

**Triborough Bridge & Tunnel Auth. Superior Officers
Benevolent Assn. v Triborough Bridge & Tunnel
Auth.**

2022 NY Slip Op 32133(U)

July 5, 2022

Supreme Court, New York County

Docket Number: Index No. 656157/2021

Judge: Laurence Love

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY
SUPERIOR OFFICERS BENEVOLENT ASSOCIATION

Petitioner,

- v -

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,

Respondent.

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INDEX NO. 656157/2021
MOTION DATE 01/05/2022
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 9, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

Upon the foregoing documents, the Petition is resolved as follows:

Petitioner seeks confirmation of an arbitration award pursuant to CPLR 7510, and Respondent seeks vacatur of same arguing that “[t]he arbitrator exceeded his power or so imperfectly executed it under the Parties’ agreement to arbitrate [CPLR 7511(b)(1)(iii)]” and “[t]he award is void as against public policy.” A Microsoft Teams appearance was held on April 20, 2022 where both sides were present for oral argument.

Pursuant to CPLR 7510 “[t]he court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511.” CPLR 7511(b)(1)(iii) states, “[t]he award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds the rights of that party were prejudiced by ... (iii) 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.”

This matter involves the employee organization representing uniformed employees, holding the titles of Bridge and Tunnel Sergeant/Lieutenant, and the manner in which a mass transportation policy is implemented to ensure public safety at area bridges and tunnels. The parties are signers of a collective bargaining agreement dating back to 2006 where disputes were to be settled before an arbitrator.

Petitioner's filed a petition to confirm the arbitration award, per CPLR 7510, on October 26, 2021 (see NYSCEF Doc. No. 1). Respondent submits the Arbitration Opinion and Award which awarded "[t]he employer did violate the collective bargaining agreement by requiring Sergeant ... to work more than 12 consecutive hours on the tour beginning on June 7, 2016 and continuing into June 8, 2016. As a remedy, the employer is directed to cease and desist from requiring members of the bargaining unit to work more than 12 consecutive hours except in emergencies as defined in the collective bargaining agreement" (see NYSCEF Doc. No. 3 P. 46).

"In circumstances when the parties agree to submit their dispute to an arbitrator, courts generally play a limited role" (see *Matter of N.Y. State Corr. Officers & Police Benevolent Ass'n v. State of N.Y.*, 94 N.Y.2d 321, 326 [1999]). An award will be vacated if "it violates public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (see *Matter of Shenendehowa Cent. Sch. Dist. Bd. of Educ. v. Civil Serv. Emps Ass'n, Inc.*, 20 N.Y.3d 1026, 1027 [2013]). In addition, Respondent further argues that the arbitration decision should be overturned based upon the public policy that it would prohibit Respondent from addressing public safety at their facilities.

Respondent argues that, "[b]y interpreting the CBA in a manner that expands the express filing time limitations contained in the CBA and in mooted Article IX, Section 4(c)(5), the Arbitrator clearly exceeded his authority, and, therefore, vacatur is warranted" (see NYSCEF Doc.

No. 16 P. 17). Respondent further cites *Superior Officers Benevolent Association v. Triborough Bridge and Tunnel Authority*, 244 A.D.2d 154 [1st Dept. 1997]).

Article IX, Section 4(c)(5), states,

“[t]he overtime policy shall be revised to the following[g] system. Overtime for full tours shall be covered in the following order: Eligible Bridge and Tunnel Officer on list, from home facility, who is authorized to carry a gun, can replace absentee Sergeant or Sergeant who is replacing Lieutenant. The following shall be applicable to the foregoing: Seniority will not be carried by a man working at another facility. Deviation from the procedure shall be permitted by the supervisor at the facility for emergency reasons as hereinafter defined” (see NYSCEF Doc. No. 2 P. 14).

Respondent continues, “[a]s set forth above, Article IX, Section 4(c)(5) contains ‘general authorization for compulsory overtime coverage for four hours’ irrespective of tour length (Award at 6-7, 33) and further argues that the Authority’s conduct was authorized by extension of this provision. The Arbitrator instead relied on a separate provision, Article IX, Section 7, which does not address overtime, but instead limits hours of compulsory work to twelve, except in narrow emergencies (Award 33-34). The Arbitrator even recognized the inconsistency between these two provisions under a twelve-hour tour model: ‘Due to the inclusion of Article IX, Section 4(c)(5), it would be possible to think that a bargaining unit member could be forced to work an additional four hours after completing a twelve-hour tour, however, the unambiguous language of the collective bargaining agreement in Article IX, Section 7 bars forced overtime beyond twelve hours except for the enumerated emergencies.’ Award at 39” (see NYSCEF Doc. No. 16 P. 14).

Article IX, Section 7, states,

“[n]o employee will be required to work more than twelve hours continuously except in emergencies as hereinafter defined” (see NYSCEF Doc. No. 2 P. 14).

Article XXVIII. Definition of Emergency,

“An emergency as hereinabove referred to shall be as follow[s]: (1) Fire, (2) Accident, (3) Major disaster, (4) Major snow storm” (see NYSCEF Doc. No. 2 P. 29).

TBTA’s [Respondent] opposition states that Article IX, Section 4(c)(5), means that the TBTA [Respondent] is broadly authorized to demand four hours of overtime of a SOBA employee regardless of the length of the tour, *See Opp.* pg. 11. The TBTA [Respondent] claims the Award ignored this provision (*Opp.* 11).

However, the Award includes careful, detailed analysis concerning the provision. The arbitrator reviewed the record and noted the TBTA’s unsuccessful attempts in the bargaining process to negotiate terms to enable forced non-emergency overtime beyond 12 hours. *See Pet. Ex. B*, pgs. 38-42. The arbitrator determined the TBTA’s [Respondent] efforts demonstrate that it was well-aware of the prohibition in the CBA regarding ‘forced overtime beyond twelve hours during non-emergencies’ and that ‘[a]ny change to this arrangement remains a matter for collective bargaining rather than for arbitration’ *Id.* at 41-41. Thus, TBTA is aware that Article IX, Section 7 bars forced overtime beyond 12 hours in non-emergencies and is now attempting to have the Court grant what it could not obtain in negotiations. This further buttresses the rationality of the Award’s analysis” (see NYSCEF Doc. No. 17 P. 12). The Court also notes that in 2006 the work shifts of subject employees was changed from eight to twelve hour shifts which obviously had an impact on the wording within the collective bargaining agreement.

Petitioner’s Reply states, “[t]he Court of Appeals has established a high standard for vacatur of arbitration decisions. “It follows that any limitation upon the power of the arbitrator must be set forth as part of the arbitration clause itself, for to infer a limitation from the substantive provisions of an agreement containing an arbitration clause calling for arbitration of all disputes arising out of the contract, or for arbitration in some other broadly worded formulation, is to

involve the courts in the merits of the dispute – interpretation of the contract’s provisions – in violation of the legislative mandate (see *Matter of Nationwide Gen. Ins. Co. v. Investors Ins. Co.*, 37 N.Y.2d 91; Siegel, N.Y. Pract., §§ 589, 590). Moreover, absent provision in the arbitration clause itself, an arbitrator is not bound by principles of substantive law or by rules of evidence (see *Lentine v. Fundaro*, 29 N.Y.2d 382). He may do justice as he sees it, applying his own sense of law and equity to the facts as he finds them to be and making an award reflecting the spirit rather than the letter of the agreement, even though the award exceeds the remedy requested by the parties” (see *Matter of Sprinzen*, 46 N.Y.2d 623).

Petitioner’s Reply concludes, “[a]n arbitrator is charged with the interpretation and application of the agreement ... [c]ourts are obligated to give deference to the decision of the arbitrator ... even if the arbitrator misapplied the substantive law in the area of the contract” (see *Matter of Albany Cty. Sheriff’s Loc. 3973, Dist. Council 82, AFSCME, AFL-CIO on Behalf of Curry*, 245 A.D.2d 770 771 [3d Dept. 1997]).

“Unless there is no proof whatever to justify the award so as to render it entirely irrational ... the arbitrator’s finding is not subject to judicial oversight” (see *Peckerman v. D & D Associates*, 165 A.D.2d 289, 296 [1st Dept. 1991]).

Here, the court notes that the arbitrator conducted proceedings on seventeen dates between April 1, 2017 and May 8, 2019 before rendering a forty-five page well-reasoned, detailed decision. After a review of the collective bargaining agreement, the arbitration award, and the various case law, this court cannot vacate the arbitration award based on Respondents public policy claim. The simple fact remains, that the collective bargaining agreement was reached between the parties and both were well aware of the possible implications of the two clauses in question at the time. Just as both sides were well aware of provisions that distinguished between defined emergency

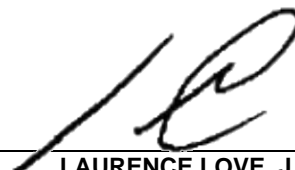
situations and non-emergencies. To now claim public policy i.e. safety, should negate a provision of the agreement falls short. The parties entered into a collective bargaining agreement which the arbitrator read into the decision. The Arbitrator’s decision was not arbitrary and does not violate public policy. This court’s view of the arbitrator’s decision does not call for vacatur, per CPLR 7511(b)(1)(ii).

As such, it is

ORDERED and ADJUDGED that the petition is granted and the award rendered in favor of Petitioner and against Respondent is confirmed; and it is further

ORDERED that Respondent is directed to cease and desist from requiring members of the Petitioner to work more than 12 consecutive hours except in emergencies as defined in the collective bargaining agreement.

7/5/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE