

Matter of Bridge & Tunnel Officers Benevolent Assn. v Triborough Bridge & Tunnel Auth.
2011 NY Slip Op 32694(U)
October 13, 2011
Supreme Court, New York County
Docket Number: 106024/11
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

CYNTHIA S. KERN

J.S.C.

PRESENT: _____

PART 52

Justice

Index Number : 106024/2011

BRIDGE AND TUNNEL OFFICERS

VS.

TRIBOROUGH BRIDGE AND TUNNEL

SEQUENCE NUMBER : 001

VACATE OR MODIFY AWARD

INDEX NO. 106024/11

MOTION DATE _____

MOTION SEQ. NO. 01

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

Upon the foregoing papers, It is ordered that this motion

is decided in accordance with the annexed decision.

Dated: 10/13/11

CK
CYNTHIA S. KERN

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: Part 52

-----X
In the Matter of the Application of

BRIDGE AND TUNNEL OFFICERS
BENEVOLENT ASSOCIATION,

Petitioner,

Index No. 11-06024

For an Order Modifying an Arbitration Award
under Article 75 of the CPLR

-against-

TRIBOROUGH BRIDGE AND TUNNEL
AUTHORITY

Respondent.
-----X

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Affirmations in Opposition to the Cross-Motion.....	<u>3</u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u>4</u>

In this Article 75 proceeding, petitioner the Bridge and Tunnel Officers Benevolent Association ("BTOBA" or "petitioner" or the "Union") seeks to vacate or modify the arbitration award dated February 20, 2011. This court denies the petitioner's request for the reasons set forth below.

The relevant facts are as follows. BTOBA is a labor organization. Respondent, the Triborough Bridge and Tunnel Authority (the "Authority") is a public benefit corporation

established pursuant to the New York Public Authorities Law and is responsible for maintaining, operating, acquiring, designing, constructing, improving and reconstructing the seven toll bridges and two toll tunnels that connect the five boroughs of the City of New York. The Authority hires Bridge and Tunnel Officers ("BTOs") to maintain and control these facilities. BTOBA is authorized to negotiate collectively on behalf of the BTOs. The Authority and the BTOBA have entered into collective bargaining agreements, the latest of which, as amended, covers the period of March 1, 2006 to May 17, 2009 and is applicable here (the "CBA"). The CBA provides that "as a third and terminal step in the grievance procedure the Authority and the [BTOBA] agree to final and binding arbitration for all issues arising out of the interpretation and application of the parties' agreement...." CBA Article X Section 3.

The Authority handles the scheduling and location assignments of BTOs based upon operational needs and staffing capability. BTOs may bid on the schedules on the basis of seniority. The only article of the CBA which is relevant to scheduling provides that "The schedules for all facilities when fully developed shall have no more than three lines manned by full time temporary BTOs. The Authority retains the right to use full time temporary BTOs in accordance with the agreement of August 9, 1978 relating to utilization of non-permanent employees. The remaining scheduled lines shall be manned by full-time permanent BTOs." CBA, Article XIV Section 1(B). A "Zipper Clause" states that "This Agreement plus past practices embedded in the present understanding of the contract all constitute the entire agreement of the parties..." Article XXIV Section 4.

On or about October 13, 2009, the BTOBA filed a grievance alleging that the Authority violated Article XIV Section 1(B) of the CBA and past practice by instituting new schedules at

its Henry Hudson Bridge (“HHB”) facility because the number of “lines” in those schedules did not correspond to the number of BTOs assigned to that “part.” The Authority denied the grievance. Subsequently, the BTOBA issued a formal demand for arbitration. A hearing was held by arbitrator Gayle Gavin and both parties submitted post-hearing briefs. On February 20, 2011, the arbitrator issued an Opinion and Award determining that there was no basis to conclude that the Authority had violated the CBA or past practices when establishing the subject schedules. The BTOBA then filed the present application.

It is well settled that the court may only vacate an arbitration award where the rights of the party seeking vacatur were prejudiced by: (i) corruption, fraud or misconduct in procuring the award; or (ii) partiality of an arbitrator appointed as a neutral...; or (iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or (iv) failure to follow the procedure of this article... CPLR 7511(b)(1). The only provision at issue in the instant case is whether the arbitrator exceeded his power. The courts have held that an arbitrator exceeds his power when the award is “completely irrational... or where the document [in which the parties agree to arbitration] expressly limits or is construed to limit the power of the arbitrators.”

Rochester City School District v Rochester Teachers Association, 41 N.Y.2d 578, 582 (1977).

An arbitrator has not necessarily exceeded his power even if he exceeded the power a court “would have had if the parties had chosen to litigate, rather than arbitrate the dispute.” *Id.* Furthermore, “courts may not set aside an award because they feel that the arbitrator’s interpretation disregards the apparent, or even the plain, meaning of the words.” *Id.*

In the instant case, the arbitrator did not exceed her power. Her determination that there

was no basis to support the Union's argument that the subject schedule violated the CBA or past practices was not "completely irrational." The arbitrator's interpretation of the contractual clause cited above, which makes no explicit mention of matching the number of lines on a schedule to the number of BTOs, was rational. Whether this court would have interpreted the provision the same way is irrelevant. Similarly, it was within the arbitrator's authority to both determine the meaning of "past practices" in the contract and to evaluate the evidence regarding what those past practices consisted of. Petitioners have not submitted any evidence to suggest the arbitrator exceeded her power in finding that the new schedule did not violate past practices.

Accordingly, the petition is denied. This constitutes the decision, judgment and order of the court.

Dated:

10/13/11



J.S.C.
CYNTHIA S. KERN
J.S.C.