

**United Derrickmen & Riggers Assn., Local 197 v
International Union of Bricklayers & Allied
Craftworkers, Local Union No. 1**

2025 NY Slip Op 30408(U)

January 22, 2025

Supreme Court, New York County

Docket Number: Index No. 654555/2024

Judge: Lynn R. Kotler

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

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

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INDEX NO. 654555/2024

UNITED DERRICKMEN & RIGGERS ASSOCIATION,
LOCAL 197, INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL AND ORNAMENTAL IRON
WORKERS,

MOTION DATE 09/03/2024

MOTION SEQ. NO. 001

Petitioner,

- v -

INTERNATIONAL UNION OF BRICKLAYERS & ALLIED
CRAFTWORKERS, LOCAL UNION NO. 1, NICHOLSON &
GALLOWAY, INC.

**DECISION + ORDER ON
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, this motion is decided as follows. This is a special proceeding to vacate an arbitration award. Petitioner United Derrickmen & Riggers Association, Local 197, International Association of Bridge, Structural and Ornamental Iron Workers (“Local 197”) moves for an order pursuant to CPLR § 7511 to vacate an arbitration award against it. The award, dated June 6, 2024, was entered by arbitrator J.J. Pierson (the “Arbitrator”) under the New York Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the “NY PLAN”) under Case Number NY 5/23/2024. The award determined that respondent Nicholson & Galloway, Inc. (“N&G”) made the correct work assignment and that respondent International Union of Bricklayers & Allied Craftworkers, Local Union No. 1 (“Local 1”) shall maintain the assignment on the Orchard Beach Pavilion Reconstruction Project (the “Project”). Local 197 argues that the Arbitrator’s decision exceeded his powers and that the award was an

imperfect execution of his powers. Local 1 and N&G (collectively, the “respondents”) oppose the petition. For the reasons that follow, the petition is denied.

Facts

The relevant facts, which are based on the petition and the memorandum of law in opposition, are largely undisputed. Local 1 and Local 197 are both labor unions in the New York metropolitan area and are members of the Building & Construction Trades Council of Greater New York (the “BCTC”). Local 1 represents the pointers, cleaners, and caulkers (“PCC”) involved in the underlying dispute. Local 1 PCC work jurisdiction includes handling and rigging stone masonry on restoration and repair projects. However, their duties do not include the utilization of power rigging equipment on such projects. Meanwhile, Local 197’s work jurisdiction includes the handling, unloading, rigging, and tending of cut stone and concrete slabs, including the use of power rigging equipment. Local 197 members may be referred to as “stone derrickmen” in the industry.

The BCTC and the member unions entered into an agreement, the New York Plan for the Settlement of Jurisdictional Disputes (the “NY Plan”), that governs all disputes between the members. N&G is a construction contractor in New York and a member of the Building Restoration Contractors Association, Inc. (“BRCA”). As a BRCA member, N&G is a signatory to the Pointers, Cleaners & Caulkers Agreement collective bargaining agreement, under which N&G agreed to be bound by the NY Plan. Prior arbitration decisions made under the plan are contained in a Green Book that is kept by the BCTC and updated periodically with new decisions which act as precedent on future disputes.

The NY Plan outlines the dispute resolution process for jurisdictional disputes between members. It is a three-step process where (1) the parties agree to meet and try to resolve the dispute directly, (2) have a mediation between the parties, and (3) hold an arbitration with an independent arbitrator to be selected from a standing panel of BCTC designated arbitrators. Green Book decisions should be considered by the parties at each step of the process. During arbitration, the arbitrator is to give equal weight to prior decisions and prevailing practices in the locality for the past ten years, so long as the craft has obtained the prevailing practices through proper means. All decisions and awards rendered pursuant to an arbitration hearing are final and binding and considered addenda to the Green Book until they are incorporated therein.

In or around early 2024, N&G was awarded and began work on a stone restoration project at One Orchard Beach Road, Bronx NY 10464. N&G assigned all stonework on the Reconstruction Project to Local 1. In or around April 2024, Local 197's Business Manager William Hayes visited the Project and took photos of Local 1 members performing stone setting work that included the use of power rigging equipment. On April 18, 2024, Local 197 filed a grievance against N&G for assigning work within the jurisdiction of Local 197 to Local 1. They met the same day for a step one meeting but were unable to resolve the dispute and Local 197 filed a demand for a step two mediation meeting. A mediation was unsuccessfully held on May 1, 2024.

On May 2, 2024, Local 197 filed a demand for arbitration under the NY Plan, which defined the parties dispute as a "jurisdictional dispute regarding the performance of removal/installation/handling and all associated rigging of all cut stone on the Orchard Beach Pavilion Project." On May 9, 2024, N&G sent a letter to the Local 197, Local 1 and the BCTC confirming that power rigging equipment had been used to handle stones on the project, but that

they were unaware that Local 197 members must be used when utilizing said equipment. The letter also stated that going forward, only non-powered rigging equipment would be used and thereafter, N&G replaced the power rigging equipment with “chain falls”.

A hearing was held by the Arbitrator on May 23, 2024 at the BCTC offices in New York City. Both sides provided opening statements and submitted evidence to the Arbitrator supporting their position. Local 197 presented the photographs taken by Hayes at the Project showing the power rigging equipment and presented Green Book decisions supporting their position that the stone setting work being performed was under their work jurisdiction. Local 197 also presented letters from Frank Mizerik, President of the Contacting Stonesetters Association, Inc. and from Robert Weiss, President of the Building Stone & Precast Contractors Association, both of which stated that this type of work being performed was within the work jurisdiction of the Local 197.

In turn, Local 1 presented evidence supporting its position that in restoration projects, this type of work was correctly assigned to them. They presented to the Arbitrator the 1990 NY Plan Decision (269-7c) which established industry trade practice for the handling and rigging of stone and masonry on restoration projects to Local 1 PCC works. The decision provides in pertinent part as follows:

The Executive Committee finds that the handling and rigging of stone masonry on restoration and repair projects is the work of Pointing, Cleaning and Caulking Local Union No. 66, provided power rigging equipment is not utilized - Decision of Executive Committee, August 2, 1990.

They also provided letters from individuals working in the stone setting field, including two letters from John Gertonson, President of Minelli Construction Company, Inc., and another letter from Sylvie Straus-Figueroa, counsel to and Managing Director of the BRCA. The

opinions of both Gertonson and Straus-Figueroa supported the Green Book decision that on restoration projects, the type of work being performed on the Project is traditionally within the work jurisdiction of PCC workers. Straus-Figueroa's letter provides:

Though the vast majority of restoration projects are exclusively performed by PCC workers, there are some instances in which a restoration project may call for the use of bricklayers or stone setter. Where new structures are added to an existing restoration project, for example, a new edition to a building or a new retaining wall to a bridge, bricklayers and/or stone setters perform that work. Restoration contractors in NYC have relied on this distinction and been accustomed to this practice for decades upon decades, and in some instances for over a century.

Local 1 submitted a list of "thousands" of stone masonry restoration projects completed by N&G between 1976 and the date of the hearing where Local 1 workers were used to handle the stone in restoration of buildings. Local 1 "presented numerous letters from signatory contractor executives, foreman and sub-foreman who performed the specific work in dispute" as well as witnesses who testified that Local 1 PCC members did all the restoration work. Pat Perrone, a Field Supervisor for Western Group, stated "I never used a Stone Derrickman ... I used Pointers, Cleaners and Caulkers to do the work ... stripping and reusing in restoration" and that he only used stone derrickmen on new jobs.

Multiple witnesses also testified that the work could only be considered restoration and not new construction. The Arbitrator found, based on the testimony provided and the Scope of Work Specification for the Project that the work in question was restoration and not new construction. Additionally, "there can be no doubt that this project falls under the intent of the 1990 NY Greenbook Decision of Restoration and Repair work, which finds the handling and rigging of stone masonry on restoration and repair projects is the work of [PCC workers], provided power rigging equipment is not utilized." The Arbitrator also found that trade practice of giving this type of work to Local 1 workers on "restoration projects has extended over a

period of time.” For these reasons, the Arbitrator determined “[N&G] made the correct work assignment and shall maintain the assignment for ‘the removal/installation/handling, all associated rigging and tending the cut stone’ to [Local 1] on the [Project]... through the duration of the Project.”

This special proceeding ensued. In the petition, Local 197 argues that the award must be vacated pursuant to CPLR §7511(b)(1)(iii) because the Arbitrator ruled on an issue not submitted to him rather than the submitted issue, therefore exceeding his power and in the alternative that the Arbitrator so imperfectly executed his power that a final and definite award was not made. In opposition to the petition, Local 1 contends that the Arbitrator did not exceed his power, as the award was rational and within his power, and that the award was final and definitive as the subject matter submitted was decided.

Discussion

CPLR § 7511(b)(1)(iii) provides that an award may be vacated when a party who participated in the arbitration or was served with notice of arbitration was prejudiced by “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.” Generally, judicial review of arbitration awards is extremely limited (*Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 NY3d 471, 479 [2006]).

An arbitration award will only be vacated if “it is violative of a strong public policy, or is totally irrational, or exceeds a specifically enumerated limitation on his power” (*Matter of Santos v City Univ. of N.Y.*, 126 AD3d 561, 562 [1st Dept 2015] quoting *Azrielant v Azrielant*, 301 AD2d 269, 275 [1st Dept 2002], *lv denied* 99 NY2d 509 [2003]). In order to prove that the

arbitrator exceeded his power, it must be shown that the arbitrator's "award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*Matter of Kowaleski (New York State Dept. of Correctional Servs.)*, 16 NY3d 85, 90 [2010] quoting *New York City Transit Auth. v. Transp. Workers' Union of Am.*, 6 NY3d 332, 336 [2005]). An award is considered indefinite or nonfinal for the purposes of CPLR § 7511 "only if it leaves the parties unable to determine their rights and obligations, if it does not resolve the controversy submitted or if it creates a new controversy (*Matter of Meisels v Uhr*, 79 NY2d 526, 536 [1992]).

The deference given to arbitral awards is such that even an error of law or fact is not a sufficient basis for vacatur under CPLR § 7511 (*Wien & Malkin LLP*, 6 NY3d at 479; *Matter of Associated Teachers of Huntington v. Board of Educ., Union Free School Dist. No. 3, Town of Huntington*, 33 NY2d 119 [1973]). The "party seeking to overturn an arbitration award on one or more grounds stated in CPLR 7511(b)(1) bears a heavy burden and must establish a ground for vacatur by clear and convincing evidence" (*Matter of Denaro v. Cruz*, 115 AD3d 742, 742–743 [2d Dept 2014] [citations and internal quotation marks omitted]).

In their petition, Local 197 argues that the Arbitrator ruling on the issue of whether the Project was a restoration or new construction project exceeded his powers and resulted in an imperfect execution of his power, as he did not rule on the submitted issue of whether the type of work was "Stone Setting work or P.C.C. work." Local 1 argues that the arbitrator was required to determine what type of work the Project was in order to determine whether the type of work was under the jurisdiction of Local 1 or Local 197. The court agrees.

Local 197 argues that the Arbitrator was granted a limited power to rule on the sole issue of whether the type of work being performed was stone setting or PCC work and that the

Arbitrator never ruled on the submitted issue. However, the decision indicates that the Arbitrator was aware of the arguments made by Local 197, including prior use of the power rigging equipment, but the union that this type of work belonged to was dependent on the type of project being undertaken. Both the cited Green Book decision and the testimony presented at the hearing by Local 1 supported that the industry norm is to assign this type of work to PCC workers so long as power rigging equipment was not being used. Once N&G realized that power rigging equipment required the use of Local 197 workers, N&G switched to chain falls, which rendered the work within Local 1's jurisdiction.

Local 197 argues that the ruling effectively made a new contract between the parties, as their "jurisdiction has been contingent upon the type of work being performed without regard to the type of project on which the work occurs." Despite this claim, Local 197 did not provide evidence that they historically were awarded this type of work on reconstruction projects. It cannot be said that the Arbitrator was irrational when he determined that this type of work was correctly assigned to Local 1 because the Project was reconstruction and the use of power rigging equipment was discontinued. Local 197 claims that "[n]o evidence was submitted to support a broad ruling that Local 197's jurisdiction is limited to new construction", however, the 1990 NY Greenbook Decision of Restoration and Repair work clearly established, in conjunction with the testimony provided by Local 1, that on renovation projects this type of work is correctly assigned to PCC workers rather than stone setters.

Local 197 argues that the award is indefinite and nonfinal because it both leaves the parties unable to determine their rights and creates a new controversy. They claim that by failing to define the difference between what constitutes new construction vs restoration, Local 197 may be "prohibited from ever performing work on existing structures." This is incorrect, as the

evidence presented in the hearing established that Local 197 workers may be used when power rigging equipment is being utilized or whenever a new structure is being added to an existing one. The award is clear as to the rights of the parties, as Local 1 is to maintain the work assignment, and the decision relied on established precedent rather than reaching a novel determination. Therefore, no new controversy is created by the determination as it follows prevailing practices and prior determinations published in the Green Book.


Local 197 further argues that the Arbitrator failed to consider that the Green Book decision only addresses “handling and rigging” but not the removal or installation of stones. This argument fails to consider the depth of witness testimony presented to the Arbitrator that established prevailing practices i.e., PCC workers are assigned to removal and installation work on restorations projects. The Arbitrator was rational in finding that Local 1 workers had jurisdiction over the removal and installation of stones on the Project.

Finally, Local 197 argues that the 1990 Green Book decision is “inapposite and irrelevant” because of the evidence of power rigging equipment being used on the Project. While N&G conceded that they had been using power rigging equipment in the past, they switched to chain falls when they became aware that the equipment being utilized was outside the work jurisdiction of Local 1 workers. The determination does not rule that the prior use of power rigging equipment by Local 1 workers was appropriate, but rather that the continued used of Local 1 workers is appropriate since power rigging equipment would not be used on the Project going forward.

Conclusion

Accordingly, it is hereby ORDERED that the petition is denied, this proceeding is dismissed and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

<u>1/22/2025</u>		
DATE		LYNN R. KOTLER, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE