Village of Maybrook v Teamsters Local 445
2023 NY Slip Op 34355(U)
May 6, 2020
Supreme Court, Orange County
Docket Number: Index No. EF001072-2020
Judge: Sandra B. Sciortino
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To commence the statutory time 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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE
---X
VILLAGE OF MAYBROOK,
Petitioner,

-against-

TEAMSTERS LOCAL 445,
Respondent,
---X

DECISION AND ORDER

INDEX NO.: EF001072-2020
Motion Date: 3/02/2020
Sequence Nos. 1 & 2

SCIORTINO, J.

The following papers numbered 1 to 31 were considered in connection with petitioner's application (Seq. #1) to permanently stay arbitration in the above matter pursuant to CPLR §§7502(B) and 7503, and Respondent's Cross-Motion (Seq. #2) to compel arbitration:

PAPERS	NUMBERED
Order to Show Cause (Seq. #1)/Verified Petition/Exhibits A-F Supporting Affirmation (Naughton)/Petitioner's Memorandum of Law in Support	1 - 10
Verified Answer	11
Notice of Cross-Motion (Seq. #2)/Affirmation (Anderson)/ Exhibits A-L/Affidavit (Pitt)/Affidavit (Maresca)/ Respondent's Memorandum of Law	12 - 28
Verified Reply	29
Affidavit (Johnson)/Petitioner's Reply Memorandum of Law	30 - 31

Background and Procedural History

Petitioner, the Village of Maybrook and Respondent, Teamsters Local 445, on behalf of the Village of Maybrook Policemen's Benevolent Association, are parties to a Collective Bargaining Agreement (CBA) which took effect on June 1, 2018. (Exhibit A to Verified Petition) Article 5.1 of the CBA contains a three-step grievance procedure. The article provides that a grievance may be

filed by the Respondent union, on behalf of an aggrieved employee, to a "claimed violation, misinterpretation or inequitable application of the expressed (sic) provisions of this [CBA] but shall not mean or refer to any matter that is otherwise reviewable pursuant to law or any rule or regulation having the force and effect of law."

Sergeant Michael Maresca has been employed as a police officer with Maybrook since 2008. A deduction for a contribution to the cost of health insurance has been taken from Sergeant Maresca's paycheck since March 19, 2008, and continues to date. On or about December 10, 2019, Respondent filed a Step One grievance (Exhibit D to Petition) against Petitioner, on behalf of Maresca, claiming that the health insurance deduction constituted a violation of Section[1] 4 of the CBA, and Section 10 of the 2005 Village of Maybrook Handbook. Maresca claimed that Village Clerk Tina Johnson brought this to his attention, and asked "Why are you paying for insurance?" The grievance sought to end the deductions from Maresca's checks, and to return to him all medical insurance deductions paid.

Article 4 of the CBA is entitled "Compensation and Insurance." The only discussion of health insurance is in Article 4.4, which provides for a cash buyout for those employees who opt out of health insurance. The 2005 Update to the Village Handbook of Maybrook (the 2005 Handbook, Exhibit E) provides, in relevant part, that: "All regular, full-time employees, including those in a probationary status, shall be eligible to participate in the Village health, dental and vision insurance programs after 30 days of employment." The 2005 Handbook goes on to provide , "Effective on June 1, 2005, all new full-time employees...will pay 10 percent of the health, dental and vision insurance costs." On January 2, 2020, Respondent's Step One grievance was denied. (Exhibit C to

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[1]Maybrook acknowledges that "Section" should be read as "Article".

cross-motion)

The same day, Respondent filed a Step Two grievance (Exhibit D to cross-motion), on the same assertions. After Respondent and Maresca met with the Maybrook Mayor and Village Attorney on January 7, 2020, the Step Two grievance was denied. (Exhibit E to cross-motion) In the denial letter, Maybrook noted that it was not disputed that Maresca had been a Maybrook employee since February 2008, and had had deductions taken from his check throughout his employ. Respondent now sought to enforce the provisions of Maybrook's 2010 Handbook (Exhibit F to Petition). The Health Insurance provision in the 2010 Handbook states, in relevant part, "[Maybrook] currently pays premiums for individual and family health care coverage in full. Effective January 1, *2009* (emphasis added), all new full time employees who are eligible for medical insurance will pay 10% of health, dental and vision insurance costs." Respondent acknowledged that Maybrook's Deputy Treasurer advised that the 2010 Handbook was a typo. Maybrook's decision further found that Respondent's grievance was time-barred, as the deductions sought to be recovered began in 2008. A grievance must be filed within thirty days of the first deduction. Nor did Maybrook believe the claim to be a proper subject of a grievance as there was no showing of a violation of a provision of the CBA. (Exhibit E to cross-motion)

On January 21, 2020, Respondent filed a Step 3 Demand for Arbitration. (Exhibit B to Petition, with Exhibits) Unlike the underlying Step 1 and Step 2 grievances, the Demand for Arbitration alleged violations of Article 3.9 of the CBA and the 2010 Handbook. On January 27, 2020, the New York State Public Employees Labor Relations Board (PERB) provided both parties with a list of arbitrators and requested them to rank their selections. (Exhibit C to Petition) Maybrook has not responded to the request.

Petition to Stay Arbitration (Sequence #1)

By Order to Show Cause and Verified Petition electronically filed on February 7, 2020, and signed on February 10, 2020, Maybrook sought permanent stay of arbitration. A Temporary Restraining Order staying the proceedings was entered. Maybrook argues that the claim Respondent seeks to arbitrate is time-barred under Civil Practice Law and Rules §7502(b). Maybrook futher argues that the claim sounds in mandamus, and should have been brought as an Article 78 petition, not a grievance. An Article 78 petition would have been subject to a four-month statute of limitations, long since past. Alternatively, the claim can be seen as a breach of contract, subject to the 18-month statute of limitations for actions against a village (Civ. Prac. Law & Rules §9802), or, at best, a six-year statute of limitations. Whether based on a purported violation of the 2005 Handbook or the 2010 Handbook, the claim is time barred.

Moreover, the claim encompassed by the grievance is not arbitrable under the CBA, which specifically excludes any dispute "otherwise reviewable pursuant to law or any rule or regulation having the force and effect of law." (Exhibit A to Petition at 5.1) Because the subject matter of this claim is reviewable under Article 78, it is specifically outside the purview of the arbitration clause.

Finally, Maybrook asserts, the grievance and demand to arbitrate refer to an alleged violation of the 2005 or 2010 Handbook. The provision of the CBA referred to in the grievance is inapplicable to the circumstances; no violation of the section referenced in the Demand for Arbitration has been shown. Respondent also fails to provide any authority to assert claims for arbitration that are different from the ones asserted in the grievance.

Cross-Motion to Compel Arbitration (Sequence #2)

On March 4, 2020, together with its Answer to Petition, Respondent electronically filed its cross-motion to compel arbitration. The motion is supported by the affidavits of Maresca and of Mike Pitt, the law enforcement representative/agent of the Teamsters. Both affiants aver that the Village Clerk, Tina Johnson, told Sergeant Maresca, in December 2019, that he should not be paying for his insurance. When Pitt investigated, he realized that Maybrook was violating its own rules as the 2010 Handbook requires that Sergeant Maresca's premiums be paid in full by Maybrook. Maybrook's refusal pay the premiums is a violation of Article 3.9 of the CBA which requires that all existing rules and regulations be continued for the benefit of employees.

Respondent further claims that Sergeant Maresca first inquired about the deductions in 2018, and was referred to the 2005 Handbook. He did not become aware of the unlawful deductions until December 9, 2019, when the Village Clerk directed him to the 2010 Handbook.

Respondent further argues that the dispute at bar is indeed arbitrable; there is no law or rule prescribing or mandating judicial review. Respondent argues that if the Court accepts Maybrook's interpretation, no grievance could ever proceed to arbitration without first being reviewed as an Article 78 proceeding.

Nor does the discrepancy between the alleged violations in the grievance and the demand for arbitration compel a stay. The issue of the 2010 Handbook, rather the 2005 version, and Article 3.9, rather than Article 4, of the CBA were discussed in the Step 2 meeting. There is no claim of surprise.

Finally, the issue of the timeliness of the claim is not for the Court to determine, but for the arbitrators. There is a presumption of arbitrability, and arbitrators are tasked with determining procedural questions growing out of the dispute. There is no requirement that such a claim be brought by Article 78, so the four-month limitation is irrelevant. Nor is the six-year statute relevant

as every deduction constituted a continuing violation of the CBA. The question of the propriety of an arbitrator's award past a six-year period is premature.

Respondent argues that the arbitrable issue deals squarely with Article 3.9 of the CBA, which requires Maybrook to continue all policies existing for the benefit of employees. Because the Teamsters had no knowledge of the unlawful actions until December 2019, the action is not time-barred.

Reply

In reply, Petitioner submits the affidavit of Valentina (Tina) Johnson, the Maybrook Village Clerk. Johnson denies Sergeant Maresca's claim that she asked him why he was paying for his health insurance. She avers that Maresca came to her with the 2010 Handbook, and asked her whether he should be paying the deduction. She claims she directed him to the Village Treasurer. Johnson further avers that when the 2010 Handbook was adopted, on June 28, 2010, she prepared copies and distributed them to all departments, including the Police Department. Thus, the information in it was available to Maresca and all Maybrook personnel since 2010.

Petitioner reiterates its position that the proper remedy for the alleged violation is an Article 78 proceeding, with a four-month statute of limitations. However, even if the Court accepts Respondent's argument that the Teamsters could assert a breach of contract claim on Maresca's behalf, Respondent has not shown a violation of the CBA. Rather, the claim challenges the administrative decision to continue collecting medical deductions from Maresca's check. The alleged breach of the CBA alleged by Respondent is subject to an 18-month statute of limitations under Civil Practice Law & Rules §9802, or at most, six years under section 213(2). The alleged violation does not create any kind of continuing wrong, which would otherwise toll the statute.

The Court has fully considered the submissions of the parties.

Discussion

For the reasons which follow, Petitioner's application to permanently stay the arbitration is granted; and Respondent's application to compel arbitration is denied.

There is no dispute that New York has a general policy in favor of resolution of disputes through arbitration. The question of arbitrability, however; i.e., whether a collective bargaining agreement creates a duty for the parties to arbitrate a particular grievance, is an issue for judicial determination, unless the parties clearly and unmistakably prove otherwise.(*American Telephone & Telegraph Technologies, Inc. v. Commun. Workers of America*, 475 U.S. 643 [1986])

On a motion to compel or stay arbitration, the court addresses three threshold questions:

1. Whether the parties have a valid agreement to arbitrate;
2. Whether the agreement has been complied with;
3. Whether the asserted claim would be time-barred under Civil Practice Law & Rules §7502(b) if it had been asserted in state court. (*Mtr. of County of Nassau v. Civil Serv. Empls. Assn.*, 14 ad3d 509 [2d Dept 2005])

The Court must not, on such an evaluation, rule on the merits of the underlying claim. (*American Telephone & Telegraph*, 475 US at 650)

An agreement to arbitrate must be "express, direct and unequivocal" as to the issues or disputes to be submitted to arbitration. (*Mtr. of A.F.C.O. Metals, Inc. (Local Union 580)*, 87 NY 2d 222, 226 [1995]) The question of whether a matter is subject to arbitration must be determined from the terms of the CBA. (*id.*) Absent a finding that there is a "express, direct and unequivocal" agreement to arbitrate a dispute, a court must stay arbitration. (*Mtr. of South Colonie Cent. School*

Dist., 46 NY 2d 521 [1979], *quoting Mtr. of Acting Superintendent of Schools of Liverpool Cent. Sch. Dist.*, 42 NY 2d 509 [1977]; *Mtr. of County of Rockland v. Rock. Co. Sheriff's Deputies Assn.*, 211 AD2d 787 [2d Dept 1995])

In this matter, the CBA provides that a grievance may be filed by Respondent on behalf of an aggrieved employee with reference to a "claimed violation, misinterpretation or inequitable application of the expressed (sic) provisions of this [CBA] but shall not mean or refer to any matter that is otherwise reviewable pursuant to law or any rule or regulation having the force and effect of law."

Petitioner first challenges the arbitrability of Respondent's grievance asserting that Respondent does not actually claim a violation of the CBA, which contains no provision for the payment of health insurance premiums by any party. Rather, the violation claimed is of the 2010 Maybrook Handbook. Respondent correctly argues that the uncertainty of whether this grievance is encompassed within the arbitration agreement is generally a matter of contractual interpretation left to the arbitrators for resolution. (*Incorp. Village of E. Hampton v. E. Hampton Vill. Police Benev. Assn.*, 149 AD2d 407 [2d Dept 1989]) If this were Petitioners' only argument, the result would be different.

Similarly, Petitioner argues that Respondent has not shown a basis for the amendment of the grievance. Respondent originally sought to enforce Article 4 of the CBA and the 2005 Maybrook Handbook, but eventually sought arbitration of a different section and a different handbook. Questions of compliance with the step-by-step grievance procedures in a CBA are also questions of procedural arbitrability, and should be resolved by arbitrators. (*Mtr. of City of Albany v. Pomakoy,* 142 AD2d 775 [3d Dept 1988]; *Mtr. of Policemen's Benev. Assn. of Vill. of Spring*

Valley v. Rosenthal, 207 AD2d 492 [2d Dept 1994])

However, it is well-established that a court is empowered to determine threshold issues, including the statute of limitations. (*Corbo v. Les Chateau Assocs.*, 127 AD2d 657 [2d Dept 1987]) Statutory time limits, as opposed to contractual time limits, are for determination by the court, and not arbitrators. (*Mtr. of County of Nassau*, 14 AD3d at 511; *citing Mtr. of County of Rockland (Primiano Constr. Co.)*, 51 NY 2d 1 [1980])

It is on this ground that Respondent's application must fail. In 2019, the Second Department, affirmed the decision and order of the Supreme Court, Orange County, upon an Article 78 challenge of a Town employee to a 15% health insurance premium contribution requirement. Such a challenge to an administrative determination must be brought within four months of the time the determination is "final and binding upon the [petitioner]." (*Salomon v. Town of Wallkill*, 174 AD3d 720, 721 [2d Dept 2019]) It is clear that these facts, similar to the ones at bar, indicate that Respondent's claim is "otherwise reviewable" under Article 78. But unlike the petitioner in *Salomon*, the petitioner at bar is not the employee himself, but the Teamsters on his behalf.

Respondent argues that this difference is significant. The Third Department held that a union is entitled to bring an action to construe members' rights under the CBA on behalf of its members. Such an action is *not* subject to a four-month statute of limitations, as long as the claim is "substantially related to the subject matter of the substantive agreement of the parties." (*Matter of County of Broome (Rauen)*, 130 AD2d 811, 812-13 [3d Dept 1987]) In such an instance, a six-year statute of limitations may be applied, and the fact that a different remedy would have been barred as untimely will not bar arbitration. (*Id.*)

In this instance, however, such an interpretation does not save this claim. Respondent argues

that this is not a contract claim. If it is not, it is a "legislative equivalency" claim properly asserted under Article 78. (*Mtr. of County of Nassau v. Civil Serv. Empls. Assn.*, 265 AD2d 326, 328 [2d Dept 1999]) If the distinction is, in fact, based upon a violation of the CBA, it is a contract-based claim, subject to a longer statute of limitations.

It is not disputed that deductions have been taken from Sergeant Maresca's paychecks since 2008, shortly after his employment began. Civil Practice Law & Rules §217(3) has a six-year statute of limitations for such actions. It is clear that Respondent's claim under a contract theory is untimely.

Moreover, Civil Practice Law & Rules §9802 provides that no action arising out of a contract with a village may be maintained against a village unless commenced within 18 months after the cause of action accrues, and only if a claim is filed with the village clerk within one year after the cause of action accrued. There is no allegation that any claim was filed.

Even if this Court credits Respondent's position that no cause of action accrued until the 2010 Handbook created an arguably[2] different right, the deduction in Sergeant Maresca's check became a final and binding action the first time he received a check reflecting the administrative determination, i.e., in 2010. (*Salomon*, 174 AD2d at 721)

Respondent's reliance on the "continuing wrong" doctrine is misplaced. A continuing wrong will serve to toll the running of the statute of limitations to the date of the last wrongful act. (*Henry v. Bank of America*, 147 AD3d 599 [2d Dept 2017]) Such a theory may not be predicated on the continuing effects of earlier unlawful conduct as opposed to a series of independent, distinct wrongs.

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[2]Petitioner argues that the clause providing for contribution only for new hires after 2009 was an error. This substantive issue would have been left to the arbitrators. (*Mtr. of Exercycle Corp. (Marotta)*, 9 NY 2d 329 [1961])

The statute of limitations does not change because of continuing consequential damages. (*Id.; see also, Rowe v. NYCPD*, 85 AD3d 1001 [2d Dept 2011]) In *Salomon*, the Appellate Division held that the alleged wrong occurred with the issuance of petitioner's first paycheck, and that each subsequent paycheck represented the "consequences of that [allegedly] wrongful act in the form of continuing damages." (*Salomon*, 174 AD3d at 722, *citing Henry*, 147 AD3d at 602)

Conclusion

On the basis of the foregoing, the application of Petitioner (Seq. #1) to permanently stay arbitration of the grievance is granted; and the application of Respondent (Seq. #2) to compel arbitration is denied.

This decision shall constitute the order of the Court.

Dated: May 6, 2020
Goshen, New York

ENTER:

HON. SANDRA B. SCIORTINO, J.S.C.

To: *Counsel of Record via NYSCEF*