

**Matter of Port Auth. of N.Y. & N.J. v Port Auth. Police
Sergeants Benevolent Assoc.**

2013 NY Slip Op 33794(U)

July 30, 2013

Supreme Court, New York County

Docket Number: 450825/2013

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

CYNTHIA S. KERN
 Index Number : 450825/2013 J.S.C.
 PORT AUTHORITY OF NEW
 vs
 PORT AUTHORITY POLICE
 Sequence Number : 001
 VACATE STAY/ORDER/JUDGMENT

PART _____

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

U N F I L E D J U D G M E N T

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 EFile a "Request for Entry of Judgment", Proposed Judgment, and any supporting documents on the NYSCEF system.

is decided in accordance with the annexed decision.

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

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Dated: 7/30/13

CK, J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

CYNTHIA S. KERN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

U N F I L E D J U D G M E N T

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In the Matter of the Application of

THE PORT AUTHORITY OF NEW YORK AND
NEW JERSEY,

Petitioner,

Index No. 450825/2013

-against-

DECISION/ORDER

THE PORT AUTHORITY POLICE SERGEANTS
BENEVOLENT ASSOCIATION,

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>
Affirmation in Opposition	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u> </u>

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Petitioner The Port Authority of New York and New Jersey (hereinafter "petitioner" or the "Port Authority") commenced the instant proceeding seeking an Order pursuant to CPLR § 7511 vacating an arbitration award granted in favor of respondent the Port Authority Police Sergeants Benevolent Association (the "respondent") on the ground that the arbitrator exceeded his power and so imperfectly executed it that a final and definite award on the subject matter submitted was not made. For the reasons set forth more fully below, the petition is denied and the arbitration award is hereby confirmed.

The relevant facts are as follows. For many years, retired Port Authority Sergeants were provided Personal and Commutation passes for their free use at Port Authority tunnel and bridge

crossings as well as free use of park lots at Port Authority airports. In 2007, the Port Authority replaced that system with an E-Z Pass Program. Subsequently, respondent filed an Improper Practice Charge against petitioner due to concerns that its retirees were receiving a diminution of benefits. Thus, petitioner and respondent entered into a written Memorandum of Agreement (the "Agreement"), effective until January 20, 2010, establishing that the benefits for the retirees in the E-Z Pass Program would be identical to or better than the benefits provided when Personal and Commutation passes were being issued.

On November 18, 2010, the Port Authority's Board of Commissioners voted to discontinue the E-Z Pass Program for non-represented employees and retirees, effective January 1, 2011. On January 28, 2011, respondent filed a grievance alleging that petitioner violated Section XXXI of the Agreement by unilaterally discontinuing the E-Z Pass Program for retirees who, it alleges, are eligible to carry the contractual benefit into retirement under the terms of the Agreement. As the parties were unable to resolve the grievance pursuant to the Agreement's grievance procedure, the matter proceeded to a hearing before Arbitrator Robert L. Douglas, Esq. ("Arbitrator Douglas") on December 9, 2011. On February 11, 2013, Arbitrator Douglas issued an Opinion and Award (the "Award") finding that the Port Authority "did violate the...Agreement...by discontinuing on or about January 1, 2011, the free passages and parking at Port Authority facilities for retirees from the bargaining unit." Arbitrator Douglas concluded that "[a]s employees perform retire for the remainder of their lifetimes and an opportunity exists before retirement for such employees to secure a lifetime benefit such as the disputed benefits to carry into retirement, the inclusion of any additional language concerning the permanent duration of the disputed benefits would be superfluous and unnecessary under the circumstances set forth

in the record.” Consequently, Arbitrator Douglas ordered that the Port Authority reinstate and restore the benefit to all retirees, including those who retired under predecessor Agreements and reimburse the retirees who incurred travel or parking expenses since January 2011, with prevailing interest added to such expenses. Petitioner now brings the instant Article 75 proceeding seeking to vacate the Award.

A party aggrieved by an arbitration award may move to vacate the award pursuant to Article 75 of the CPLR. Specifically, CPLR § 7511(a) states that “[a]n application to vacate or modify an award may be made by a party within ninety days after its delivery to him.” Pursuant to CPLR § 7511(b),

1. The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were prejudiced by:

- (i) corruption, fraud or misconduct in procuring the award; or
- (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; 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, unless the party applying to vacate the award continued, with the arbitration with notice of the defect and without objection.

A petition to vacate an award pursuant to CPLR § 7511(b)(1)(iii) will be granted only when one of the following circumstances is shown: (1) the arbitrator has exceeded a specifically enumerated limitation on his authority; (2) the decision is totally irrational; or (3) the award is violative of a strong public policy. *See Board of Education of the Dover Union Free School District v. Dover-Wingdale Teachers’ Ass’n*, 61 N.Y.2d 913 (1984). “Courts are reluctant to

disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined.” *Goldfinger v. Lisker*, 68 N.Y.2d 225, 230 (1986). “Even in circumstances where an arbitrator makes errors of law or fact, courts will not assume the role of overseers to conform the award to their sense of justice.” *Matter of New York State Correctional Officers & Police Benevolent Assn. v. State of New York*, 94 N.Y.2d 321, 326 (1999).

In the instant action, the petition to vacate the arbitration award is denied as Arbitrator Douglas did not exceed or so imperfectly execute his power that a final and definite award upon the subject matter submitted was not made. Arbitrator Douglas based his Award on his finding that Port Authority lacked a contractual right to abolish the disputed benefits on a unilateral basis based on the Agreement which omitted “any suggestion that the parties had agreed to curtail, to limit, or to restrict the scope of the retiree category in any manner.” Further, Arbitrator Douglas relied on the language in the Agreement which states that “[r]etired employees and employees on military leave receive the same allowance to which they would be entitled if their Port Authority service was not interrupted.” Based on the foregoing, petitioner has not demonstrated that the Award exceeded a specifically enumerated limitation on Arbitrator Douglas’ authority, was irrational or violative of public policy. Thus, the petition to vacate the award must be denied. Pursuant to CPLR § 7511(e), “upon the denial of a motion to vacate or modify, [the court] shall confirm the award.” Thus, Arbitrator Douglas’ award in favor of respondent and against petitioner is hereby confirmed.

Accordingly, the petition to vacate the arbitration award at issue herein is denied and the arbitration award is confirmed. It is hereby

ORDERED and ADJUDGED that the arbitration award rendered in favor of respondent

and against petitioner is confirmed; and it is hereby

ORDERED and ADJUDGED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and judgment of the court.

Dated: 7/30/13

Enter: OK

J.S.C.

CYNTHIA S. KERN
J.S.C.

U N F I L E D J U D G M E N T

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