Matter of Civil Serv. Empls. Assn., Local 1000, AFSCME, AFL-CIO, Inc. v State of New York

2024 NY Slip Op 35166(U)

August 21, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 603579/2023

Judge: Maureen T. Liccione

Short Form Order

Index No. 603579/2023

SUPREME COURT – STATE OF NEW YORK
PART 78 – SUFFOLK COUNTY

PRESENT:
Hon. Maureen T. Liccione
Justice Supreme Court

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In the Matter of the Application of

CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 1000, AFSCME, AFL-CIO, INC. on behalf of ALLEN ROPER,

Petitioner,

For a Judgment Pursuant to Article 75 of the CPLR, Vacating an Arbitration Award

-against-

STATE OF NEW YORK and STATE UNIVERSITY OF NEW YORK AT STONY BROOK,

Respondents.

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Mot. Seq. No. 001–MD/CaseDisp
Orig. Return Date: 03/30/2023
Mot. Submit Date: 06/05/2024

PETITIONER'S ATTORNEY
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Upon the reading and consideration of NYSCEF document nos. 1 through 24, it is:

ORDERED that the petition is denied; and it is further

ORDERED AND ADJUDGED that the proceeding is dismissed.

This is a special proceeding brought pursuant to CPLR Article 75 by the Civil Service Employees Association Local 1000, AFSCME, AFLCIO, Inc. (CSEA) on behalf of one of its members, Allen Roper (Mr. Roper) (collectively Petitioners), against the State of New York and the State University of New York at Stony Brook (SUNY) (motion sequence 001) seeking to vacate an arbitration award (Award) dated January 6, 2023. SUNY has opposed the petition.

Background

On February 10, 2022, SUNY brought misconduct/incompetence charges against Mr. Roper, who was a Trades Specialist (Carpenter) assigned to Stony Brook University Hospital (SBUH), seeking his termination from employment after suspending him. Five charges were

asserted, all related to Mr. Roper's failure to receive the first dose of the COVID-19 vaccine by September 27, 2021, as ordered by SUNY and as mandated by the New York State Department of Health (DOH) pursuant to10 NYCRR § 2.61 (Mandate or Section 2.61).

Mr. Roper filed a grievance, and the matter proceeded to an arbitration hearing on November 18, 2022. During the arbitration Mr. Roper did not dispute that he did not receive the first dose of the COVID-19 vaccine upon his return to work after a leave of absence. Rather, he contended at the hearing that his work at an off-site location excluded him from the definition of "personnel" required to get the COVID-19 vaccination.

The arbitration Award determined that Mr. Roper fell within the category of personnel required to be vaccinated under the Mandate because of his close contact with other covered personnel. The Award also found Mr. Roper guilty of all five charges, that the proposed penalty of termination was appropriate, and that SUNY had probable cause to believe that Roper's continued presence on the job would represent a potential danger to persons such that his suspension was proper.

This Proceeding

The petition, filed on February 10, 2023, seeks vacatur of the Award, together with costs and disbursements of this proceeding. The petition does not allege that Mr. Roper was excluded from the definition of "personnel" required to get the COVID-19 vaccination, as he contended at the arbitration. Instead, it asserts that Award violated public policy and was irrational because it was premised upon the Mandate, which was declared invalid, null and void by an Onondaga County Supreme Court order issued on January 13, 2023, in *Medical Professionals for Informed Consent v. Bassett,* 78 Misc3d 482 [Supreme Ct Onondaga County, 2023], *app dismissed* 220 AD3d 1157 [4th Dept 2023]. The decision in *Bassett,* which was issued a week after the Award, declared that Section 2.61 was beyond the scope of the DOH's authority.[1]

Respondents counter by asserting that Petitioners have not met the high bar for vacating an arbitration award and that the Award was rational and in accordance with public policy because the arbitrator applied the law in effect at the time it was issued[2] (*We the Patriots USA, Inc. v*

[1] Counsel stipulated to a stay of this proceeding pending the appeal of *Bassett* to the Appellate Division, Fourth Department. That appeal was dismissed due to the repeal of Section 2.61.
[2] On October 4, 2023 DOH repealed Section 2.61, which was ten months subsequent to the issuance of the Award.

Hochul, 17 F 4th 266, 290 [2d Cir 2021], *cert. denied sub nom.*, *Dr. A. v Hochul*, 142 S. Ct. 2569 [2022]; *Andre-Rodney v Hochul*, 618 F Supp 3d 72, 83-84 [NDNY 2022]).

Applicable Law and Conclusions

It is well settled that judicial review of arbitration awards is extremely limited (*Wien & Malkin, LLP v. Helmsley-Spear, Inc.*, 6 NY3d 471 [2006], *citing United Paperworkers Intern. Union, AFL-CIO v Misco, Inc.*, 484 US 29 [1987]). "Indeed, we have stated time and again that an arbitrator's award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice" (*id.*, at 479-480, *citing Matter of Sprinzen,* 46 NY2d 623, 629 [1979]). "A court cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one" *(Matter of New York State Correctional Officers & Police Benevolent Assn. v State of New York*, 94 NY2d 321, 326 [1999]). Notwithstanding, "[p]ursuant to CPLR 7511 (b) (1) (iii), a court may vacate an arbitrator's award that violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*Long Beach Pro. Firefighters Ass'n v. City of Long Beach*, 214 AD3d 735, 736–37 [2d Dept 2023] [internal quotations and citations omitted]). "Additionally, an award may be vacated where it exhibits a manifest disregard of law. The burden is on the movant to establish grounds for vacatur by clear and convincing evidence" (*id.*).

Section 2.61, which was adopted in August 2021, and was extended several times before it was made permanent on June 22, 2022, required covered healthcare entities to ensure that their employees were "fully vaccinated" against COVID-19 if those employees "engage[d] in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease" (10 NYCRR § 2.61 [a] [2] [c]).

Here, the Award was consistent with both public policy and applicable law at the time it was issued (*see, e.g., We the Patriots USA, Inc. v Hochul*). Moreover, neither the *Bassett* decision nor the eventual repeal of the Mandate invalidate the Award (*Salamoon v Richmond University Med Ctr*, Index No. 151073/2023, 2024 WL 1819048 [Sup Ct, Richmond County April 11, 2024] ["Even the eventual repeal of the Mandate in 2023 does not change the Court's analysis that it was valid at the time relevant to this case"]; *Dennison v Bon Secours Charity Health Sys. Med Group, P.C.*, 2023 WL 3467143, 8 n.5 [SDNY 2023] ["As a matter of public policy, employers should not be required to accurately predict the outcome of litigation in order to avoid liability for

discrimination on the one hand, or [take on] liability for violating state law on the other"] [internal quotations omitted]; *see Hollinshead v NYC Health and Hosps. Corp.*, 81 Misc3d 763[Sup Ct, Kings County 2023]; *Haczynska v Mt Sinai Health System, Inc.*, 2024 WL 3178639, 15 n14 [EDNY June 26, 2024]; *Jackson v New York State Office of Mental Health*, 2024 WL 1908533, 9, n5, [EDNY May 1, 2024]; *Mace v Crouse Health Hosp, Inc.*, 2023 WL 5049465 [NDNY Aug. 8, 2023]; *Algarin v NYC Health and Hosp. Corp.*, 678 F Supp 3d 497 [NDNY 2023]).

Although Supreme Courts in Erie and Onondaga counties have applied *Bassett* as a basis for vacating arbitration awards which had upheld the terminations of State employees who refused Covid-19 vaccinations, those awards were issued after the *Bassett* decision was rendered, not before, as is the case here (*see Cooper v Roswell Park Comprehensive Cancer Ctr.*, 81 Misc3d 324 [Sup Ct, Erie County, 2023]; *Spence (on behalf of Laframboise) v State University of New York,* Index No. 004245/2023 [Sup Ct, Onondaga County, August 22, 2023]). As a result, those Supreme Court orders do not compel vacatur of the instant Award.

Accordingly, since the instant Award was in accordance with law and public policy in place at the time it was issued, there is no basis for it to be vacated. The petition is denied, and the proceeding is dismissed.

The parties' remaining contentions are unnecessary to this determination.

The foregoing constitutes the decision, order, and judgment of the Court.

ENTER

DATE: August 21, 2024
Riverhead, NY

HON. MAUREEN T. LICCIONE, J.S.C.

__X__ FINAL DISPOSITION ___ NON-FINAL DISPOSITION