

Matter of County of Nassau v Nassau County Sheriff's Corr. Officers' Benevolent Assn.
2020 NY Slip Op 35785(U)
August 11, 2020
Supreme Court, Nassau County
Docket Number: Index No. 603571/20
Judge: Diccia T. Pineda-Kirwan
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Short Form Order/Judgment

NEW YORK SUPREME COURT - NASSAU COUNTY

Present: Honorable DICCIA T. PINEDA-KIRWAN
Justice

IA PART 27

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In the Matter of the Application of COUNTY OF
NASSAU,Index No.: 603571/20
Motion Date: 6/18/20
Motion Cal. #: 2, 3
Seq. No.: 1, 2

Petitioner(s),

For a Judgment Pursuant to Article 75 of the
New York Civil Practice Law and Rules

-against-

NASSAU COUNTY SHERIFF'S CORRECTION
OFFICERS' BENEVOLENT ASSOCIATION,Respondent(s).
-----XThe following numbered papers read on this petition to vacate an Arbitration Award, and cross-petition by
respondent to confirm an arbitration award.

PAPERS

NUMBERED

Notice of Petition-Petition-Exhibits.....	EF 1 - 13
Notice of Cross-Petition-Affidavits-Exhibits.....	EF 14 - 18
Answering Affidavits-Exhibits.....	EF 19 - 22
Replying.....	EF 24 - 29

Upon the foregoing cited papers, and after Skype for Business (SfB) conference, it is ordered that the petition by the County of Nassau ("County") for an order pursuant to CPLR Article 75 vacating an arbitration award ("Award") dated December 12, 2019, that resolved a grievance filed by the respondent, Nassau County Sheriff's Correction Officers' Benevolent Association ("NCSCOB"), and cross-petition by NCSCOB for an order pursuant to CPLR Article 75, confirming the arbitrator's award, are consolidated for disposition, and are determined as follows:

This matter arises out of the arbitration of a grievance brought by NCSCOB against County, pursuant to a collective bargaining agreement (the "CBA"). NCSCOB is an incorporated labor union for, and the certified bargaining representative of, uniformed correction officers, and correction corporals, sergeants, lieutenants, and captains, who are employed by the Nassau County Sheriff's Department (the "Department").

The Award determined a grievance that NCSCOBAs commenced against the County challenging the denial of General Municipal Law §207-c benefits to NCSCOBAs unit members assigned to the Department.

GML §207-c provides, in pertinent part, that:

[a]ny . . . corrections officer of the sheriffs department of any county . . . who is injured in the performance of his or her duties or who is taken sick as a result of the performance of his or her duties so as to necessitate medical or other lawful remedial treatment shall be paid by the municipality . . . by which he or she is employed the full amount of his or her regular salary or wages from such employer until his or her disability arising therefrom has ceased, and, in addition such municipality . . . shall be liable for all medical treatment and hospital care necessitated by reason of such injury or illness.

NCSCOBAs contends that several of its members were improperly denied GML §207-c benefits solely because they did not miss additional work time after suffering a covered injury. NCSCOBAs filed Grievance Number SG-04-19 dated January 11, 2019 (the “Grievance”), which states:

Under the CBA, the County cannot deny line of duty [GML §207-c] benefits on the basis that the employee did not lose any work time. Within the last year, the County violated the CBA by denying requests for line of duty benefits on the basis that those officers did not lose any work time as a result of an injury.

Pursuant to the dispute resolution process set forth in the CBA, the Grievance was submitted to binding arbitration before Arbitrator Jay M. Siegel (the “Arbitrator”). The matter was heard on March 25, 2019 and on September 16, 2019, and NCSCOBAs submitted evidence of ten correction officers who were initially denied GML §207-c benefits on the basis of “No loss [sic] Time/Disability, Evaluation/Treatment Only.” Of the ten officers, seven continued to be denied GML §207-c benefits. On December 12, 2019, the Arbitrator issued the Award that is the subject of these proceedings.

The Arbitrator ordered that with respect to the seven correction officers who continued to be denied GML §207-c benefits, the County must designate “their treatment and any work time they missed on the day of the illness or injury . . . as GML 207-c leave and benefits” and to “cease and desist from denying officers GML 207-c benefits for medical treatment solely because the officer does not miss additional work time as a result of the injury.”

The County brings the instant petition to vacate the Award pursuant to CPLR 7511(b)(1)(iii), on the basis that it: (1) exceeds the power of the Arbitrator by rewriting the CBA; (2) is unsupported by any reasonable construction of the parties’ CBA, and is thus irrational; and (3) violates New York State public policy by stripping the County of its inherent discretionary authority to establish criteria for, and make initial determinations, regarding a correction officer’s eligibility for, and entitlement to GML §207-c benefits. NCSCOA opposes the petition, and cross-petitions to confirm the Award.

It is well-settled that there are “three narrow grounds that may form the basis for vacating an arbitrator’s award—that it violates public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator’s power” (*Matter of Shenendehowa Cent. Sch. Dist. Bd. of Educ.*, 20 NY3d 1026, 1027 [2013], quoting *Matter of New York City Tr. Auth. v Transport Workers Union of Am., Local 100*, 14 NY3d 119, 123 [2010]).

Vacatur of an arbitration award on public policy grounds is extremely narrow, and the Court should exercise restraint when applying the public policy exception to cases involving public employment collective bargaining agreements (see *United Fed’n of Teachers, Local 2, AFT, AFL-CIO v. Bd. of Educ. of City Sch. Dist. of City of New York*, 1 NY3d 72, 80 [2003]). An award may be vacated on public policy grounds if it “violates a well-defined constitutional, statutory or common law of this State” (*Id.*, quoting *Matter of New York City Transit Authority v Transport Workers Union of America, Local 100*, 99 NY2d 1 [2002]). An arbitrator’s award will not be vacated for errors of law and fact committed by the arbitrator, or even for misapplication of law (see *Matter of MBNA American Bank v Karathanos*, 65 AD3d 688 [2009]).

Here, the Arbitrator explained that in reaching his determination, he looked to the express language of GML §207-c, which “clearly provides two discrete benefits.” The first “provide[s] regular salary or wages to the officer who has been injured or taken sick as a result of the performance of the officer’s duties and who cannot work due to said injury or illness.” GML §207-c also provides a “[s]eparate and distinct” benefit, which “is the municipality’s liability for all medical treatment or medical care necessitated by the injury.” The Arbitrator observed that “[t]here is nothing in GML 207-c indicating that an individual is precluded from receiving GML 207-c hospitalization or medical treatment benefits if the individual is not receiving 207-c benefits for lost wages.” This was recognized as a flaw in the County’s argument that an employee must miss work time due to the illness or injury incurred in the performance of duties for their medical treatment to be designated as GML §207-c leave.

The Arbitrator went on to analyze the specific cases of the corrections officers that were denied GML §207-c benefits. He extrapolated that officers who faced nearly identical situations, in that they suffered similar injuries and received similar treatment, achieved disparate results when they applied for GML §207-c benefits, solely because one missed additional work time thereafter, and the other did not. The Arbitrator concluded that these opposing results, based solely upon whether additional work time was lost, runs afoul of GML §207-c.

The County argues that pursuant to Attachment B to the CBA, it has discretionary authority to make initial determinations regarding GML §207-c benefits, which includes the County’s right to establish standards and criteria for same. Attachment B provides in relevant part that “the Sheriff and or his designee may exercise their discretion and deem that an injury or illness whether physical or mental resulting from an incident to be considered 207 (c) [*sic*] status immediately following said incident.” The County contends that the Award nullifies the County’s standards and criteria by requiring the County to bestow GML §207-c wage replacement benefits automatically upon a correction officer even if the officer has not demonstrated that he or she sustained a disabling injury. According to the County, the Award exceeds the Arbitrator’s power and rewrites Attachment B of the CBA, in violation of public policy.

Contrary to the County's position, the Award did not nullify the County's authority to make initial determinations regarding GML §207-c benefits, but rather determined that the County was improperly exercising that authority based upon a misapplication of GML §207-c. Stated another way, the Award did not hold that the County could not make an initial determination regarding GML §207-c benefits, as it is permitted to do, but only that such determination was inconsistent with the express language of GML §207-c. The County therefore fails to establish that the Arbitrator exceeded his power or rewrote the CBA. Nor does the County demonstrate that the Award is unsupported by any reasonable construction of the CBA, or is otherwise irrational.

The Award further does not automatically bestow corrections officers with GML §207-c benefits as the County alleges. Pursuant to GML § 207-c, an officer must show that he or she was "injured" or "taken sick in the performance of" their "duties so as to necessitate medical or other lawful remedial treatment. . ." Here, there is no contention that these criteria were not met.

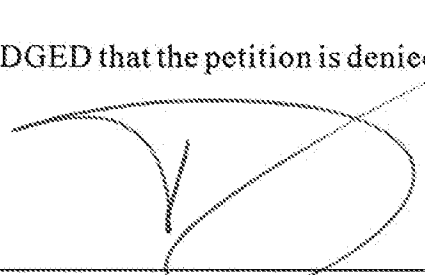
To the extent the County argues that the Award should be vacated in the interest of "maintaining adequate standards," this interest alone is insufficient to vacate an award as violative of public policy (*see United Fed'n of Teachers* at 81). Given the narrow scope of the public policy exception to an arbitrator's powers, the Court declines to find that the Award should be vacated on that basis.

The Court finds that the County has not established a basis for *vacatur* pursuant to CPLR 7511(b). Thus, the Court is required to confirm the Award (*see* CPLR 7510).

The Court has considered the remaining contentions of the parties and finds that they do not require discussion or alter the determination herein.

Accordingly, it is ORDERED and ADJUDGED that the petition is denied, and the cross-petition is granted.

Dated: August 11, 2020



DICCIA T. PINEDA-KIRWAN, J.S.C.

ENTERED

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