

**Matter of Municipal Hous. Auth. of the City of
Yonkers v Local 456, Intl. Bhd. of Teamsters**

2022 NY Slip Op 31248(U)

March 23, 2022

Supreme Court, Westchester County

Docket Number: Index No. 64628/2021

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT: STATE OF NEW YORK
IAS PART WESTCHESTER COUNTY
PRESENT: HON. JOAN B. LEFKOWITZ, J.S.C.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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In the Matter of the Arbitration between

DECISION & ORDER

MUNICIPAL HOUSING AUTHORITY OF THE
CITY OF YONKERS,

Index No: 64628/2021

Petitioner,

Motion Sequence No. 01

-against-

LOCAL 456, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Respondent.
-----X

The following papers (NYSCEF document nos. 1-28) were read on the petition for an order, pursuant to CPLR 7503, permanently staying an arbitration.

Motion Sequence No. 01

Order to Show Cause-Petition-Exhibits (A-E)-Affirmation-Memorandum of Law
Affirmation in Opposition-Memorandum of Law-Exhibits (A-E)
Reply Affirmation

Upon reading the foregoing papers, the petition is determined as follows:

Petitioner and respondent are parties to a collective bargaining agreement (CBA) effective January 1, 2017 through December 31, 2023. According to the "Grievance Form" proffered by petitioner dated September 13, 2021 (*see* NYSCEF document no. 4), it is alleged that petitioner "has failed to equalize paid overtime as required under the contract" (*id.*). The relevant provision under the contract allegedly breached by petitioner is cited as: "Article III, Section 5(E); Article XVI" (*id.*), and the remedy requested by respondent is stated as: "[e]qualize paid overtime as required under the contract; pay back pay for employees unfairly denied overtime" (*id.*). Under the heading entitled "Action Taken", respondent asserts that "[s]tep 1 sent September 3, 2021 to Carlos Laboy and Juaquin Padilla, via email, by Nicholas A. Devyatkin, Labor Counsel. No response received. Step

2 sent September 13, 2021 to Wilson Kimball, via email, by Nicholas A. Devyatkin” (*id.*). By demand dated September 24, 2021, respondent served upon petitioner a “Demand for Arbitration” (*see* NYSCEF document no. 5). This proceeding by petitioner ensued with the filing of a verified petition on October 11, 2021.

Contemporaneous with the filing of the petition, petitioner moved, by order to show cause, for the relief sought herein. In the proposed order to show cause, petitioner made application for a temporary restraining order (TRO) enjoining and restraining respondent from proceeding with the arbitration. On October 14, 2021, the court signed the order to show cause and granted petitioner’s application for a TRO pending determination of the motion. The motion now having been fully briefed and submitted is decided as follows.

In support of the petition, petitioner argues, among other things, that respondent waived the issue of arbitration since it “*may* not have complied with the ‘steps’ of the negotiated grievance procedure” (petition at ¶ 14, NYSCEF Doc No. 1 [emphasis added]) as outlined in the CBA. Notwithstanding same, petitioner asserts that the parties have not agreed to arbitrate the subject dispute because the overtime provision within the CBA is aspirational and contains no express agreement on overtime equalization. Petitioner further contends that the grievance is not yet ripe for arbitration and is thus not justiciable since the grievance is bereft of sufficient factual allegations.

In opposition, respondent contends, among other things, that its grievance was timely and that it did not waive its right to arbitrate the subject dispute. Respondent submits that because the CBA does not contain any explicit language making compliance with grievance time limitations a condition precedent to arbitration, and instead contains a broad arbitration clause, a stay is not warranted. In any event, respondent argues that the issue of timeliness is to be determined by the arbitrator. Respondent further submits that the grievance is sufficiently specific and is thus ripe for determination by the arbitrator.

In reply, petitioner argues, among other things, that respondent failed to submit competent evidence in opposition to the petition demonstrating that it complied with the procedural steps for filing a grievance outlined in the CBA. Since respondent failed to comply with a condition precedent, petitioner submits that a permanent stay of arbitration is warranted.

It is well settled that “ ‘[p]ublic policy in New York favors arbitral resolution of public sector labor disputes’ ” (*Matter of City of Yonkers v Yonkers Fire Fighters, Local 628, IAFF, AFL-CIO*, 167 AD3d 599, 600 [2d Dept 2018], quoting *Matter of City of Yonkers v Yonkers Fire Fighters, Local 628, IAFF, AFL-CIO*, 153 AD3d 617, 617 [2d Dept 2017]; *see Matter of Incorporated Vil. of Floral Park v Floral Park Police Benevolent Assn.*, 131 AD3d 1240, 1241 [2d Dept 2015]). “However, a dispute between a public sector employer and an employee is only arbitrable if it satisfies a two-prong test. First, the court must determine whether there is any statutory, constitutional or public policy prohibition

against arbitration of the grievance. If there is no prohibition against arbitration, the court must then examine the CBA to determine if the parties have agreed to arbitrate the dispute at issue” (*Matter of City of Yonkers v Yonkers Fire Fighters, Local 628, IAFF, AFL-CIO*, 187 AD3d 900, 901 [2d Dept 2020] [internal quotation marks and citations omitted]).

“Where the agreement contains a broad [arbitration] clause, compliance with contractual notice provisions as well as time requirements in the grievance procedure are issues to be determined by the arbitrator” (*Matter of United Nations Dev. Corp. v Norkin Plumbing Co.*, 45 NY2d 358, 363 [1978]; see *Matter of R.C. Metell Constr., Inc. v Sandler*, 189 AD3d 1415, 1417 [2d Dept 2020]; *Matter of City of Poughkeepsie v City of Poughkeepsie, Unit, Local 486 Civ. Serv. Empls. Assn.*, 78 AD2d 653, 653 [2d Dept 1980]). Moreover, where the relevant arbitration provision of the CBA is broad, “if the matter in dispute bears a reasonable relationship to some general subject matter of the CBA, it will be for the arbitrator and not the courts to decide whether the disputed matter falls within the CBA. If there is none, the issue, as a matter of law, is not arbitrable. If there is, the court should rule the matter arbitrable, and the arbitrator will then make a more exacting interpretation of the precise scope of the substantive provisions of the CBA, and whether the subject matter of the dispute fits within them” (*Matter of City of Yonkers*, 187 AD3d at 901 [internal quotation marks and citations omitted]). “A dispute is, thus, nonarbitrable, if a court can conclude without engaging in any extended factfinding or legal analysis that a law prohibits, in an absolute sense, the particular matters to be decided by arbitration. Put differently, a court must stay arbitration where it can conclude, upon examining the parties’ contract and the implicated statute on their face, that the granting of *any* relief would violate public policy” (*Matter of County of Chautauqua v Civil Serv. Empls. Assn., Local 1000, AFSCME, AFL-CIO, County of Chautauqua Unit 6300, Chautauqua County Local 807*, 8 NY3d 513, 519 [2007] [internal quotation marks, citations and brackets omitted] [emphasis in original]).

Here, petitioner has not demonstrated that it would be unlawful under any statute, precedent or public policy to refer this grievance to arbitration (see *Matter of Committee of Interns & Residents [Dinkins]*, 86 NY2d 478 [1995]). Contrary to petitioner’s contention, the respondent did not waive its right to arbitrate. Petitioner’s allegation that respondent “may not have complied with the ‘steps’ of the negotiated grievance procedure” (petition at ¶ 14, NYSCEF Doc No. 1) is based on nothing more than surmise and conjecture. As outlined above, where, as here, the CBA contains a broad arbitration clause (see Article XVI, Section D [1.] at p. 49, NYSCEF Doc No. 3), procedural compliance issues are to be determined by the arbitrator (see *Matter of United Nations Dev. Corp.*, 45 NY2d at 363; *Matter of R.C. Metell Constr., Inc.*, 189 AD3d at 1417; *Matter of City of Poughkeepsie*, 78 AD2d at 653; cf. *Matter of Anagnostopoulos v Union Turnpike Mgt. Corp.*, 300 AD2d 393, 394 [2d Dept 2002]). Moreover, petitioner’s argument that the subject grievance may not yet be ripe for arbitration is unavailing in light of CPLR 7501 which provides, in pertinent part, that “[a] written agreement to submit any controversy thereafter arising or any existing controversy to arbitration is enforceable *without regard*

to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award” (emphasis added) (see also *Matter of Board of Educ. of Merrick Union Free School Dist. v Merrick Faculty Assn.*, 65 AD2d 136, 139-141 [2d Dept 1978]; *Board of Educ., Cent. School Dist. No. 1, Town of Clarkstown v Cracovia*, 36 AD2d 851, 852 [2d Dept 1971]; *Long Is. Light. Co. v Trigen-Nassau Energy Corp.*, 165 Misc2d 209, 211-212 [Sup Ct, Nassau County 1995]). In addition, the fact that the subject grievance does not specifically identify a member is not fatal to respondent’s right to arbitration as determination of the sufficiency of the description of the grievance falls within the ambit of the arbitrator’s authority.

In light of petitioner’s failure to demonstrate that it would be unlawful to refer this grievance to arbitration, the court next examines the language of the CBA to determine whether the parties have agreed to arbitrate the dispute herein (see *Matter of City of Yonkers*, 187 AD3d at 901). Respondent alleges that petitioner has failed to equalize paid overtime as required by Article III, Section 5 (E.) of the CBA. That section provides:

“The Employer will endeavor to equalize paid overtime over a three (3) month interval as far as practical, by skill, classification, project and shift. For purposes of this clause, an employee who requests to be excused and is excused by the supervisor from working available overtime shall be considered to have worked such overtime for the purpose of equalization” (see NYSCEF Doc No. 3 at p. 6).

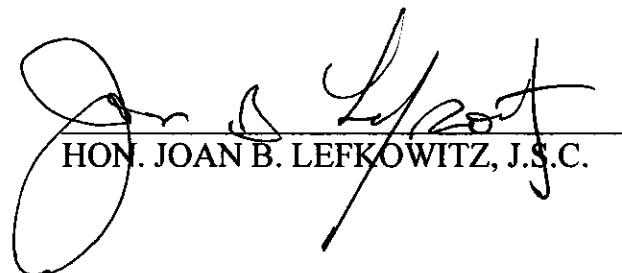
Article XVI, Section D (1.) of the CBA provides that “[s]hould a grievance concerning an alleged violation of an express provision of this agreement not be resolved according to the provisions of this Article, then and in that event only, either party may refer such grievance to arbitration...”. Here, there is no limitation in the CBA as to what issues may be arbitrated, so long as they arise from an alleged violation of the agreement. The issue invoked by respondent in the grievance and demand for arbitration is the failure by petitioner to equalize paid overtime. In comparing the subject matter of the dispute with the general subject matter of the CBA, the court finds that a reasonable relationship exists between the two (see *Matter of Board of Educ. of Watertown City School Dist. [Watertown Educ. Assn.]*, 93 NY2d 132, 143 [1999]), and petitioner has not otherwise pointed to any language in the CBA which rebuts the presumption of arbitrability. Consequently, the grievance is arbitrable and it is within the arbitrator’s authority to “make a more exacting interpretation of the precise scope of the substantive provisions of the CBA, and whether the subject matter of the dispute fits within them” (*Matter of City of Yonkers*, 187 AD3d at 901 [internal quotation marks and citations omitted]).

All other arguments raised on the petition and evidence submitted by the parties in connection thereto have been considered by the court, notwithstanding the specific absence of reference thereto. Based on the foregoing, it is hereby:

ORDERED the petition is denied, the temporary restraining order as set forth in the order to show cause dated October 14, 2021, is lifted, and the proceeding is dismissed.

ENTER,

Dated: White Plains, New York
March 23, 2022



HON. JOAN B. LEFKOWITZ, J.S.C.

To:

All counsel of record via NYSCEF