

Matter of Town of Islip v United Pub. Serv. Empls. Union
2025 NY Slip Op 35634(U)
January 2, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 605282/2024
Judge: Maureen Liccione
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Short Form Order

Index No. 605282/2024

SUPREME COURT – STATE OF NEW YORK
PART 78 – SUFFOLK COUNTY**P R E S E N T:****Hon. Maureen T. Liccione**

Justice Supreme Court

-----X
In the Matter of the Application of

TOWN OF ISLIP,

Petitioner, Cross-Respondent,

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

-against-

UNITED PUBLIC SERVICE EMPLOYEE'S
UNION,Respondent, Cross-Defendant.
-----X

Mot. Seq. No. 001 – MG/CaseDisp

Mot. Seq. No. 002 - MD

Orig. Return Date: 05/09/2024

Mot. Submit Date: 10/02/2024

PETITIONER'S ATTORNEYLITTLER MENDELSON, PC
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Melville, NY 11747**RESPONDENT'S ATTORNEY**ISAACS DEVASIA CASTRO &
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75 S. Broadway, 4th Fl
White Plains, NY 10601

Upon the reading and consideration of NYSCEF documents numbered 1 and 30 and due consideration, it is:

ORDERED that the petition by the Town of Islip to vacate the November 30, 2023 arbitration award of Arbitrator Thomas J. Linden in the Matter of Arbitration between the Town of Islip and the United Public Services Employees Union is granted; and it further

ORDERED and ADJUDGED that the November 30, 2023 arbitration award of Arbitrator Thomas J. Linden in the Matter of Arbitration between the Town of Islip and the United Public Services Employees Union is vacated; and it further

ORDERED that the cross-petition by the United Public Services Employees Union to confirm the November 30, 2023 arbitration award of Arbitrator Thomas J. Linden in the Matter of Arbitration between the Town of Islip and the United Public Services Employees Union is denied.

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Petitioner the Town of Islip (Town) brings this special proceeding pursuant to Article 75 of the Civil Practice Law and Rules seeking to vacate the November 30, 2023 arbitration award (Arbitration Award) of Arbitrator Thomas J. Linden in the Matter of Arbitration between the Town and the Respondent United Public Services Employees Union (Union). The Union cross-moves to confirm the Arbitration Award.

The arbitration involved the discharge of Matthew Hawthorne who, at the time of his termination, had been employed by the Town for less than five (5) years as a non-competitive, labor class, blue-collar employee. Specifically, Hawthorne was working as a Maintenance Mechanic I for the Town. The terms and conditions of Hawthorne's employment were governed by the collective bargaining agreement (CBA) between the Town and the Union, dated January 1, 2021, as well as the New York State Civil Service Law.

According to the Town, on September 24, 2021, Hawthorne fell asleep in his truck on the airfield while working voluntary overtime security duty at Long Island MacArthur Airport. Once discovered and confronted by a supervisor, the Town argues that Hawthorne was insubordinate, threatened other employees, and returned to the airfield despite being directed to leave for the day by his supervisor.

On October 4, 2021, a hearing was held before the Town's Director of Labor Relations, Personnel and Safety, Chris Nicolino, at which Hawthorne and two Union officers, Pat DeFelice and Chris Warren, were present. The details of the allegations concerning Hawthorne's disciplinary charges were presented to Hawthorne. Hawthorne, with his Union representatives present, was afforded the opportunity to respond to the allegations presented against him, and he was informed that he was terminated effective immediately.

Subsequently, the Union brought a grievance on behalf of Hawthorne claiming that the Town was in violation of the CBA "including but not limited to Article XXVII Discharge and Layoff, Article XLI Contract Administration and Resolution of Disputes and Grievances in that grievant was wrongfully discharged" (NYSCEF Doc No. 6). The CBA sections referred to by the Union in their grievance are the following:

ARTICLE XXVII - DISCHARGE AND LAYOFF

After a six (6) month probationary period, no employee within the Unit shall be discharged except for just cause and after a hearing.

...

ARTICLE XLI - CONTRACT ADMINISTRATION AND RESOLUTION OF DISPUTES AND GRIEVANCES

Statement of Intent: Any employee(s) shall have the right to have a representative of the Union present at any inquiry or meeting to which the employee(s) has been requested to attend before any Department Head, or substitute or subordinate, or designated representative, the result of which meeting might lead to disciplinary proceedings against such employee(s). (...)

Any violation of this Agreement shall entitle the employee(s) to initiate a grievance, pursuant to the procedures as hereinafter set forth. (...)

A "grievance" shall mean any claimed violation, misinterpretation or inequitable application of the (existing) laws, rules procedures, regulations, administrative orders, or work rules, and the various provisions of this negotiated contract. (...)

Step 4. If the aggrieved employee(s) is not satisfied with the Director of Labor Relation's solution, the employee(s) must, within seven (7) working days, submit the grievance, in writing, to a designated impartial arbitrator. The impartial arbitrator, or a designee, will hold a hearing within ten (10) working days of the receipt of the grievance. The impartial arbitrator will give an answer, in writing, within fifteen (15) working days of the close of the hearings, to the employee(s), with a copy sent to the Union. The decision of the impartial arbitrator shall be final and binding.

(NYSCEF Doc No. 4).

The Union's grievance was denied by the Town. The Union then brought the grievance to arbitration, contending that Hawthorne's termination was in violation of various sections of the CBA.

An arbitration hearing was held on September 6, 2023, before the Arbitrator Thomas J. Linden (Arbitrator). The Arbitrator bifurcated the hearing into two parts: arbitrability and merits. The parties agreed that the issue to be determined by the Arbitrator was: "Is the discharge of Mathew Hawthorne arbitrable under the collective bargaining agreement between the Town of Islip and the UPSEU, dated January 1, 2021, to December 31, 2024?" (NYSCEF Doc No. 3). Sworn testimony was taken from both sides and both sides submitted briefs in support of their positions.

On November 30, 2023, the Arbitrator issued the Arbitration Award, which held that the "grievance was arbitrable" and that "by contract, [Hawthorne] has the right to a just cause arbitration hearing before an impartial third party as provided under the negotiated agreement between the parties" (*id.*). The Arbitration Award also stated that "[t]he numerous references to the

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past practices of the Town concerning how employees were discharged or disciplined, as testified to by witness and revisited in the Town brief, will not be given any probative value or weight herein. Evidence of past practice 'is wholly inadmissible where the contract language is plain and unambiguous'" (*id.*). The Arbitrator further determined that "The language of Article XXVII, which states 'After a six (6) month probationary period, no employee within the Unit shall be discharged except for just cause and after a hearing,' is clear and unambiguous. There are no qualifiers, quantifiers or modifies in this sentence" (*id.*).

The Arbitrator also found that Hawthorne did not have the requisite five (5) years of service to be afforded the pre-termination and pre-discipline hearings rights of Civil Service Law Section 75.

The Town moves via a petition filed pursuant to CPLR Article 75 to vacate the Arbitration Award, arguing that the Arbitration Award irrationally modified the CBA, violates public policy, that the Arbitrator impermissibly disregarded past practice, and that the Arbitrator failed to understand the issues presented. The Union opposes the petition and moves via cross-petition for an Order pursuant to CPLR Article 75 confirming the Arbitration Award, arguing the Arbitration Award did not violate public policy, was not irrational, and was within the Arbitrator's authority to make.

Petition to Vacate the Arbitration Award

"It is well settled that judicial review of arbitration awards is extremely limited" (*David v Byron*, 130 AD3d 772, 773 [2d Dept 2015]). A court is required to grant a timely application to confirm an award "unless the award is vacated or modified upon a ground specified in section 7511" (CPLR 7510; *Matter of Blamowski (Munson Transp., Inc.)*, 91 NY2d 190, 194 [1997]; *Tauber v Gross*, 216 AD3d 1066, 1068 [2d Dept 2023]; *Jurcec v Moloney*, 164 AD3d 1431, 1432 [2d Dept 2018]). A 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 (*Jurcec*, 164 AD3d at 1432, quoting *David v Byron*, 130 AD3d 772, 773 [2d Dept 2015]; see *Quality Bldg. Const., LLC v Jagiello Const. Corp.*, 125 AD3d 973, 973 [2d Dept 2015]). An arbitration award "will not be vacated even though the court concludes that [the arbitrator's] interpretation of the agreement misconstrues or disregards its plain meaning or misapplies substantive rules of law, unless it is violative of a strong public policy, or is totally

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irrational, or exceeds a specifically enumerated limitation on his [or her] power” (*Merrick Union Free Sch. Dist. v Merrick Fac. Assn., Inc.*, 87 AD3d 536, 539 [2d Dept 2011]).

An application to vacate an arbitration award may be granted only in narrow circumstances, including where “an arbitrator ... exceeded his [or her] power” (*Vill. of Spring Valley v Civ. Serv. Emps. Assn., Inc.*, 214 AD3d 818, 819 [2d Dept 2023]; see CPLR 7511 [b] [1] [iii]; *Am. Intl. Specialty Lines Ins. Co. v Allied Cap. Corp.*, 35 NY3d 64, 70 [2020]). An arbitrator “exceed[s] [his or her] power within the meaning of the CPLR only when [he or she] issue[s] an award that violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator’s power” (*Vill. of Spring Valley*, 214 AD3d at 819, quoting *Am. Intl. Specialty Lines Ins. Co. v Allied Cap. Corp.*, 35 NY3d 64, 70 [2020]; see *United Fedn. of Tchrs., Loc. 2, AFT, AFL-CIO v Bd. of Educ. of City Sch. Dist. of City of New York*, 1 NY3d 72, 79 [2003]).

An award is irrational if there is “no proof whatever to justify the award” or if the award gave a completely irrational construction to the provisions in dispute and, in effect, made a “new contract for the parties” (*Rockland Cnty. Bd. of Co-op. Educ. Servs. v BOCES Staff Assn.*, 308 AD2d 452, 453 [2d Dept 2003]; see *Natl. Cash Reg. Co. v Wilson*, 8 NY2d 377, 383 [1960]; *Pine Plains Cent. Sch. Dist. v Kimball*, 272 AD2d 332, 333 [2d Dept 2000]). However, “[t]he mere fact that a different construction could have been accorded the provisions concerned and a different conclusion reached does not mean that the arbitrators so misread those provisions as to empower a court to set aside the award” (*Rockland Cnty. Bd. of Co-op. Educ. Servs.*, 308 AD2d at 453).

The Arbitration Award at issue in the instant proceeding must be vacated pursuant to the above standard, as the Arbitrator has rewritten the CBA by adding thereto a new provision not negotiated by the parties (*Bd. of Educ. of N. Babylon Union Free Sch. Dist. v N. Babylon Teachers’ Org.*, 104 AD2d 594, 597 [2d Dept 1984]). Contrary to the assertions of the Arbitrator, the concept of the “just cause arbitration hearing” was not incorporated in the “clear and unambiguous” language of Article XXVII of the CBA (NYSCEF Doc No. 3). Article XXVII of the CBA simply states “[a]fter a six (6) month probationary period, no employee within the Unit shall be discharged except for just cause and after a hearing” (NYSCEF Doc No. 4). While the Arbitrator contends that this language clearly and unambiguously entitles all Town employees with more than 6 months of probationary service to an “arbitration” hearing, the term “arbitration” does not appear in the provision or section, at all. Article XXVII of the CBA provides no information about what type of hearing this would entail, in front of whom the hearing should be, and, certainly, does not

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state “arbitration hearing.” In fact, the Arbitrator admits that “[t]here are no qualifiers, quantifiers or modifiers in this sentence” (NYSCEF Doc No. 3). Admitting that the section of Article XXVII at issue contains no qualifiers, modifiers or quantifiers but then holding that the “by contract, [Hawthorne] has the right to a just cause arbitration hearing before an impartial third party as provided under the negotiated agreement between the parties” is irrational.

Here, the Arbitrator’s interpretation of the CBA did not simply “misconstrue[] or disregard[] its plain meaning” (see *Merrick Union Free Sch. Dist.*, 87 AD3d 536 at 539), but was irrational for rewriting the CBA. There was nothing in the Article XXVII entitling provisional and noncompetitive employees with more than 6 months of service to a disciplinary arbitration hearing. By determining that a non-tenured, provisional and/or noncompetitive class employee is entitled to a disciplinary arbitration hearing, the Arbitrator expanded the limited protections afforded by the CBA to such an employee, who is not entitled to the protections of the Civil Service Law Section 75. The Arbitrator’s declaration during the parties’ underlying hearing that an arbitration hearing is better than the protections provided under Section 75 shows that the Arbitrator intended to provide to non-tenured, provisional and/or noncompetitive class employees what he perceived as more rights than the rights afforded to tenured employees (NYSCEF Doc No. 7 [“the [arbitration hearing] provides justice for the employees, not a hearing that can be overruled by the town or a school district. That’s what Section 75 provides”]). This statement further supports the determination that the Arbitration Award was irrational.

Thus, the Arbitrator exceeded his authority by rewriting the CBA to provide not bargained for rights to provisional and noncompetitive employees with more than 6 months of service, which is grounds for vacating the Arbitration Award (see, e.g., *City of New York v. Dist. Council 37*, 161 AD3d 435 [1st Dept 2018] [arbitrator’s decision that rewrote the CBA between the parties by expanding the number of workers entitled to the assignment differential, when the CBA expressly limited the differential to workers at a specific facility, warranted its vacatur]; *In re Livermore-Johnson (New York State Dept. of Corr. & Cmty. Supervision)*, 155 AD3d 1391 [3d Dept 2017] [arbitrator exceeded his power by adding a requirement to the CBA that the employer needed to provide in the suspension notice support and detailed reasoning for its probable cause determination]; *Board of Educ. of North Babylon Union Free School Dist. v North Babylon Teachers’ Organization*, 104 AD2d 594 [2d Dept 1984] [vacating an arbitration award where the award read into the CBA a provision for “vesting” of a teacher’s right to terminal leave upon

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attaining 10 years of service, which directly contravened the language of the CBA making eligibility for retirement in accordance with the policies of the New York State Teachers Retirement System a prerequisite for obtaining terminal leave]; *Kings Park Classroom Teachers Assn. v Kings Park Cent. School Dist.*, 100 AD2d 929 [2d Dept 1984] [where a CBA allowed a school district to terminate probationary teachers without cause, an arbitration award which in effect recognized a petitioner's right to pursue a grievance based on a claim that evaluations of the teacher in question were incorrect had the effect of rewriting the CBA to provide that probationary teachers could only be terminated for cause and thus exceeded the arbitrator's powers, constituting grounds for vacating the award]].

Furthermore, the very brief three paragraph "Discussion and Opinion" section of the Arbitration Award does not explain why "by contract, [Hawthorne] has the right to a just cause arbitration hearing before an impartial third party as provided under the negotiated agreement between the parties" (NYSCEF Doc No. 3), but instead, focuses on Hawthorne's ineligibility for the protections afforded by Civil Service Law Section 75. However, Hawthorne's entitlement to Section 75 removal and discipline rights was not the issue presented to the Arbitrator by the parties and none of the parties disputed that Hawthorne was not entitled to Section 75 rights.

Accordingly, the Town's petition is granted. The Union's cross-petition is denied.

The foregoing constitutes the decision and Order of the Court.

ENTER

DATE: January 2, 2025
Riverhead, NY


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

 X FINAL DISPOSITION

 NON-FINAL DISPOSITION