the language of § 44-5.2 of the CBA must be read in conjunction with other relevant provisions of the CBA; 2) the parties did not intend § 44-5.2 of the CBA to provide part-time employees with the same vacation as full-time employees; 3) for over twenty

years, § 44-5.2 has been applied to provide part-time employees with pro rata vacation; and 4) CSEA's position is illogical as it would require part-time employees to receive the same vacation as full time employees, and would provide part-time employees with more vacation than "full-time reduced" employees, both of whom work more than part-time employees.

NHCC provides an Affirmation of Peter A. Bee ("Bee") dated September 3, 2009 (Ex. H to D's Motion) in support of its claim that the parties, in negotiating the CBA, did not intend to provide part-time employees with the same vacation as full-time employees. Bee affirms, *inter alia*, that 1) he is an attorney who was present and personally involved in representing Nassau County in all labor negotiations with CSEA from approximately 1977 through 2002; 2) CSEA's current claim, that the language of § 44-5.2 means that part-time employees hired after April 1, 1985, after working one thousand (1,000) hours are entitled to receive the same vacation credit as full-time employees, is inconsistent with the negotiated meaning of the original language; and 3) in the negotiation of §§ 44-5.1 and 44-5.2 for the collective bargaining agreement for the period January 1, 1985 to December 31, 1987, there was no discussion regarding, or expressed intention to, provide part-time employees hired after April 1, 1985 with more vacation credit than full-time employees.

CSEA submits, *inter alia*, that 1) Defendant's position is based upon parol evidence that the Court should not consider in interpreting the CBA; and 2) the language of § 44-5.2 entitles Plaintiff to the relief that it seeks.

RULING OF THE COURT

A. Summary Judgment Standards

On a motion for summary judgment, it is the proponent's burden to make a *prima facie* showing of entitlement to judgment as a matter of law, by tendering sufficient evidence to demonstrate the absence of any material issues of fact. *JMD Holding Corp. v. Congress Financial Corp.*, 4 N.Y.3d 373, 384 (2005); *Andre v. Pomeroy*, 35 N.Y.2d 361 (1974). The Court must deny the motion if the proponent fails to make such a *prima facie* showing, regardless of the sufficiency of the opposing papers. *Liberty Taxi Mgt. Inc. v. Gincherman*, 32 A.D.3d 276 (1st Dept. 2006). If this showing is made, however, the burden shifts to the party opposing the summary judgment motion to produce evidentiary proof in admissible form

sufficient to establish the existence of material issues of fact that require a trial. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324 (1986).

Summary judgment is the procedural equivalent of a trial. *Capelin Assoc., Inc. v. Globe Mfg. Corp.*, 34 N.Y.2d 338, 341 (1974). It is a drastic remedy that will only be granted where the proponent establishes that there are no triable issues of fact. *Alvarez v. Prospect Hosp.,* 68 N.Y.2d at 324. Summary judgment will not be defeated by mere conclusions or unsubstantiated allegations. *Zuckerman v City of New York*, 49 N.Y.2d 557, 562 (1980).

B. The Court Will Enforce the CBA as Written

When the parties set down their agreement in a clear, complete document, their writing should be enforced according to its terms. *Henrich v. Phazar Antenna Corp.*, 33 A.D.3d 864 (2d Dept. 2006). A contract will be interpreted in accordance with the intent of the parties as expressed in the language of the agreement. *Greenfield v. Philles Records, Inc.*, 98 N.Y.2d 562, 569 (2002). The best evidence of what parties to a written agreement intend is what they say in their writing. *Greenfield, supra*, at 569, *quoting Slamow v. Del Col*, 79 N.Y.2d 1016, 1018 (1992). A written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms. *South Road Assoc., LLC v. International Business Machines Corp.*, 4 N.Y.3d 272, 277 (2005); *WWW Assoc., Inc. v. Giacontieri*, 77 N.Y.2d 157, 162 (1990). The interpretation of an unambiguous contract provision is a matter for the court. *Greenfield v. Philles Records, Inc., supra* at 569; *WWW Assoc., Inc. v. Giacontieri, supra,* at 162. When an agreement is unambiguous, the court should not consider extrinsic or parol evidence of the parties' intent. *Willsey v. Gjuraj*, 65 A.D.3d 1228 (2d Dept. 2009); *Bridge Public Relations and Consulting, Inc. v. Hylan Elec. Contracting Inc.*, 65 A.D.3d 603 (2d Dept. 2009); *US Philips Corp. v. EMI, Music Inc.*, 65 A.D.3d 547 (2d Dept. 2009).

Here, CBA § 42-2 expressly provides that vacation leave is based upon "actual completed service." The term "completed service" is defined in § 2-15, which provides expressly that the service of "less than full-time" employees is to be "pro-rated." These provisions must be read together, and when read together, compel the result that NHCC is not in violation of the CBA when it credits "less than full-time" employees with vacation leave that is "pro-rated."

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The Court is persuaded by NHCC's argument that CSEA's proposed interpretation of the CBA would result in the illogical, and arguably absurd, requirement that part-time employees be provided with the same vacation as full-time employees, and with more vacation than "full-time reduced" employees, both of whom work more than part-time employees. Accordingly, the Court declares that NHCC is not in violation of the CBA when it credits "less than full-time" employees with vacation leave on a "pro-rated" basis. Based on the foregoing, NHCC is entitled to summary judgment dismissing the Complaint.

All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

DATED: Mineola, NY
December 2, 2009

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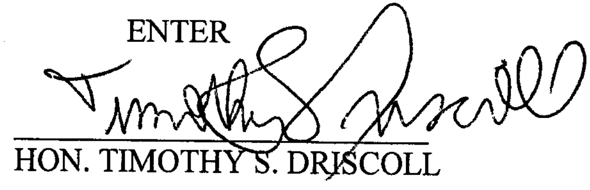

HON. TIMOTHY S. DRISCOLL

J.S.C.

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