

**Matter of Port Auth. of N.Y. & N.J. v Port Auth. Police
Benevolent Assn., Inc.**

2011 NY Slip Op 31429(U)

May 25, 2011

Sup Ct, NY County

Docket Number: 403175/10

Judge: Judith J. Gische

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.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE
J.S.C. Justice

PART 10

Index Number : 403175/2010
PORT AUTHORITY OF NEW
VS.
PORT AUTHORITY POLICE
SEQUENCE NUMBER : 001
VACATE OR MODIFY AWARD

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

UNFILED JUDGMENT

Upon the foregoing papers, It is ordered that this motion

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

**motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.**

Dated: 5/25/11

HON. JUDITH J. GISCHE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10**

-----X
Application of

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY,

DECISION/ ORDER
Index No.: 403175/10
Seq. No.: 001

Petitioner,

For an Order Pursuant to Article 75 of the
Civil Practice Law and Rules Vacating an
Arbitration Opinion and Award of a Certain
Controversy

PRESENT:
Hon. Judith J. Gische

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).

-against-

PORT AUTHORITY POLICE BENEVOLENT
ASSOCIATION, INC.,

Respondent.

-----X
Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of
this (these) motion(s):

Papers	Numbered
Notice of Pet w/TJR affirm, exhs, AOS	1
Respondent's answer	2
Respondent's opp w/BJP affid, exhs	3
Pet's reply w/TJR affirm	4

Upon the foregoing papers, the decision and order of the court is as follows:

This is a petition by the Port Authority of New York and New Jersey ("Port
Authority") for an order vacating the arbitration award and decision entered against it on
August 13, 2010 ("arbitration award") on the basis that the arbitrator exceeded her
authority and executed it so imperfectly that the award is indefinite or not final, pursuant
to Article 75 of the CPLR. Respondent, the Port Authority Police Benevolent
Association, Inc. ("PBA") opposes the motion and seeks to confirm the arbitrator's

award.

Fact and Arguments Presented

On November 3, 2004, Port Authority and PBA entered into a Memorandum of Agreement ("MOA"), in which the parties agreed to arbitrate all grievances in a manner consistent with the provisions in the MOA.

The MOA also set forth policies regarding officer assignments and overtime procedures. The MOA states, in relevant part, as follows:

Any Police Officer assigned to a Special Operations Division special detail will not be used to cover manpower deficiencies at any Facility Police Command, except . . . for conditions resulting from serious accidents affecting facility operations, floods, fires, disasters or other similar emergencies.

[If a Police Officer] . . . is bypassed in violation of [the Overtime] Procedure due to a misapplication of this Procedure, then the Port Authority in its sole discretion will either remunerate the Police Officer (make whole) or afford the opportunity to work an overtime assignment mutually acceptable to his Commanding Officer and himself, for the equivalent amount of hours at the equivalent rate of pay . . . this paragraph sets forth the only remedy(s) for an overtime by-pass violation.

For a 3-6 month period (end of 2006/early 2007), Port Authority temporarily used police officers assigned to the Special Operations Division ("SOD") to assist with bag checking at the PATH train stations. On March 26, 2007, PBA filed a grievance (Grievance No. 14P-07), asserting that the Port Authority's use of SOD officers to cover manpower deficiencies at the PATH trains in February and March of 2007 violated the MOA.

The underlying grievance was heard before Arbitrator Mattye M. Gandel ("Gandel"), commencing November 9, 2009. On August 13, 2010, Gandel concluded that Port Authority should have used PATH police officers who volunteered, on overtime, to perform bag checks. Gandel awarded the following:

1. The Port Authority violated the Memorandum of Agreement as set forth in Grievance #14P-07.
2. Two PATH Officers per day as shown on PBA Exhibits 2 through 7 with the lowest amount of overtime hours, who volunteered but were bypassed, shall be made whole by the payment of four hours of overtime for each day that was denied.
3. The Grievance is sustained.

Port Authority contends that, *inter alia*, there were exigent circumstances, specifically the threat of a terrorist plot to detonate a series of explosives in the PATH railway system in the summer of 2006, that allowed Port Authority to use SOD officers at bag checking locations. Port Authority contends that the situation was classified as an emergency, as defined under the MOA (" . . . a condition[] resulting from serious accidents affecting facility operations, floods, fires, disasters or other similar emergencies . . ."), thereby allowing SOD officers to cover the manpower deficiency at the PATH trains. Port Authority argues that the arbitrator's award is an abuse of discretion because it also violates the direct language of the MOA, which states that "the Port Authority in its sole discretion will either remunerate the Police Officer (make whole) or afford the opportunity to work an overtime . . ."

PBA contends that it was impermissible for Port Authority to use SOD officers at bag checking posts because there was no emergency situation as defined by the

terms of the MOA.

Discussion

CPLR § 7511 [b] sets forth the narrow grounds upon which an arbitrator's award may be vacated. An award may be vacated by the court only if the petitioner can prove: it was procured by corruption, fraud, or misconduct, the arbitrator was not impartial, the arbitrator exceeded his or her power, or executed it so imperfectly that the award is indefinite or not final. It may also be vacated if there was a complete failure to adhere to required arbitration procedures.

Although in certain extraordinary circumstances, an award may be vacated if the petitioner can prove it is "utterly arbitrary or violative of public policy," this is a difficult burden to meet, and an award will not be vacated by the court merely because the arbitrator may have committed an error of law or fact. Wien & Malkin LLP v. Helmsley-Spear, Inc., 6 N.Y.3d 471 (2006). Nor may the court "examine the merits of an arbitration award and substitute its judgement for that of the arbitrator simply because it believes its interpretation would be the better one." Matter of New York State Correctional Officers & Polices Benevolent Assn. v State of New York, 94 N.Y.2d 321, 326 (1999).

The court should not assume the role of overseer to mold an award to conform to its sense of justice. In the matter of Sprinzen v. Nomberg, 46 N.Y.2d 623, 629 (1979). Therefore, judicial review of an arbitration award is extremely limited and it must be upheld when the arbitrator has offered "even a barely colorable justification for

the outcome reached." Wien & Malkin LLP v. Helmsley-Spear, Inc., 6 N.Y.3d at 479, *supra*.

Here, Gandel specifically and thoroughly addressed the arguments and positions of the Port Authority and the PBA before reaching her decision. Gandel's report is fourteen pages in length, including a detailed analysis of her findings, conclusions, and basis for the award. Additionally, there was testimony from eight witnesses and multiple exhibits, submitted by each party.

Port Authority makes no showing of corruption, fraud, or misconduct, or impartiality. Port Authority has also failed to show that the arbitrator exceeded her authority in rendering her award or that she executed it so imperfectly that the award is indefinite or not final. Accordingly, the petition to vacate the award is hereby denied in its entirety.

Although respondent has not cross-moved to have the arbitrator's award confirmed, it seeks this relief in its opposition. In reply, PBA has not objected that the relief be sought in a formal motion. Since the court always has the discretion to grant any appropriate relief when deciding a motion and the relief sought by PBA is the natural sequella of the court denying the Port Authority's motion, in the interest of judicial economy, the court hereby confirms the arbitrator's award, dated August 13, 2010.

Conclusion

In accordance with the foregoing,

It is hereby:

ORDERED that the petition is denied in its entirety; and it is further
ORDERED that the arbitrator's award is confirmed; and it is further
ORDERED AND ADJUDGED in favor of respondent, PORT AUTHORITY
 POLICE BENEVOLENT ASSOCIATION, INC., and against petitioner, THE PORT
 AUTHORITY OF NEW YORK AND NEW JERSEY, that, as set forth in the arbitrator's
 opinion and award, as follows:

1. The Port Authority violated the Memorandum of Agreement as set forth in Grievance #14P-07.
2. Two PATH Officers per day as shown on PBA Exhibits 2 through 7 with the lowest amount of overtime hours, who volunteered but were bypassed, shall be made whole by the payment of four hours of overtime for each day that was denied.
3. The Grievance is sustained.

and it is further

ORDERED that any requested relief not expressly addressed herein has
 nonetheless been considered by the court and is hereby expressly denied; and it is
 further

ORDERED that this shall constitute the decision and order of the Court.

Dated: New York, New York
 May 25, 2011

So Ordered:



 HON. JUDITH J. GISCHE, J.S.C.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).