

**Matter of New York City Tr. Auth. v Transport
Workers Union of Greater N.Y. Local 100**

2014 NY Slip Op 32257(U)

August 21, 2014

Supreme Court, New York County

Docket Number: 451546/14

Judge: Manuel J. Mendez

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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

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

In the Matter of the Application of
NEW YORK CITY TRANSIT AUTHORITY,
Petitioner,

INDEX NO. 451546 /14

For an Order Permanently Staying Arbitration under
Article 75 of the Civil Practice Law and Rules,

MOTION DATE 08-20-2014

- Against -

MOTION SEQ. NO. 001

TRANSPORT WORKERS UNION OF GREATER NEW YORK
LOCAL 100,

MOTION CAL. NO. _____

AMENDED DECISION

The following papers, numbered 1 to 4 were read on this petition Pursuant to CPLR 7503
(b)to stay arbitration.

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

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

PAPERS NUMBERED

1-2

Answering Affidavits — Exhibits _____

3-4

Replying Affidavits _____

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is ordered that this petition to permanently stay the arbitration filed by Respondent Transport Workers Union of Greater New York Local 100 (hereinafter "TWU") is granted, the arbitration is permanently stayed.

Petitioner New York City Transit Authority (hereinafter "TA"), a public benefit corporation organized and existing under the New York State Public Authorities Law and Respondent TWU, an unincorporated association and the duly recognized collective bargaining representative of various employees of the TA, entered into a Collective Bargaining Agreement (hereinafter "CBA") effective since December 15,1999 and which incorporated by reference other agreements and understandings between the parties. The agreement (Exhibit B) in its section 1.2 Recognition states:

"The authorities recognize the Union as the exclusive bargaining representative and the exclusive representative for the presenting and processing of employee grievances of all the:

A. Hourly paid operating maintenance employees of the Transit Authority in the titles listed in Appendix A, attached hereto and made a part hereof, *excluding those employed in the Queens Bus Division and those employed in the Staten Island Bus Division...."*

Section 5.2 J Transfers states:

“The Transit Authority reserves the right whenever there may be an employee in any unit of any Division with divisional seniority for whom there is no work in such unit to transfer and assign him/her to work in any other unit of that Division or in any unit of any other Division where there may be work for him/her to do within his/her title or classification. At any time after his/her transfer if a vacancy in his/her title occurs in the unit from which he/she was transferred, he/she will be given one opportunity to elect to return to such unit with the same preference status which he/she would have had, had he/she remained there.

Employees appointed to the Brooklyn Division will be “Frozen” in that Division, except:

1) A) that they may be eligible for transfer to 126th street, (Manhattan) or B) to the extent that employees may become excess or be covered by the restricted duty policy. ”

Section 2.1 (A) definitions states:

(1) “a contract interpretation grievance is hereby defined to be a complaint on the part of *any covered employee or group of such employees* that there has been on the part of management, non-compliance with or misinterpretation of any of the provisions of this agreement...”

Effective February 2000 the TA entered into a Collective Bargaining Agreement with Almagamated Transit Union, Local 726 (hereinafter “ATU”). The agreement (Exhibit A)in its Section 1.2 Recognition states:

“The Authority recognizes the Union as the *exclusive* bargaining representative and the *exclusive representative for the presenting and processing of employee grievances* of all of the hourly paid operating maintenance employees of the Authority in the titles listed in Appendix A, attached hereto and made a part hereof, *in the Staten Island Division.*”

Section 3.2I Transfers states:

“The authority reserves the right whenever there may be an employee in any Unit of any Division with divisional seniority for whom there is no work in such Unit to transfer and assign him/her to work in any other unit of that Division or in any unit of any other Division where there may be work for him/her to do within his/her title or classification. At any time after his/her transfer if a vacancy in his/her title occurs in the unit from which he/she was transferred, he/she will be given one opportunity to elect to return to such unit with the same preference status which he/she would have had he/she remained there...”

Newly hired maintenance employees receive their training at the Zerega Central Maintenance Facility, which is located in Bronx County. During training they report daily to this facility regardless of where they live or where they may be ultimately assigned to work. Since the Training location is in Bronx County - not in Staten Island or Queens - trainees are listed in the TA system as nominal members of the TWU. After completion of training new employees are given the opportunity to pick , based on seniority, the location in which they prefer to work. Once an employee is given his/her initial assignment, the employee joins the bargaining unit covering that location.

Some employees assigned to the Staten Island Division following their training seek a transfer out of that Division to the Brooklyn Division. The ATU, which covers the Staten Island Division has filed a grievance and is seeking to arbitrate that grievance in accordance with its CBA with the TA. Respondent TWU has filed a similar grievance on behalf of the same workers. Petitioner now moves pursuant to Article 75 of the CPLR, by Order to Show Cause, to permanently stay Respondent TWU from arbitrating its grievance.

Petitioner claims Respondent lacks standing to arbitrate this grievance for three (3) reasons:

(1) The ATU and not the TWU is the exclusive representative for the affected employees; (2) The particular claims being arbitrated arise out of the ATU not the TWU CBA ; and (3) allowing the TWU to arbitrate would usurp the ATU's right to act as the "exclusive bargaining representative and the exclusive representative for presenting and processing employee grievances.

Respondent opposes the motion and argues that it seeks to grieve a violation of Section 5.2J of the CBA, which is ambiguous and falls within the compass of the arbitration provision of the CBA. It further argues that the TWU can file a grievance to compel the TA to comply with the terms of the CBA even if these terms are also part of another contract. It finally argues that it is up to the arbitrator to decide if it has standing.

"In determining whether an issue is subject to arbitration under a collective bargaining agreement a court must apply a two step analysis. The court must first determine whether there is any statutory, constitutional or public policy prohibition against arbitration of the grievance; and second, determine whether the Collective Bargaining Agreement demonstrates that the parties agreed to refer this type of dispute to arbitration" (In re Village of Kenmore, 114 A.D.3d 1185, 979 N.Y.S.2d 741 [2nd. Dept. 2014]. A party cannot be compelled to arbitrate in the absence of an express, direct and unequivocal agreement to do so (Matter of Massena Central School District, 82 A.D.3d 1312, 918 N.Y.S.2d 228 [3rd. Dept. 2011]; In re Sherwood, 108 A.D.3d 979, 970 N.Y.S.2d 124 [3rd. Dept. 2013]). An arbitration will be foreclosed when it falls outside the scope of the Collective Bargaining Agreement. To be arbitrable there must be a reasonable relationship between the subject matter of the dispute and the general subject matter of the Agreement; that is, a court must decide whether the provisions of the Collective Bargaining agreement are applicable to a grievant asserting a claim thereunder (Matter of Board of Education of the Rondout Valley Central School District, 101 A.D.3d

1446, 956 N.Y.S.2d 671[3rd. Dept. 2012].

It is clear from the Collective Bargaining Agreements that the employees from the Staten Island Division are to be exclusively represented by and covered under the ATU collective bargaining agreement. It is also clear that a contract interpretation grievance is a complaint on the part of "a covered employee or group of such employees", and that the employees of the Staten Island Division, being covered under the ATU agreement are not considered "covered employees" under the TWU agreement. Since the Staten Island Division employees are to be exclusively represented by and covered under the ATU agreement, the TWU lacks standing to arbitrate any grievance on behalf of these employees. The arbitration of any grievance on behalf of the Staten Island Division employees is exclusively reserved to the ATU under the ATU and TWU Collective Bargaining Agreements. Thus the matter sought to be arbitrated by the TWU falls outside of its Collective Bargaining Agreement.

Finally, section 5.2J does not apply to the situation at hand because the employees in question were employees with Divisional Seniority and were not transferred into the Staten Island Division because there was no work available for them in their former unit or division. They were newly hired and were assigned initially to the Staten Island Division.

Accordingly, it is ORDERED and ADJUDGED that the petition is granted, and it is further

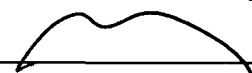
ORDERED and ADJUDGED that Respondent is not entitled to arbitrate a grievance on behalf of the Staten Island Division employees because they are not covered under the Collective Bargaining Agreement between Petitioner and Respondent, and it is further

ORDERED and ADJUDGED that the arbitration of Respondent's grievance is permanently stayed, and it is further

ORDERED that the Clerk is Directed to enter judgment accordingly.

ENTER:

Dated: August 21, 2014

MANUEL J. MENDEZ
J.S.C.


Manuel J. Mendez
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE