International Brotherhood of Teamsters, Local No. 118 v Town of Savannah
2014 NY Slip Op 30666(U)
March 14, 2014
Sup Ct, Wayne County
Docket Number: 0076490/2013
Judge: Daniel G. Barrett

At a Term of the Supreme Court held in and for the County of Wayne at the Hall of Justice in the Village of Lyons, New York on the 21st of January 2014

Present: Honorable Daniel G. Barrett
Acting Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 118

Petitioner,

-vs-

TOWN OF SAVANNAH,

Respondent

DECISION
Index No. 76490
2013

The Petitioner, International Brotherhood of Teamsters, Local No. 118, has moved pursuant to CPLR 7510 for a Judgment confirming an arbitration award delivered on or about July 25, 2013. The Respondent, Town of Savannah, opposes this application and has cross-moved for an Order vacating the arbitration award on the grounds that the Arbitrator exceeded his power by ignoring language in the parties' collective bargaining agreement (hereafter CBA) which serves as a waiver to the Petitioners' right to object to the assignment of the at-issue Highway Department work duties to non-bargaining personnel including but not limited to the Deputy Highway Superintendent, or in the alternative that the award is entirely irrational, or both pursuant to CPLR 7511 (b)(iii).

BACKGROUND

To frame the issues at stake a brief recitation of the facts is helpful. For a period of time, at the beginning of every workday, the Town Supervisor would assign work for the day to two members of the Respondent and the Deputy Highway Supervisor. It is undisputed that the New York State Public Employment Relations Board certified the Savannah Highway Employees Association as the exclusive bargaining representative for the Highway Department Motor Equipment Operators (MEOs) of the Town of Savannah's Highway Department and that the title Deputy Highway Superintendent (Deputy) position was excluded from the bargaining unit.

Although no starting date is presented, for a considerable period of time the Deputy has been working side by side with the two full time MEOs performing the same duties. At the beginning of the work day the Superintendent of Highways (Superintendent) met with the two MEOs and the Deputy and distributed work assignments. The Deputy never assigned work details nor did he engage in any managerial or supervisory responsibilities. His work duties were the same as the MEOs.

In 2011, the Union filed a grievance regarding this work assignment issue alleging violations of Article 3.2 of the CBA. In exchange for a one year extension of the 2011 CBA, the Union withdrew this grievance without prejudice.

On January 7, 2013, a member of the Union filed a grievance dealing with this work assignment issue. On January 15, 2013, the Town denied the grievance. On May 16, 2013, the arbitration was conducted.

In his Decision, the Arbitrator set forth the positions of the Petitioner and the Respondent. He found the language of the CBA to be clear and unambiguous. Section 3.2.1 defines the scope of the bargaining unit regarding positions and duties. Section 3.2.1 specifically excludes the Deputy from the bargaining unt. The only reference to the Deputy performing the duties of the MEOs in the CBA is in Section 6.1.5 ("equalization of overtime").

The Respondent argued that past practices of the operations of the Highway Department should defeat the Unions' grievance. The Arbitrator indicated that to establish a past practice the Town must prove three key elements: 1) it is uniform; 2) it is consistent; 3) it has been mutually accepted by the parties. The Town opted not to present any evidence in its case in chief. Therefore the Arbitrator found the Town did not establish a past practice.

The Town argued that the Union witness testified that the Deputy "always" performs MEO work. The Arbitrator found that this should not be construed to establish a past practice existed but rather that this testimony established that the Deputy was not functioning in a supervisory capacity.

In support of its position the Town relies on Section 2.1.1 which states that the Town has the right to "determine the composition and organization of the workforce... unless expressly provided otherwise provided in this collection bargaining agreement." The Arbitrator concluded from this language that the Town had no restrictions or limitations within the CBA pertaining to the Deputy; Superintendent; or temporary, part-time, or seasonal employees from doing the same work as the MEOs during regular hours of operations.

The Town argued that ruling in favor of the Union would be analogous to the Arbitrator rewriting the CBA thereby exceeding his authority. The Arbitrator cited two Decisions in support of his position.

In a post-hearing brief the Town reminded the Arbitrator that pursuant to Section 13.1.4 the Arbitrator did not have the power to amend, modify or delete any provisions of the CBA. The Arbitrator responded that he understood and accepted the limitations of his authority. The Arbitrator found it ironic to accept the Town's understanding of the Management Right's Clause would have the practical effect of rendering the Recognition Clause and other provisions relating to bargaining unit rights and benefits meaningless and in essence deleting them from the CBA.

ANALYSIS

The legal issues in this application were addressed in the 2013 Fourth Department case, Professional, Clerical Technical, Employees Association v. Board of Education for Buffalo City School District, 103 A.D. 3d 1120, 959 N.Y.S. 2d 310. The following is a direct quotation from that case.

> [1][2][3][4][5] It is well established that "an arbitrator's rulings, unlike a trial court's, are largely unreviewable" (Matter of Falzone [New York Cent. Mut. Fire Ins. Co.], 15 N.Y. 3d 530, 534, 914 N.Y.S. 2d 67, 939 N.E. 2d 1197). Thus, "a court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (i.d.; see generally CPLR 7511[b][1][iii]). "Outside of these narrowly circumscribed exceptions, **312 courts lack authority to review arbitral decisions, even where 'an arbitrator has made an error of law or fact'" (Matter of Kowaleski [New York State Dept. of Correctional Servs.], 16 N.Y. 3d 85, 91, 917 N.Y.S. 2d 82, 942 N.E. 2d 291, quoting Falzone, 15 N.Y. 3d at 534, 914 N.Y.S. 2d 67, 939 N.E. 2d 1197; see Matter of United Fedn. of Teachers, Local 2, AFT, AFL-CIO v. Board of Educ. of City School Dist. of City of N.Y., 1 N.Y. 3d 72, 79, 769 N.Y.S 2d 451, 801 N.E. 2d 827). Indeed, an arbitrator's interpretation of a collective bargaining agreement "may even disregard 'the apparent, or even the plain, meaning of the words' of the contract before him [or her] and still be impervious to challenge in the courts" (*1122 Matter of Albany County Sheriff's Local 775 of Council 82, AFSCME, AFL-CIO [County of Albany], 63 N.Y. 2d 654, 656,479 N.Y.S. 2d 513, 468 N.E. 2d 695,

quoting Rochester City School Dist. v. Rochester Teachers Assn., 41N.Y. 2d 578, 582, 394 N.Y. S. 2d 179, 362 N.E., 2d 977). As the Court of Appeals explained, "Courts are bound by an arbitrator's factual findings, interpretation of the contract and judgment concerning remedies. 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 the better one. Indeed, 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, 704 N.Y.S. 2d 910, 726 N.E. 2d 462.)

[6] Of the three "narrow grounds" that may form the basis for vacating an arbitration award (United Fedn. of Teachers, Local 2, AFT, AFL-CIO, 1 N.Y. 3d at 79, 769 N.Y.S. 2d 451, 801 N.E. 2d 827; see Matter of New York City Tr. Auth. V. Transport Workers Union of Am. Local 100, 14 N.Y. 3d 119, 123,897 N.Y.S. 2d 689, 924 N.E. 2d 797), only the irrational and exceeding enumerated limitations grounds are at issue here. " An award is irrational if there is no proof whatever to justify the award" (Matter of Lucas [City of Buffalo], 93 A.D. 3d 1160, 1164, 941 N.Y.S. 2d 365; see Matter of Buffalo Council of Supervisors & Adm'rs., Local No 10, Am. Fedn. of School Adm'rs [Board of Educ. of City School Dist. of Buffalo], 75 A.D. 3d 1067, 1068, 905 N.Y.S. 2d 404). So long as an arbitrator "offer[s] even a barely colorable justification for the outcome reached," the arbitration award must be upheld (Matter of Monroe County Sheriffs' Office [Monroe County Deputy Sheriffs' Assn., Inc.], 79 A.D. 3d

1797, 1799, 915 N.Y.S. 2d 425; see Matter of Buffalo Teachers Fedn. Inc. [Board of Educ. of Buffalo City School Dist.], 67 A.D. 3d 1402, 1402, 890 N.Y.S. 2d 225).

[7][8] An award may be set aside on the ground that an arbitrator exceeded his or her power "only if the [arbitrator] gave a completely irrational construction to the provision in dispute and in effect, made a new contract for the parties" (Matter of National Cash Register Co. [Wilson], 8 N.Y. 2d 377, 383, 208 N.Y.S. 2d 951, 171 N.E. 2d 302; see Rochester City School District., 41 N.Y. 2d at 583, 394 N.Y.S. 2d 179, 362 N.E. 2d 977). "The mere fact that a different construction could have been accorded the provisions concerned and a different conclusion reached does not mean that the arbitrator [] so misread those provisions as to empower a court to set aside the award" (National Cash Register Co., 8 N.Y. 2d at 383, 208 N.Y.S. 2d 951, 171 N.E. 2d 302; see United Fedn. Of Teachers, Local 2, AFT, AFL-CIO, 1 N.Y. 3d at 82-83, 769 N.Y.S. 2d 451, 801 N.E. 2d 827; **313 *1123 7 Matter of Albany County Sheriffs Local 775 of N. Y. State Law Enforcement Officers Union, Dist. Council 82, AFSCME, AFL-CIO [County of Albany], 27 A.D.3d 979, 981, 812 N.Y.S. 2d 152). Rather, so long as the contractual language is "reasonably susceptible of the construction given it by the arbitrator[]," a court may not vacate the award (National Cash Register Co., 8 N.Y. 2d at 383, 208 N.Y.S. 2d 951, 171 N.E. 2d 302; see Albany County Sheriffs Local 775 of N.Y. State Law Enforcement Officers Union, Dist. Council 82, AFSCME, AFL-CIO, 27 A.D. 3d at 981, 812 N.Y.S. 2d 152).

CONCLUSION

As the foregoing presentation of the law in this area demonstrated, the Arbitrator has latitude to determine the facts and the law and interpret the contract. Under these circumstances, the Court is prevented from overturning the Decision of the Arbitrator. Therefore, the application of the Petitioner is granted and the cross-motion of the Respondent is denied.

Counsel for Petitioner to prepare a Judgment consistent with this Decision.

Dated: March 14, 2014
Lyons, New York

Daniel G. Barrett
Acting Supreme Court Justice