

**Matter of New York State Dept. of Correctional  
Servs. v New York State Correctional Officers &  
Police Benevolent Assn.**

2011 NY Slip Op 30254(U)

February 7, 2011

Sup Ct, Albany County

Docket Number: 8242-10

Judge: Joseph C. Teresi

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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of

NEW YORK STATE DEPARTMENT  
OF CORRECTIONAL SERVICES,

Petitioner,

For a Judgment Pursuant to Article 75  
of the Civil Practice Law and Rules

**DECISION and ORDER**  
**INDEX NO. 8242-10**  
**RJI NO. 01-10-102416**

-against-

NEW YORK STATE CORRECTIONAL OFFICERS  
AND POLICE BENEVOLENT ASSOCIATION and  
BROOKE FITZSIMMONS,

Respondents.

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Supreme Court Albany County All Purpose Term, January 21, 2011  
Assigned to Justice Joseph C. Teresi

**APPEARANCES:**

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**TERESI, J.:**

Petitioner commenced this proceeding, pursuant to CPLR § 7511, to annul an arbitration  
Opinion and Award (hereinafter “Arbitrator’s Award”), dated September 13, 2010, claiming the

arbitrator exceeded his powers. Respondents oppose the petition. Because Petitioner failed to demonstrate its entitlement to annulment of the arbitrator's award, the petition is denied.

“[C]ourts are obligated to give deference to the decision of [an] arbitrator.” (New York City Transit Authority v. Transport Workers' Union of America, Local 100, AFL-CIO, 6 NY3d 332 [2005]). “An arbitration award may be vacated under CPLR 7511(b)(1)(iii) as in excess of the arbitrator's authority only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power.” (In re Massena Cent. School Dist. (Massena Confederated School Employees' Assn., NYSUT, AFL-CIO), 64 AD3d 859 [3d Dept. 2009]; In re Grasso, 72 AD3d 1463 [3d Dept. 2010]). Petitioner cites neither a strong public policy nor irrationality as the basis for its excess power claim. Rather, Petitioner must demonstrate that “a specific limitation on... [the arbitrator's] power enumerated in the arbitration clause itself has been violated.” (Matter of Albany County Sheriff's Local 3973, Dist. Council 82, AFSCME, AFL-CIO (Albany County), 245 AD2d 770, 771 [3d Dept. 1997]; Matter of New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82, AFSCME, AFL-CIO (Department of Correctional Servs. of State of N.Y.), 210 AD2d 859 [3d Dept. 1994]).

Considering first the arbitrator's power, Petitioner submits portions of the applicable collective bargaining agreement (hereinafter “CBA”). The arbitrator's power is delineated by the CBA as: “[d]isciplinary arbitrators shall confine themselves to determinations of guilt or innocence and the appropriateness of proposed penalties, taking into account mitigating and extenuating circumstances. Disciplinary arbitrators shall neither add to, subtract from nor modify the provisions of this agreement... the disciplinary arbitrator may approve, disapprove or take any

other appropriate action warranted under the circumstances.” Additionally, the CBA maintains that “[w]ith the exception of disciplinary actions or annual work performance ratings, any material in the official personal history folder of an adverse nature, over one (1) year old may, upon the employee’s written request, be removed from the official personal history folder by mutual agreement of the employee and the appropriate agency representative.”

In accord with the CBA, the arbitrator held a hearing. After the hearing, the arbitrator found Respondent Fitzsimmons guilty of negligently causing damage to a State vehicle, the only charge against her. Despite the guilty finding, the arbitrator rejected the Petitioner’s proposed penalty. Instead he imposed a “a \$250.00 fine. [Also, i]f there is not cause for the State to issue a NOD<sup>1</sup> to [Respondent Fitzsimmons] as of April 30, 2012, [Respondent Fitzsimmons’] personal history folder shall be expunged of all records of this discipline... The Arbitrator shall retain jurisdiction to address any and all questions which may arise regarding the State’s implementation of the penalty provided herein and expunging records from [Respondent Fitzsimmons’] personal history folder should that occur.”

On this record, Petitioner failed to demonstrate that the arbitrator exceeded a specific limitation on his power. The arbitrator’s guilty finding and fine imposition are not at issue. Rather, Petitioner focuses on the arbitrator’s expungement and retention of jurisdiction. The CBA, however, does not specifically preclude the arbitrator from taking either action. Petitioner introduces no evidence that the CBA contains a specific limitation on an arbitrator’s continuing jurisdiction to ensure implementation of a penalty. The CBA’s silence on this issue is not a specific limitation. Similarly, the CBA’s “personal history folder” provision, cited above, does

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<sup>1</sup> NOD stands for Notice of Discipline, the first step in the CBA’s discipline process.

not explicitly eliminate the arbitrator's ability to expunge. Rather, its limited applicability is easily reconciled with the arbitrator's expungement upon Respondent Fitzsimmons' "remain[ing] discipline free." The arbitrator's expungement remedy did not "add to, subtract from nor modify" the CBA; rather, in accord with the CBA, he took "other appropriate action warranted under the circumstances."

Accordingly, Petitioner failed to demonstrate its entitlement to annulment of the Arbitrator's Award, and its petition is denied.

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 Albany 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  
February 7, 2011

  
Joseph C. Teresi, J.S.C.

**PAPERS CONSIDERED:**

1. Notice of Petition, dated December 9, 2010; Petition, dated December 9, 2010, with attached Exhibit 1; Affidavit of Robert Pasquini, dated December 9, 2010, with attached Exhibits A-C.
2. Answer, dated January 18, 2010; Affidavit of Lawrence Schaefer, dated January 18, 2010, with attached Exhibits A-G.