

Matter of Tioga Ctr. Sch. Dist. (Tioga Teachers Assoc.)

2015 NY Slip Op 31791(U)

September 25, 2015

Supreme Court, Tioga County

Docket Number: 45659

Judge: Eugene D. Faughnan

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At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Tioga County Courthouse, Owego, New York, on the 21st day of August, 2015.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : TIOGA COUNTY

In the Matter of the Application of the
TIOGA CENTRAL SCHOOL DISTRICT, and
SCOT TAYLOR, Superintendent of Schools
of Tioga Central School District,

PETITIONERS,

DECISION AND ORDER

Index No. 45659
RJI No.

For a Judgment Pursuant to Article 75 of the CPLR
permanently stating an Arbitration brought by the
TIOGA TEACHERS ASSOCIATION,

RESPONDENT.

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EUGENE D. FAUGHNAN, J.S.C.

This matter comes before the Court on the Tioga Central School District's and Scot Taylor's (collectively "Petitioners") Order To Show Cause signed April 27, 2015 and a Verified Petition (with exhibits) filed April 23, 2015 seeking a Permanent Stay of Arbitration pursuant to CPLR §7503 and the Tioga Teachers Association's ("TTA's" or "Respondent's") Cross Motion to Compel Arbitration pursuant to CPLR §7503 filed August 11, 2015.

Petitioners submitted a Memorandum of Law dated April 23, 2015. Respondent submitted an affidavit of David E. Reese dated August 6, 2015 and a Memorandum of Law dated August 10, 2015. Petitioners submitted an Answer dated August 17, 2015 to the Respondent's Cross Motion. The parties appeared for oral argument on August 21, 2015.

The Tioga Central School District ("TCSD") is a school district with its principal offices in Tioga Center, New York. The TTA is the exclusive representative for teachers within the TCSD. In early 2015, a vacancy arose for an assistant softball coaching position. Janice Barto, a member of TTA, expressed interest in the position. However, Petitioner alleges that she never applied and that the position was given to Stephanie Hills, upon the recommendation of the head softball coach. Hills is not a member of TTA. TTA invoked the grievance procedures of the collective bargaining agreement ("CBA") arguing, among other things, that there is a past practice established which requires TCSD to offer any coaching position to a member of TTA before hiring a non-unit member. As no resolution was obtained through the various grievance steps outlined in the CBA, on March 30, 2015, TTA served a demand for arbitration.

Petitioners do not dispute that TTA followed the grievance procedure as outlined in the CBA. Rather, they argue that hiring is an issue reserved to the District and as such, arbitration is barred as against public policy. In the alternative, Petitioners argue the grievance procedures only cover

issues arising from disputes as to the meaning or application of the CBA. Petitioner alleges that the CBA does not address any “right of first refusal” to be given to unit members and therefore is not subject to the grievance procedures and by extension, not subject to arbitration. Respondent urges that there is no public policy bar from negotiating and arbitrating procedures for hiring. Respondent further argues that the CBA does contain a salary scale for the assistant coaching position and a procedure for notifying TTA of vacancies and as such, the subject of the grievance is generally covered by the CBA, and therefore, is subject to the grievance and arbitration procedures in the CBA.

The question of arbitrability involves a two-pronged inquiry. First, a court must decide whether “arbitration claims with respect to the particular subject matter of the dispute [are] authorized” *Matter of City of New York v. Uniformed Fire Officers Assn., Local 854, IAFF, AFL-CIO*, 95 N.Y.2d 273, 280, 739 N.E.2d 719, 716 N.Y.S.2d 353 [2000], quoting *Matter of New York City Dept. of Sanitation v MacDonald*, 87 N.Y.2d 650, 656, 664 N.E.2d 1218, 642 N.Y.S.2d 156 [1996]; see *Civil Service Law art 14; Matter of Acting Supt. of Schools of Liverpool Cent. School Dist. [United Liverpool Faculty Assn.]*, 42 N.Y.2d 509, 512, 369 N.E.2d 746, 399 N.Y.S.2d 189 [1977]). “Second, the court must ascertain whether the authority to arbitrate was in fact exercised and the parties consented by the terms of their particular agreement to refer disputes in this specific area to arbitration” *Matter of City of New York v Uniformed Fire Officers Assn., Local 854, IAFF, AFL-CIO, supra* at 280; see *Matter of Board of Educ. of Watertown City School Dist. [Watertown Educ. Assn.]*, 93 N.Y.2d 132, 138, 710 N.E.2d 1064, 688 N.Y.S.2d 463 [1999]). This standard has been referred to as the “may they arbitrate” and “did they agree to arbitrate” test. With respect to the second prong, when faced with a broad arbitration clause, a court should “merely determine whether there is a reasonable relationship between the subject matter of the dispute and the general subject matter of the [collective bargaining agreement]” *Matter of Board of Educ. of Watertown City School Dist. [Watertown Educ. Assn.]*, *supra* at 143.

1. May they Arbitrate

Petitioners argue that the demanded arbitration would impermissibly infringe upon its management responsibilities citing Education Law §1709 (16). Education Law §1709 empowers school districts, and deems it their duty, to “employ such persons as may be necessary to supervise, organize, conduct and maintain athletic, playground and social center activities...” Ed. Law §1709 (16). Petitioners argue that even if there was a past practice giving unit members a “right of first refusal” (which they deny)¹, any such past practice would be against public policy as it impinges upon TCSD’s non-delegable powers regarding hiring and staffing under the Education Law.

Respondent asserts that although the grievance pertains to Petitioner’s hiring decision, it is the process or procedure that is being challenged. It argues that such grievances are permissible pursuant to *Enlarged City School District of Troy, infra*.

“The court’s role in reviewing applications to stay arbitration is of course a limited one: ‘it is not for the courts to interpret the substantive conditions of the contract or to determine the merits of the dispute * * * Nor should arbitration be stayed merely because the requested remedy, if granted, runs the risk of resulting in an impermissible assumption of the board’s supervisory responsibility, or * * * because it is feared that the arbitrator’s judgment would be improperly substituted for the subjective determination of an applicant’s qualification which is vested in the discretion of the superintendent’” *Enlarged City School District of Troy v. Troy Teachers Association*, 69 NY2d 905, 906 (1987) quoting *Board of Educ. v. Barni*, 51 NY2d 894, 895-896 (1980). “To justify preemptive judicial intervention in the arbitration process, public policy considerations embodied in decisional law or statutes must ‘prohibit, in an absolute sense, particular matters being decided or certain relief being granted by an arbitrator.’” *Enlarged City*

¹Petitioner argues that even if there was a right to first refusal, Respondent has no claim as the unit member never applied for the vacant position. However, this is argument goes to the merits and is well beyond the scope of this Court’s review.

School District of Troy at 906, citing *Matter of Sprinzen [Nomberg]*, 46 NY2d 623, 631 (1979).

In the present case, Petitioner argues that any infringement upon its duties regarding hiring is against public policy and may not be the subject of arbitration. However, it has been long held that parties to a CBA may negotiate procedures regarding hiring without infringing upon management's duty to ensure that qualified individuals fill vacant positions. *See Enlarged CSD of Troy*. Respondent alleges that a past practice was established which created a contractual obligation on the part of Petitioner to offer unit members a right of first refusal. Although such an obligation *may* ultimately infringe upon the TCSD's duty to hire qualified individuals, this Court cannot say that such is the case based upon the record before it. Likewise, the Court cannot conclude that any remedy fashioned by an arbitrator would necessarily impermissibly infringe on Petitioner's statutory duties. Rather, at this stage, the Court is compelled to assume that the arbitrator will use his or her broad powers to fashion a remedy "adequately narrowed to encompass only procedural guarantees". *Port Washington Union Free School District v. Port Washington Teachers Association*, 45 NY2d 411, 418 (1978).

For the reasons set forth herein, the Court concludes neither public policy nor statutory provisions bar the arbitration of this grievance.

2. Did they agree to Arbitrate

To determine whether the parties agreed to arbitrate the dispute in question, the Court must first look to the language of the CBA. *See Yorktown Central School District v. Yorktown Congress of Teachers*, 98 AD3d 665 (2nd Dept. 2012). Under the relevant CBA, a grievance is defined as "...any alleged violation of this agreement or any dispute with respect to its meaning or application." Article XII (3)(a), 2014-2017 CBA. This sort of grievance language has been generally characterized as a "broad" arbitration clause. *See Windsor Central School District v. Windsor Teachers Association*, 306 AD2d 669 (3rd Dept. 2003); *Johnson City Professional Fire Fighters v. Village of Johnson City*, 75 AD3d 805 (3rd Dept. 2010). There is no limitation in the

CBA language as to what issues may be arbitrated, so long as they arise from a violation of the agreement, or any dispute as to the meaning or application of its provisions.

The Court is not required to delve deeply into the issues being raised in the grievance but "should merely determine whether there is a reasonable relationship between the subject matter of the dispute and the general subject matter of the CBA." *City of Binghamton v. Binghamton Police Benevolent Association*, 82 AD3d 1488, 1489 (3rd Dept. 2011) quoting *Matter of Board of Educ. of Watertown City School Dist. v. Watertown Educ. Ass'n.*, 93 NY2d 132,143 (1999); see *Matter of Peters v. Union-Endicott Cent. School Dist.*, 77 AD3d 1236 (3rd Dept. 2010). Here, TTA alleges a violation of Article II ("Recognition") and Article V ("Salary and Compensation")² as well as a violation of a past practice of giving unit members a "right of first refusal" regarding coaching positions.

The "Recognition" clause contained in Article II of the CBA provides that the District recognizes TTA as the negotiating agent for the teachers in the District. Nothing in this clause appears to address the issue of hiring non unit members for coaching positions. Although the District is prohibited from negotiating with "any other *teachers' organization*", this would not appear to bear any relationship to the hiring of an *individual* for a coaching position. Significantly, TTA does not argue that a non unit member cannot be offered, or hold, a coaching position. Rather, they argue that past practice and Article V requires the District to offer such positions to unit members first. Therefore, for the purposes of determining this motion, there is nothing in the Recognition Clause, by itself, generally relating to the subject matter of the grievance. However, as will be discussed more below, the interpretation of this provision is squarely within the authority of the arbitrator, and this court will not invade his or her province. *City of Binghamton, supra*.

²TTA, in its Memorandum of Law, raises a violation of Article VII. Article VII may well be implicated in the present dispute. However, neither the Grievance dated March 13, 2015 nor the Demand to Arbitrate dated March 30, 2015 addresses any violation of Article VII.

Article V, Salary and Compensation, provides various pay scales for positions within the District including coaching positions³. It is clear that most of Article V pertains to rates to be paid to unit members, including coaching positions. However, it is equally clear that whether this provision creates certain contract rights for unit members in, or to, coaching positions is a matter of contract interpretation, which is reserved to the arbitrator. *Yorktown* at 667. Where “the subject matter of the dispute bears a reasonable relationship to the articulated contract provisions ... it is for an arbitrator to decide in the first instance whether the precise scope of those provisions covers the issues presently disputed”. *City of Binghamton v. Binghamton Police Benevolent Association, supra*; see also *Matter of City of Johnstown v. Johnstown Police Benevolent Assn., supra*; *Matter of Board of Educ. of Watertown City School Dist. v. Watertown Educ. Assn., supra*; *Matter of City of Ithaca Paid Fire Fighters Assn., IAFF, Local 737*, 29 AD3d 1129, 1131-1132 (3rd Dept. 2006). Therefore, the Court finds that Article V generally pertains to the subject matter of the dispute. The determination of the scope of that provision is a matter to be determined by the arbitrator.

TTA alleges that there is a past practice of giving unit members a “right of first refusal” regarding coaching positions. TCSD denies the existence of any such “past practice”. “Past practices may be considered by an arbitrator only when interpreting a specific contractual provision covering the issue in dispute or when the agreement expressly allows for the inclusion of past practices”. *Franklin Central School District v. Franklin Teachers Association*, 238 AD2d 848 (3rd Dept. 1997); *Matter of Hunsinger v. Minns*, 197 AD2d 871 (4th Dept. 1993); see, *City of Canandaigua v. Canandaigua Police Officers Assn.*, 174 AD2d 1048, 1049 (4th Dept. 1991); *Matter of New York City Tr. Auth. v. Patrolmen's Benevolent Assn. of N. Y. City Tr. Police Dept.*, 129 AD2d 708 (2nd Dept. 1987); See also *Aeneas McDonald Police Benevolent Association*, 92 NY2d 326 (1998).

In the present case, there is no specific language in the CBA wherein the parties agreed to arbitrate issues of past practice. Although the grievance provisions are broad, they can only encompass

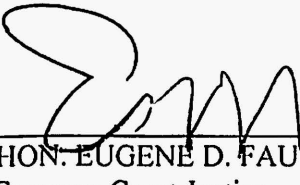
³At Oral Argument, both sides conceded that the District could not pay a non unit member at a rate other than provided in the CBA.

“any alleged violation of [the] agreement or any dispute with respect to its meaning and application.”
Therefore, the Court finds that past practice may be considered by the arbitrator in interpreting the contract, but may not create any new provisions therein.

For the Reasons set forth herein, the Court concludes that there is a reasonable relationship between the subject matter of the grievance and the CBA. As such, Petitioners’ application to permanently stay arbitration is **Denied** and the Respondent’s cross motion to compel arbitration is **Granted**.

SO ORDERED.

Dated: September 25, 2015
Owego, New York



HON. EUGENE D. FAUGHNAN
Supreme Court Justice