Matter of Board of Educ. of the City Sch. Dist. of the City of N.Y. v United Fedn. of Teachers, Local 2, Am. Fedn. of Teachers, AFL-CIO

2023 NY Slip Op 32162(U)

June 29, 2023

Supreme Court, New York County

Docket Number: Index No. 452823/2022

Judge: Erika M. Edwards

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ERIKA M. EDWARDS **PART** 10M

Justice

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In The Matter of the Application of

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK ("DOE"), and DAVID C. BANKS, as Chancellor of the DOE,

Petitioners,

- v -

UNITED FEDERATION OF TEACHERS, LOCAL 2, AMERICAN FEDERATION OF TEACHERS, AFL-CIO, MICHAEL MULGREW, as President of UNITED FEDERATION OF TEACHERS, LOCAL 2, AFL-CIO,

Respondents.

For a Judgment and Order Pursuant to Article 75 of the Civil Practice Law and Rules.

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INDEX NO. 452823/2022

MOTION DATE 10/24/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for VACATE AWARD & CROSS-MTN TO DISMISS/CONFIRM.

Upon the foregoing documents, the court denies Petitioners' The Board of Education of the City School District of the City of New York's ("DOE"), and David C. Banks, as Chancellor of the DOE's (collectively "Petitioners") Verified Petition to vacate an arbitration award and grants Respondents United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO's ("UFT"), Michael Mulgrew, as President of United Federation of Teachers, Local 2, AFL-CIO's (collectively "Respondents") Cross-Petition to confirm the arbitration award as set forth herein.

Petitioners brought this Verified Petition, pursuant to CPLR 7511(b)(1)(iii), to vacate the Opinion and Award of Arbitrator Melissa H. Biren, dated July 22, 2022, in the arbitration

proceeding entitled *United Federation of Teachers, Local 2 v. New York City Department of Education* Re: Ricky Sanchez, AAA Case No.: 01-22-0000-3181. This matter involves the rate of pay provided to Ricky Sanchez for teaching a sixth period class involving aviation maintenance in addition to the regular five periods that he was required to teach each day from September 5, 2019, to January 10, 2020, at Aviation Career & Technical High School ("Aviation High School"). Arbitrator Biren was also tasked with determining the appropriate remedy consistent with the terms of the CBA.

Mr. Sanchez was paid the coverage pay rate instead of the much higher shortage pay rate for teaching the class for the fall semester in 2019. Mr. Sanchez filed a grievance, the matter was arbitrated, hearings were held and Arbitrator Biren sustained the grievance. She determined in substance that Petitioner DOE violated Articles 7 and 20 of the collective bargaining agreements ("CBA") between the DOE and UFT by paying Mr. Sanchez coverage pay for teaching the extra period each day in aviation maintenance for the semester. She determined that the coverage rate was intended to be applied in emergency situations when a teacher was asked to cover a class for a teacher who was unavailable to teach the class during that period and it was not to be applied when a teacher was asked to teach a class for the entire semester.

Arbitrator Biren ordered the DOE to pay Mr. Sanchez back pay award equal to the difference in applicable pro-rated shortage license area pay rate set forth in Article 7(O) of the CBA for the back pay period and the coverage pay set forth in Article 7(N) that he was paid for teaching the extra class. She also determined that the back pay period was limited to the thirty (30) school days prior to the filing of the grievance on November 22, 2019 through January 10, 2020. Finally, she retained jurisdiction of the matter for one year from the date of the award on

July 22, 2022, solely to clarify the award provisions, including final calculation of the back pay award.

Petitioners argue in substance that the award should be vacated because Arbitrator Biren exceeded the jurisdiction conferred upon her under the CBA and the award was irrational. Petitioners further argue in substance that the CBA grants Petitioners the complete and exclusive discretion to determine which teaching assignments warrant shortage pay compensation and they failed to designate the disputed assignments as warranting such shortage pay. Petitioners further argue that Arbitrator Biren's award violated this negotiated managerial right and improperly modified the terms of the CBA which was beyond the scope of her authority.

Petitioners further argue that they determine the citywide shortage license areas at the start of each year and schools with exceptional needs or circumstances may submit requests for teachers in other license areas. However, the Chancellor's decision not to authorize a shortage license area in a particular school is final and not subject to the CBA's grievance and arbitration provisions.

Petitioners also argue in substance that according to the grievance and arbitration provision of the CBA, Arbitrator Biren's determination was limited to the application and interpretation of the CBA and she was prohibited from making any decision to modify or vary the terms of the CBA, or any decision involving the DOE's discretion, unless under certain circumstances, like if a provision was disregarded or applied in a discriminatory or arbitrary or capricious manner so as to constitute an abuse of discretion. They further argue in substance that aviation maintenance was not one of the licenses listed on the citywide shortage area list and since the principal exercised his discretion not to submit a request for designation of a shortage

license area in aviation maintenance, the award also disregarded the provision granting the principal such discretion.

Petitioners further argue that Mr. Sanchez volunteered and was accepted to teach an extra period of aviation maintenance in addition to his regular classes and in excess of his maximum periods/day at the agreed upon coverage rate and not the shortage rate. Arbitrator Biren found that the DOE violated Articles 7 and 20 by paying Mr. Sanchez coverage pay instead of the higher shortage pay and improperly rejected the DOE's argument that the matter was not arbitrable since it involved an area exclusively within the DOE's discretion. Petitioners further argue that Arbitrator Biren improperly imposed shortage pay as a remedy. Therefore, she exceeded her authority, improperly modified the contract, ignored the plain language of this provision in the CBA which states that shortage license area determinations are discretionary and non-grievable and the award was irrational.

Respondents oppose Petitioners' Petition to vacate the award and they filed a Cross-Petition to confirm the award. Respondents argue that Petitioners failed to demonstrate that Arbitrator Biren exceeded her jurisdiction or authority or that her award was irrational. Respondents argue that the court should confirm the award because Arbitrator Biren's award was thoughtful, well-reasoned and well within the authority provided to her by the CBA. They further argue in substance that Arbitrator Biren correctly found that under the CBA, the coverage rate was intended to be provided in emergency situations when the assigned teacher is unavailable to teach the class and there is no substitute teacher available to cover the class. In that type of situation, the principal assigns another teacher in the school to cover the class without regard to the program to which the teacher is assigned and the assignment is rotated among the teachers. The shortage pay rate was intended to be paid to teachers who worked certain assignments in

license areas that the DOE determined to have citywide teacher shortages in addition to their regular program assignments. They argue that Arbitrator Biren correctly found that imposing the remedy of the shortage pay rate was the only rate that was agreed upon in the CBA that applies to situations when a teacher teaches a sixth class for an entire semester, with of all of its additional responsibilities, as opposed to covering a period on a one-time emergency basis.

Respondents further argue in substance that Arbitrator Biren addressed all of the DOE's arguments and ruled against it. They argue that she was well within her jurisdiction to impose the remedy of shortage pay, which is consistent with the CBA. They further argue that she correctly determined that the principal's practice of unilaterally, and without DOE's authorization, creating a sixth class position to resolve the shortage by paying the lower coverage rate set forth in Article 7(N) of the CBA, rather than the higher shortage license area rate set forth in Article 7(O) of the CBA, violated the terms of the CBA. They further argue that she disagreed with the DOE and determined that the matter was proper for arbitration because the CBA does not provide the DOE with discretion to pay coverage rate for Mr. Sanchez's assignment because it was not the type of emergency coverage situation, but a sixth period for an entire semester. Additionally, since the principal never requested the shortage pay, the DOE had no chance to exercise its discretion. Additionally, they argue in substance that she addressed all of DOE's arguments without ignoring the provisions of the CBA. As such, they argue that the court should confirm the award.

Pursuant to CPLR 7511(b)(1)(iii), the court shall vacate an arbitration award upon the application of a party who participated in the arbitration if the court finds that the rights of the party were prejudiced by an arbitrator who "exceeded (his or her) power or so imperfectly

executed it that a final and definite award upon the subject matter submitted was not made" CPLR 7511[b][1][iii]).

Courts are limited to the grounds for vacatur set forth in CPLR 7511 and an award cannot be vacated based on legal or factual errors, or the lack of reasoning or calculations to justify the award (*see Lentine v Fundaro*, 36 AD2d 539 [2d Dept 1971]; *Burt Bldg. Materials Corp. v Local 1205*, 18 NY2d 556, 558 [1966]). Courts "should not assume the role of overseers to mold the award to conform to their sense of justice," nor can a court substitute its own judgment for that of an arbitrator merely because it believes it has a better interpretation (*Wien & Malin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471, 479-80 [2006]).

An arbitration award made after all parties have participated "will not be overturned merely because the arbitrator committed an error of fact or of law" (*Motor Vehicle Accident Indemnification Corp. v Aetna Cas. & Sur.* Co., 89 NY2d 214, 223 [1996]). To be upheld, a compulsory arbitration award must have evidentiary support or other basis in reason, as may be appropriate, and appearing in the record, and cannot be arbitrary and capricious (*id.*; *Mt. St. Mary's Hosp. of Niagara Falls v Catherwood*, 26 NY2d 493, 508, [1970]).

Here, the court denies Petitioners' Verified Petition to vacate the arbitration award and grants Respondent's Cross-Petition to confirm the arbitration award. The court finds that Petitioners failed to demonstrate that Arbitrator Biren exceeded her authority, or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made. Petitioners failed to demonstrate that the award was arbitrary or capricious or irrational. The court is not persuaded by Petitioner's arguments to the contrary.

The court agrees with Respondents that Arbitrator Biren's award was well within her jurisdiction and that the remedy imposed was consistent with the terms of the CBA. Both parties

participated in the arbitration, presented evidence and had a sufficient opportunity to present their arguments. Arbitrator Biren clearly did not ignore the provisions of the CBA, nor the DOE's arguments, but she demonstrated that she adequately considered and addressed them. The court finds that her decision that the DOE violated Articles 7 and 20 of the CBA by paying Mr. Sanchez the coverage rate for teaching the sixth period aviation maintenance class for the entire semester and that the proper remedy was to impose the shortage rate, which she found to be the contractual rate set forth in Article 7(O) of the CBA, was rationally based and within her jurisdiction and authority. She found that the shortage rate was the only rate that the parties agreed to in the CBA that applied to teaching a sixth class on a regular basis for a semester.

She also rejected DOE's arguments regarding its past practice of paying the coverage rate for teaching a sixth period and instead found that even though it may have been the school's practice, there was no evidence that UFT was aware of the practice, or that it accepted the practice. Additionally, she noted that binding past practice cannot be inconsistent with the terms of the CBA and in this case, it was inconsistent with the provisions of the CBA.

She also explained why she disagreed with the DOE's arguments that the grievance was not arbitrable, that the grievance was untimely, and other arguments that she exceeded her jurisdiction and that the award was irrational. Arbitrator Biren based her determinations on her understanding of the applicable law, her interpretation and application of the applicable provisions of the CBA and her view of the evidence presented. Therefore, her determinations were not irrational or arbitrary or capricious, but based on reason.

The court finds that Arbitrator Biren did not exceed the scope of her authority and her determinations were within her jurisdiction, including her retention of jurisdiction for the limited purposes set forth in the award.

The court is not inclined to grant Respondents' request for interest from July 25, 2022, until the payment of the award, since the total amount of the award has yet to be determined until after the Arbitrator calculates the amount of back pay. The court authorizes such interest should the Arbitrator determine that it is appropriate. Therefore, the court leaves the total amount of the award and any determination regarding interest up to the Arbitrator that will handle any further proceedings.

Therefore, the court denies Petitioners' Petition to vacate the award and grants Respondents' Cross-Petition to confirm the award.

The court has considered all additional arguments raised by the parties which were not specifically addressed herein and the court denies all requests for relief that were not expressly granted herein.

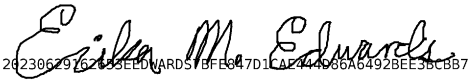
As such, it is hereby

ORDERED and ADJUDGED that the court denies Petitioners' The Board of Education of the City School District of the City of New York's ("DOE"), and David C. Banks, as Chancellor of the DOE's Verified Petition to vacate the Opinion and Award of Arbitrator Melissa H. Biren, dated July 22, 2022, in the arbitration proceeding entitled *United Federation of Teachers, Local 2 v. New York City Department of Education*, AAA Case No.: 01-22-0000-3181 re: Ricky Sanchez; and it is further

ORDERED and ADJUDGED that the court grants Respondents United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO's, Michael Mulgrew, as President of United Federation of Teachers, Local 2, AFL-CIO's Cross-Petition to confirm said arbitration award, the court confirms the award and the court remands the matter for further

proceedings, including the calculation of back pay and potential interest to be determined by the Arbitrator.

This constitutes the decision and order of the court.



6/29/2023
DATE

ERIKA M. EDWARDS, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**			[ ]	**NON-FINAL DISPOSITION**		
	[X]	**GRANTED** X-Petition	[X]	**DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		Petition	[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**			[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**