

Matter of Port Auth. Field Supervisors Assoc. v Port Auth. of N.Y. & N.J.
2014 NY Slip Op 33337(U)
December 15, 2014
Supreme Court, New York County
Docket Number: 652683/2014
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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In the Matter of the Application of

THE PORT AUTHORITY FIELD SUPERVISORS
ASSOCIATION, LOCAL 111S, USWU, IUJAT,

Petitioner,

Index No. 652683/2014

-against-

DECISION/ORDER

THE PORT AUTHORITY OF NEW YORK AND NEW
JERSEY,

Respondent.

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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>4</u>

Petitioner brings the instant application for an Order pursuant to CPLR § 7511(b)(iii) vacating the arbitration decision and award entered by Arbitrator Martin F. Scheinman on June 5, 2014 (the "Award"). For the reasons set forth below, the petition is denied and the Award is confirmed.

The relevant facts are as follows. Petitioner Port Authority Field Supervisors Association, Local 111S, USWU, IUJAT ("PAFSA") is the recognized majority representative of employees denominated "Operations Supervisors" or "Field Supervisors" employed by respondent The Port Authority of New York and New Jersey ("Port Authority"). On or about

July 30, 2011, Port Authority employee Francis Croffie (“Mr. Croffie”), a PAFSA member, engaged in a verbal and physical altercation with a Police Officer at a security checkpoint at John F. Kennedy Airport (“JFK”). As such, Port Authority initiated a disciplinary proceeding against Mr. Croffie, which was held in front of Hearing Officer Jack Tillem (the “disciplinary proceeding”). On September 12, 2012, Hearing Officer Tillem issued an Opinion and Award, which found Mr. Croffie guilty of the disciplinary charges and imposed a penalty of “compulsory leave of absence without pay for time served in suspension pending his return to work upon completion of these proceedings” (the “Tillem Award”). In other words, the Tillem Award imposed a penalty of reinstatement without back pay.

At the time of the incident, Mr. Croffie was the Chief Operations Supervisor at JFK. However, upon returning to work after the incident, Mr. Croffie was transferred to another position, at the same grade level, at the Headquarters of the Aviation Department. According to the Port Authority, due to the incident, it decided to revoke Mr. Croffie’s Security Information Display Area (“SIDA”) identification privileges making him ineligible to continue working at JFK.

Thereafter, petitioner filed a grievance on behalf of Mr. Croffie alleging that his transfer violated the Memorandum of Agreement (“MOA”) between the parties, which governs Mr. Croffie’s conditions of employment. Specifically, petitioner asserted that respondent’s refusal to return Mr. Croffie to his position at JFK violated Tillem’s Award and contravened Article XXVI and XXVIII of the MOA. On or about October 3, 2013, the grievance proceeded to a hearing before Arbitrator Martin F. Scheinman (the “Arbitrator”). After a full hearing, on or about June 5, 2015, the Arbitrator issued the Award herein at issue denying petitioner’s grievance and

finding that the Port Authority did not violate the MOA. In pertinent part, the Arbitrator found as follows:

I find the Employer did not violate the MOA. Based upon the facts of this case, the Employer's decision to move Croffie while retaining the same salary and benefits was not improper.

I find persuasive the Employer's argument it has wide discretion to administer security protocols, in particular with regard to restricted areas at JFK, the subject of the instant dispute. This includes both administering who has SIDA privileges and determining what lack of SIDA privileges means with regard to access and the ability to work in certain areas.

Petitioner now brings the instant application pursuant to CPLR § 7511(b)(1) 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. Pursuant to CPLR § 7511(b)(iii), the award of an arbitrator shall be vacated if the court finds that "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...." An arbitrator "exceeds his power under the meaning of the statute where his award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power." *Matter of Kowaleski*, 16 N.Y.3d 85 (2010).

In the present case, petitioner's application to vacate the Award is denied as petitioner has failed to demonstrate a proper basis warranting vacatur. The gravamen of petitioner's claim is that the Award is wholly irrational as it upheld a penalty beyond that which was imposed by Hearing Officer Tillem, who had exclusive authority to determine disciplinary measures under the MOA. However, the court is not persuaded by such argument as the Arbitrator rationally found that the revocation of Mr. Croffie's SIDA privileges and subsequent transfer was not an

additional disciplinary penalty but was a proper exercise of respondent's discretion. As the Arbitrator noted, "the MOA is silent regarding SIDA privileges, and no evidence was introduced of negotiating or arbitrating these decisions." Additionally, the Port Authority's Rules and Regulations made clear that they had "the right to rescind permission for the use of any access control device and confiscate any Airport ID preciously given to any individual for any lawful reason." Indeed, the legal precedent presented to the Arbitrator demonstrated that courts give deference to the respondent and other similarly situated agencies to make the types of security decisions respondent made in regards to Mr. Croffie. Thus, the Arbitrator's decision to deny petitioner's grievance was rational.

Additionally, to the extent petitioner contends that the Arbitrator exceeded the power granted to him by the MOA as he relied on evidence outside the MOA in making his decision, such contention is without merit. Petitioner fails to present any authority specifically limiting the Arbitrator to the terms of the MOA in making his decision. Indeed, petitioner's contention is belied by the fact that petitioner itself stipulated to many of the facts presented to the Arbitrator, which included several pieces of evidence outside the MOA.

Accordingly, the petition is denied and the Award is confirmed. This constitutes the decision, order and judgment.

Dated: 12/15/14

Enter: _____
 J.S.C.

CYNTHIA S. KERN
 J.S.C.