Matter of Brentwood Union Free School Dist. v Local 237

2011 NY Slip Op 33548(U)

December 22, 2011

Sup Ct, Suffolk County

Docket Number: 00980-11

Judge: Peter Fox Cohalan

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SHORT FORM ORDER

INDEX # 00980-11
RETURN DATE: **3-24-11**
7-20-11 (003)
MOT. SEQ. # **001, 002 & 003**

SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART XXIV - SUFFOLK COUNTY

PRESENT:
Hon. PETER FOX COHALAN

COPY

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In the Matter of the Application of

BRENTWOOD UNION FREE SCHOOL DISTRICT,

Petitioner,

-against-

LOCAL 237, CITY EMPLOYEES UNION INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondent.

For an Order and Judgment Pursuant to Article 75 of the CPLR Vacating an Arbitration Award.

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CALENDAR DATE: July 20, 2011
MNEMONIC: MD; XMG; XMG; C/Disp.

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Upon the following papers numbered 1 to 28 read on this motion to confirm arbitration and cross motions ; Notice of Motion/Order to Show Cause and supporting papers 1-12; Notice of Cross-Motion and supporting papers 13-20; 21-24; Answering Affidavits and supporting papers 25-28; Replying Affidavits and supporting papers _____; Other _____; and after hearing counsel in support of and opposed to the motion it is,

ORDERED that this motion (seq. #001) by the petitioner, Brentwood Union Free School District, seeking to vacate and set aside an arbitration award, dated November 9, 2010, pursuant to CPLR §7511 (b) (iii) because the arbitrator exceeded her powers; and the cross-motion (seq. #002) and amended cross-motion (seq. #003) by respondent, Local 237, City Employees Union International Brotherhood of Teamsters, seeking to confirm the arbitrator's award are decided as follows:

ORDERED that the petition to set aside the arbitrator's award, dated November 9, 2010, because the arbitrator exceeded her powers pursuant to CPLR §7511 (b)(iii) is denied and the arbitrator's award is confirmed; and, it is further

ORDERED that the cross-motion and amended cross-motion by the respondent to confirm the arbitrator's award, dated November 9, 2010, is granted in all respects and the Court directs compliance with the arbitrator's award reinstating Mike Cruz to his position as Chief Custodian at Sonderling High School, Brentwood, New York and a calculation of lost overtime within ten (10) days of service of a copy of this order with notice of entry thereon;

This petition arises from a dispute between the Chief Custodian, Mike Cruz (hereinafter Cruz), and four subordinate custodian employees assigned to Cruz's second shift (evening shift) at Sonderling High School of the Brentwood Union Free School District (hereinafter Brentwood) located at 2 Sixth Avenue, Brentwood, Suffolk County on Long Island, New York. The four subordinate employees, Steve Mesquita (hereinafter Mesquita),

Deorag Ramrissoom, Chris Jean-Pierre and Miguel Villacorta allege that Cruz demeaned, degraded and talked down to them, and generally was arrogant and treated them poorly. After these complaints were brought to her attention, Stacy O'Connor (hereinafter O'Connor), Brentwood's Director of Business Services testified she sought to resolve the existing conflict. O'Connor noted that her options included a transfer of the second shift under Cruz which would result in moving a number of employees and disrupting the established custodial staff in the other buildings or transferring Cruz. Donna Jones, Brentwood's Superintendent of Schools, in consultation with George Talley, the Brentwood School Board President, decided to transfer Cruz on August 4, 2009 to South Middle School located at 785 Candlewood Road, Brentwood, New York.

After Cruz's involuntary transfer, the respondent, Local 237, City Employees Union International Brotherhood of Teamsters (hereinafter Union) who represent the non-professional employees including the custodial staff, filed a grievance listed as control #09-005, dated August 4, 2009, on behalf of Cruz. Brentwood denied the grievance on August 6, 2009, claiming there was no violation of the collective bargaining agreement (hereinafter CBA) entered into by the parties, dated July 1, 2007. Subsequently, an arbitration hearing was held on the grievance on June 15, 2010 before an arbitrator, Bonnie Siber Weinstock (hereinafter Weinstock). The issue presented to Weinstock was Cruz's involuntary transfer and whether or not such transfer violated the CBA and if so what remedy should be imposed.

On November 9, 2010, Weinstock issued a decision in which she sustained the Union's grievance on behalf of Cruz as his involuntary transfer violated Article 2 (A) of the CBA, and then Weinstock directed as a remedy the immediate transfer of Cruz back to Sonderling High School and, upon finding a diminution of overtime resulting from the transfer between schools, further awarded Cruz a back pay monetary sum in an amount not yet determined but which would be calculated based upon the loss of overtime. This award is now the subject of Brentwood's petition (seq. #001) pursuant to Article 75 seeking to overturn the arbitration award because Weinstock exceeded her powers and impermissibly modified the CBA and imposed new contractual rights as to a transfer of an employee. The Union also cross-moves (seq. #002 & #003) seeking to confirm the arbitration award.

The Court finds that Weinstock's award did not impermissibly modify the CBA or impose additional contractual requirements or rights on the parties not granted by the CBA and therefore denies Brentwood's petition to overturn, vacate and set aside the arbitration award, dated November 9, 2010, and *a priori,* for the same reasons, grants the Union's petition and amended petition to confirm Weinstock's award. Brentwood is directed to transfer and reinstate Cruz to his position at Sonderling High School as Chief Custodian and calculate the amount of lost overtime within ten (10) days of service of a copy of this order with notice of entry thereon.

The Court of Appeals in ***Matter of Mamaroneck Avenue Corp. v. 151 East Post Road Corp.***, 78 NY2d 88, 571 NYS2d 686 (1991) emphasized the strong public policy in New York in favor of arbitration:

> "Arbitration is a favored method of dispute resolution in New York, as this Court has repeatedly held... and New York courts interfere `as little as possible with the freedom of consenting parties' to submit disputes

> to arbitration [cites omitted]. Additionally, the cases grant arbitrators broad authority to resolve disputes, unfettered by formal rules of law or the constraints of the traditional litigation model [cites omitted]. When the original parties to this lease consented to arbitration of a rent dispute, they necessarily entrusted the dispute to the considerable discretion of the arbitrator. Article 75 and the relevant case law together chart the outer limits of this discretion, 78 NY2D at 92."

As a matter of public policy, the merits of an arbitration are beyond judicial review ***Integrated Sales, Inc. v. Maxell Corp. of Am.***, 94 AD2d 221, 224, 463 NYS2d 809, 811 (1st Dept. 1983); ***Matter of Adelstein v. Ortiz Funeral Home, Inc.***, 75 AD2d 529, 530, 426 NYS2d 768, 769 (lst Dept. 1980), aff'd. 52 NY2d 997, 438 NYS2d 80 (1987). In furtherance of the laudable purposes served by permitting consenting parties to submit controversies to arbitration, New York has adopted a policy of noninterference, with few exceptions, in this necessary and desirable alternative to litigation for dispute resolution ***Matter of Sprinzen[Nomberg]***, 46 NY2d 623, 629, 415 NYS2d 191 (1984). The applicable principle is that an arbitrator's award will not be vacated unless it is totally irrational, violative of a strong public policy or exceeds a specifically enumerated limitation on his or her power ***Matter of Albany County Sheriff's Local 775 of Council 82 [County of Albany***, 63 NY2d 654, 479 NYS2d 513, 514 (1984); ***City of Poughkeepsie v. Civil Service Employees Assn., Inc.***, 104 AD2d 963, 480 NYS2d 757 (2nd Dept. 1984).

Brentwood's petition in support of setting aside the arbitrator's award for allegedly exceeding her powers argues that Weinstock exceeded her mandate and powers when she ruled that Brentwood incorrectly authorized Cruz's involuntary transfer, pursuant to Article 2 (A) of the CBA, so as to eliminate an alleged "personality conflict" between Cruz and his subordinates. The Court finds otherwise. The specific language of the agreement under review with reference to "personality conflict" is referenced in Article 2 (A) of the CBA which provides:

> "Any employee transferred involuntarily will be done as a result of a personality conflict between co-workers or supervisory staff, etc. Such transfer will be made to eliminate conflict or friction and will not be used as harassment against an employee."

However, left unresolved is the definition of what constitutes a "personality conflict" and whether the actions in this case are properly classified as a "personality conflict" or was Cruz's transfer made not to eliminate conflict or friction but was " used as harassment against an employee." In this regard, Weinstock was called upon to do the very acts called for within the agreement and pursuant to the powers and authority ceded to her in the CBA agreement, i.e., was this a "personality conflict" or merely "harassment" disguised as a "personality conflict." Weinstock found harassment and this Court agrees. As the Court in ***Plainedge Federation of Teachers v. Plainedge Union Free School District***, 87 AD2d 631, 448 NYS2d 226 (2nd Dept. 1982) stated:

> "In describing the broad latitude of an arbitrator's power to resolve the "precise issue" submitted to him by agreement of the parties, the court, in ***Central Sq. Teachers Assn. v. Board of Educ.***, 52 NY2d 918, 437 NYS2d 663, 419 NE2d 341 stated: 'The path of analysis, proof and persuasion by which the arbitrator reached this conclusion is beyond judicial scrutiny. The issue resolved having been the issue tendered, and the resolution not being wholly irrational, there is no occasion for judicial intervention.' (See also, ***Matter of North Warren Cent. School Dist. v. North Warren Teachers Assn.***, 60 AD2d 725, 400 NYS2d 913.)"

Weinstock in her excellent decision stated quite clearly that

> "The arbitrator finds that the District [Brentwood] violated Article 2A of the Agreement, as the grievant's [Cruz] involuntary transfer ***was not*** the "result of a personality conflict between co-workers or supervisory staff."

She noted that "The arbitrator finds it significant that the shift on which the employees have the greatest number of hours of contact with the grievant (i.e. the day shift), the employees are happy" while the shift where the employees were underperforming was the shift with the greatest number of complaints against Cruz (i.e. the evening or second shift). Of further significance is the fact that the second shift which was underperforming and which Cruz was attempting to reform had Mesquita as a custodian. He was married to a district official and Mesquita's job performance was not only an issue but he was also suspended for sixty (60) days apparently as a result of being drunk on the job which resulted in his removal from school property at the behest of Cruz.

In this regard, Weinstock's findings are worth further review and comment as the factual recitation of her reasoning provides the prism under which she found not a "personality conflict" but an involuntary transfer caused by "harassment against an employee [Cruz]." The arbitrator reasoned:

> "The arbitrator also finds it significant that none of the employees on the second shift testified in this proceeding. Therefore, there is only hearsay testimony regarding the Grievant's alleged abrasive behavior. It is also curious that in support of the decision to involuntarily transfer Mr. Cruz, Ms. O'Connor testified that she wanted to transfer the Grievant quickly because 'we have had some violent episodes with some of [these men] and I was concerned something else would erupt.' (T:174). There is no evidence to suggest the Grievant was an employee who had 'violent episodes' in the past. Therefore, if any of the other employees on the second shift were the employees who had 'violent episodes' in the past, it is particularly odd that the District would decide to protect those volatile employees over an arguably demanding supervisor who wanted to ensure that they did the assigned work.

> What the arbitrator can assess, in addition to the testimony at the hearing, is the timing of the events in issue, and that the Arbitrator finds to be troublesome. The Arbitrator finds that the record evidence points squarely to the following scenario: the Grievant set in motion the discipline of Steve Mesquita for coming to work under the influence of alcohol. As a result, Mr. Mesquita was suspended. Mr. Mesquita's marriage to a District Supervisor is not insignificant. Almost immediately after Mr. Mesquita's suspension, the Grievant was given an involuntary transfer, though the Principal of the building and the Plant Facilities Administrator both believed that the Grievant was doing an excellent job in the High School and should remain in that building. *The hand of the Board President in the transfer is evident from the chronology of events as depicted in the testimony of the Board's witness.* **The arbitrator is persuaded that the claim of "personality conflicts" was, at best, a pretext and, at worst, an involuntary transfer in retaliation for disciplining Mr. Mesquita."** (emphasis added)

The Court would go even further noting that O'Connor, in her testimony, indicated that she met not just with Mesquita on the Cruz allegations concerning Mesquita's actions which can best be described as belligerent, threatening and an alcohol fueled attempt to engage in an altercation with Cruz requiring police intervention which resulted in his suspension but also indicated that she privately met with Mesquita and his wife, Minerva Feliciano, Brentwood's Assistant Coordinator of Bilingual Education, concerning the Cruz allegations.

To suggest that the decision to involuntarily transfer Cruz was merely a "personality conflict" which fell under Article 2(A) of the CBA as Brentwood argues would require this Court to read "personality conflict" as giving almost unreasonable unlimited power to Brentwood to involuntarily transfer almost any employee based upon the mere word of another that there was a "personality conflict." A reading of the record of the arbitration proceedings demonstrates that Weinstock did exactly what she was required to do. She weighed the evidence presented and found that the claim of a "personality conflict" was a subterfuge to punish an employee who enforced school rules against a subordinate who was married to a Brentwood official in a position of power.

A Court's review of an arbitration award is strictly limited by CPLR §7511. Errors of fact or law are insufficient to vacate an arbitrator's award. ***Kingsbridge Center of Israel v. Turk***, 98 AD2d 664, 469 NYS2d 732 (1st Dept. 1983). Only if the award is violative of public policy or wholly irrational may it be vacated. ***Diaz v. Pilgrim State Psychiatric Center***, 62 NY2d 693, 476 NYS2d 525 (1984).

In New York Jurisprudence 2nd on *Arbitration and Award* Vol. 5 §115 it specifically notes the rule of law on arbitration awards as follows:

> Such matters as a mistake of law made by the arbitrators in rejecting relevant evidence, rejecting a witness, making *a misconstruction of the law*, deciding a case on what appear to be unjustifiable grounds, or in the admission of hearsay evidence,

> the misconstruction of the agreement out of which the controversy has arisen, or the *application of an incorrect measure of damages*, are not open for consideration on motions to confirm or reject an award. *A court may not inquire into the nature or sufficiency of evidence which the arbitrator believed to be relevant or essential*. An award cannot be vacated on the basis of newly-discovered evidence. Nor, generally speaking, will an award be vacated on the ground that the damages given therein are excessive or inadequate, or for a failure to give reasons or to set forth calculations to justify the award." (emphasis added).

The Court of Appeals, in one of its more recent pronouncements on the issue involving an arbitrator's findings and award, stated in ***Wien & Malkin Llp et al v. Helmsley-Spear Inc.***, 6 NY3d 471, 478, 813 NYS2d 691, 696 (2006) that:

> "It is well settled that judicial review of arbitration awards is extremely limited (see ***Paperworkers v. Misco, Inc.***, 484 US 29, 108 S Ct. 364, 98 L Ed.2d 286 [1987]). An arbitration award must be upheld when the arbitrator 'offer[s] even a barely colorable justification for the outcome reached' (***Matter of Andros Cia. Maritima, S.A. [Marc Rich & Co., A.G.]***, 579 F2d 691, 704 [2d Cir. 1978]). *Indeed, we have stated time and time again that an arbitrator's award should not be vacated for errors of law or fact committed by the arbitrator* and the courts should not assume the role of overseers to mold the award to conform to their sense of justice *(se* ***Matter of Sprinzen [Nomberg]***, 46 NY2d 623, 629, 415 NYS2d 974, 389 N.E.2d 456[1976]; ***Matter of New York Correctional Officers & Police Benevolent Assn. v. State of New York***, 94 NY2d 321, 326, 704 NYS2d 910, 726 N.E.2d 462 [1999] ['A court cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be a better one']." (Emphasis added).

The Court finds Brentwood's arguments that Weinstock impermissibly modified the party's CBA agreement to be without legal merit. Weinstock was called upon to determine if Cruz's involuntary transfer fell within the parameters of a "personality conflict" under Article 2(A) or was in fact "harassment" and she found that Brentwood chose to use the term "personality conflict" to disguise a purely retaliatory harassment against Cruz for his conflict with Mesquita and therefore violated Article 2(A) of the CBA. Left unexplained is why O'Connor met Mesquita and his wife, Minerva Feliciano, at a private location outside school grounds to discuss his alleged grievances against Cruz.

As the Court of Appeals stated in ***Rochester City School District v. Rochester Teachers Association***, 41 NY2d 578, 394 NYS2d 179 (1977) when confronted with this same argument:

> Once a party has participated in arbitration his ability to have the courts vacate or modify the award is limited by statute (CPLR §7511, subd [b], par 1; see also CPLR §7511, subd [b], par 1, cl [iii]). An award of course may be vacated on the ground that the arbitrator "exceeded his power" (CPLR §7511, subd[b], par 1, cl [iii]. But when the arbitrator has been authorized to resolve disputes regarding the interpretation of the contract, we have held that his determination will only be set aside on this ground if it is "completely irrational" (***Matter of National Cash Register Co. [Wilson]***, 8 NY2d 377,383), "or where the document expressly limits or is construed to limit the powers of the arbitrators, hence, narrowing the scope of arbitration (***Matter of Granite Worsted Mills {Cowen}***, 25 NY2d 451, supra;, at pp 456-457)" ***Lentine v. Fundaro***, 29 NY2d 382, 385).

As the Court of Appeals went on to say an arbitrator may do justice and "the award may reflect the spirit rather than the letter of the agreement." Id.at 582. Weinstock's decision was neither irrational, exceeded her mandate or was violative of public policy.

Finally, Brentwood claims that a prior arbitration award by Martin F. Scheinman (hereinafter Scheinman) in July 2009 established Brentwood's position "that an employee's making a harassment complaint against a fellow staff member implicitly puts the employee complained of in a position of conflict with the complainant which justifies a transfer pursuant to Article 2". Weinstock recognized and acknowledged Scheinman's decision and then proceeded to distinguish it from this case in stating "Scheinman found no harassment of the transferred employees, and the same cannot be said of Mr. Cruz." The Court declines to read "personality conflict" in such broad terms as Brentwood requests so that any cross word, conflict or complaint would justify an involuntary transfer of an employee, thus giving Brentwood free rein merely on an unsupported claim or accusation of a "personality conflict." A reading or interpretation so broad would provide little protection to an employee from an involuntary transfer based on a simple claim of personality differences.

An arbitrator's award will not be vacated unless it is totally irrational, violative of a strong public policy or exceeds a specifically enumerated limitation on her power [***Matter of Albany County Sheriff's Local 775 of Council 82 [County of Albany***, *supra*]. The Court finds that Weinstock did not exceed her mandate or authority to determine whether Cruz's involuntary transfer was a "personality conflict" or 'harassment" nor did Weinstock by her findings, decision and ruling modify the CBA or impose new contractual requirements on the parties. Weinstock did what she was called upon by the CBA to determine and she determined that Article 2(A) required her to find either there was a valid complaint of a "personality conflict" mandating Cruz's involuntary transfer or the involuntary transfer was made as retaliation and "harassment" which action is precluded by Article 2(A). The fact that Weinstock chose to credit Cruz that the transfer was "harassment" rather than a "personality conflict" does not form the basis to overturn her decision and award.

Accordingly, this motion (seq. #001) by the petitioner, Brentwood Union Free School District, seeking to vacate and set aside the arbitration award, dated November 9, 2010, pursuant to CPLR §7511 (b) (iii) because the arbitrator exceeded her powers and/or imposed new conditions and changed the contractual requirements of the CBA is denied in its entirety and the cross-motion (seq. #002) and amended cross-motion (seq. #003) by respondent, Local 237, City Employees Union International Brotherhood of Teamsters, seeking to confirm the arbitrator's award are granted in all respects and the Court directs compliance with the arbitrator's award reinstating Cruz to his position as Chief Custodian at Sonderling High School, Brentwood, New York and a calculation of lost overtime within ten (10) days of service of a copy this order with notice of entry thereon.

SETTLE JUDGMENT

The foregoing constitutes the decision of the Court.

Dated: December 22, 2011

J.S.C.