

**State of N.Y. - Unified Ct. Sys. v
Civil Serv. Empls. Assn., Inc.**

2024 NY Slip Op 33341(U)

September 23, 2024

Supreme Court, New York County

Docket Number: Index No. 451438/2024

Judge: Arthur F. Engoron

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assignments or conditions,” and “[d]iscriminatory supervisory practices,” are resolved in a similar, but two-step, process where a Step 2 decision of the Deputy Director for Labor Relations decision “shall not be subject to review by arbitration.” NYSCEF Doc. No. 3 §§ 15.1(a), 15.1(b), 15.2.

The CBA’s “contract grievance and arbitration procedure” is “the exclusive grievance procedure for the resolution of disputes concerning the interpretation, application or claimed violation of a specific term or provision of [the CBA].” NYSCEF Doc. No. 3 § 15.5. If the parties cannot agree if a Step 2 decision “constitutes an arbitrable grievance, the issue of arbitrability shall be preliminarily submitted to arbitration prior to the resolution of the dispute on the merits in accordance with the procedures for arbitration set forth in Step3.” NYSCEF Doc. No. 3 § 15.7.

Article 16 of the CBA outlines the procedure for “out-of-title work” grievances, in which, essentially, an employee believes they have been assigned duties outside of their job. Out-of-title work grievances are “filed directly with the Deputy Director for Labor Relations and shall not be arbitrable.” NYSCEF Doc. No. 3.

While not arbitrable, out-of-title work and non-contract grievance Step 2 decisions are subject to review pursuant to CPLR Article 78.

Article 19 of the CBA, “Classification Appeals,” allows any employee to “apply to the Chief Administrative Judge for a review and change of the classification or allocation of the position occupied by such employee,” other than “appeals of classifications, reclassifications, allocations and reallocations pursuant to Judiciary Law § 39.” It also states that “[n]o change in position classification shall impair or diminish any existing right to salary or tenure.” NYSCEF Doc. No. 3.

Article 20 of the CBA, “Protection of Employees,” states that “[n]o permanent employee will suffer reduction in existing salary as a result of reclassification or reallocation of the position he/she holds by permanent appointment.” NYSCEF Doc. No. 3 § 20.2.

Rules of the Chief Judge § 25.5(e), authorized by Judiciary Law § 211, provides that “[n]o classification or reclassification of a position of a permanent employee shall diminish any existing salary compensable on an annual basis so long as such position is held by the then permanent incumbent.” 22 NYCRR § 25.5 (e).

The Underlying Grievance

In a letter dated May 20, 2022, and serving as a cover to an employment packet, the Principal Court Analyst for UCS’ Eighth Judicial District congratulated Granchelli on his “personal appointment as Principal Law Clerk to Judge for Honorable John J. Ottaviano in Niagara County Court.” NYSCEF Doc No. 22.

On July 7, 2022, Granchelli began working as a Principal Law Clerk to Judge Ottaviano, replacing the previous Principal Law Clerk, Retired Judge Richard C. Kloch, Sr.. NYSCEF Doc. No. 21 ¶¶ 5-6.

On July 20, 2023, Granchelli was informed at a meeting that he “was in the wrong job title, job grade, and salary,” that UCS would be changing his title from Principal Law Clerk to Associate Court Attorney, and that his annual salary would be reduced from \$127,187 to \$121,172. NYSCEF Doc. No. 21 ¶ 10.

A letter to Granchelli dated July 28, 2023, confirmed that UCS would be “re-designating” his title and adjusting his salary prospectively beginning August 3, 2023, but would not seek to recoup any overpayment. An audit had determined that because Niagara County had two full-time multi-bench judges it could not support the relevant title standard for Principal Law Clerks to Judges, “County Courts with two (2) or more full-time judges.” NYSCEF Doc. No. 23.

On August 17, 2023, Granchelli filed a simultaneous contract, non-contract, and out-of-title work grievance. Granchelli argued UCS had violated CBA § 16.1 by requiring him to perform Principal Law Clerk duties while serving as an Associate Court Attorney, and, therefore had violated CBA §§ 19 and 20, Classification Appeals and Protection of Employees, as well as § 25.25(e) of the Rules of the Chief Judge. NYSCEF Doc. No. 9.

In letters dated September 19, 2023, UCS forwarded Granchelli’s Contract and Non-Contract grievances directly to Step 2 and consolidated all three grievances, “for efficiency in processing and review,” under LRO File No. 23/33. NYSCEF Doc. No. 10.

In a Decision dated November 17, 2023, UCS dismissed all three grievances, on the grounds that Granchelli’s Principal Law Clerk placement was an administrative error. UCS also found that Granchelli’s § 19.2 claim was misplaced because his position had not been reclassified and instead he had been “placed in the wrong title from the outset of his employment,” and that his CBA § 20.2 was inapplicable because his position was neither reclassified nor reallocated. Further, UCS found that failure to “re-designate” Granchelli upon discovery of UCS’ administrative error would have violated State Finance Law § 200.3(a), which directs the State, upon discovering an overpayment, to “immediately reduce such employee’s current salary so that the salary paid to such employee prospectively is the salary which the employee is entitled to receive.” NYSCEF Doc. No. 11.

In a letter dated December 15, 2023, CSEA informed petitioner that it was appealing UCS’ decision to Step Three of the Grievance process, namely arbitration. NYSCEF Doc. No. 27.

The Instant Petition

On May 20, 2024, UCS commenced this special proceeding, pursuant to CPLR 7503, to stay permanently arbitration of Granchelli’s grievances, on the grounds that: they could not properly be determined by an arbitrator; letting an arbitrator classify or allocate a job title would go against public policy; and, in any event, the CBA allows arbitration only for contract grievances, which the subject grievances are not. NYSCEF Doc. No. 1.

On June 21, 2024, CSEA answered and cross-moved, pursuant to CPLR 2215, to compel arbitration. NYSCEF Doc. Nos. 17, 18. CSEA argues that there is no public policy against arbitrating Granchelli’s grievance, which it argues is only about a salary diminishment upon reclassification, and, in any event an arbitrator could theoretically grant relief that would not

violate public policy. Respondent further argues: that the Rules of the Chief Judge are silent on “designation” or “redesignation,” but explicitly give UCS “the power to classify and reclassify, and to allocate and reallocate to an appropriate salary grade, all positions in the classified service of the Unified Court System” so long as such actions do not “diminish any existing salary” for “a then permanent incumbent”; and that if there is any dispute over whether the “redesignation” of Granchelli’s title and pay was a reclassification as contemplated by the CBA, the question of arbitrability should, pursuant to CBA § 15.7, be before an arbitrator.

Finally, respondent argues the petition is barred by laches due to UCS’ five-month delay in commencing this special proceeding, allegedly causing respondent to miss the four-month statute of limitations to bring an Article 78 claim.

In reply, UCS argues, inter alia, that: public policy bars arbitration here as respondent seeks review of UCS’ discretionary authority, pursuant to the Rules of the Chief Judge, to establish and supervise compliance with the title standards for non-judicial positions; despite respondent’s argument that it only seeks arbitration of a salary dispute the underlying grievances clearly seek restoration of “title, grade and salary”; that no grounds exist for granting respondent’s cross-motion to compel; and that the petition is timely and not barred by laches.

Discussion

In determining whether a grievance is arbitrable, the Court of Appeals has enunciated a two-part test. The first part asks if “there is any statutory, constitutional or public policy prohibition against arbitration of the grievance.” Matter of City of Johnstown (Johnstown Police Benevolent Ass’n), 99 NY2d 273, 278 (2002). If there is none, the second part asks if the parties in fact agreed to arbitrate the particular dispute. Matter of United Fedn. Of Teachers, Local 2, AFT, AFL-CIO v Board of Educ. Of City School Dist. Of City of N.Y., 1 NY3d 72, 80 (2003).

“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 Civ. Serv. Employees Ass’n, 8 NY3d 513, 519 (2007) (internal quotation and citation omitted).

Here, the underlying grievances are non-contract grievances, as contemplated by the CBA, as Granchelli sought to “remain in the position of Principal Law Clerk to Judge, remain in JG-31 grade, and remain at [his] current salary trajectory.” Contrary to respondent’s assertions, such relief clearly implicates petitioner’s discretionary authority to administer its operations by establishing and supervising job title standards, and therefore arbitration is precluded by public policy. Respondent’s current argument that Granchelli merely seeks to keep his salary static until his Associate Court Attorney salary reaches the salary he had when he was re-designated, would implicate a violation of State Finance Law § 200.3(a).

Respondent’s laches argument fails as its notice of intention to arbitrate failed to include a 20-day preclusion from objecting, pursuant to CPLR 7503(c). Allstate New Jersey Ins. Co. v Tse, 102 AD3d 473, 473 (1st Dept 2013).

In the final analysis, the grievant was assigned a title he to which he was not entitled, a title that could not exist, and, therefore, he is not entitled to arbitrate the administrative decision rectifying the error.

This Court has considered respondent's other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

The petition is hereby granted, the cross-motion to compel is denied, and the arbitration is permanently stayed.

HON. ARTHUR F. ENGORON

ARTHUR F. ENGORON, J.S.C.

9/23/2024
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: