

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

PRESENT:

Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE 5-24-16

SUBMIT DATE 9-15-16

Mot. Seq. # 01 - MG

02 - MD

-----X

In the Matter of the Application of

ALEXANDER D. GREGOR, in his official
capacity as Superintendent of Highways of the
Town of Southampton,

Petitioner,

- against -

CIVIL SERVICE EMPLOYEES ASSOCIATION,
INC., LOCAL 1000, AFSCME, AFL-CIO,
SUFFOLK COUNTY LOCAL 852,
SOUTHAMPTON UNIT 875600,

- and -

THE TOWN OF SOUTHAMPTON,

Respondents.
-----X

**BEE READY FISHBEIN HATTER &
DONOVAN, LLP**

Attorneys for Petitioner

170 Old Country Road, Suite 200
Mineola, New York 11501

VITALE AND LEVITT, P.C.

Attorneys for Respondent

*Civil Service Employees Association, Inc., Local
1000, AFSCME, AFL-CIO, Suffolk County Local
852, Southampton Unit 875600
445 Broad Hollow Road, Suite #124
Melville, New York 11747*

LAW OFFICE OF VINCENT TOOMEY

Attorneys for Respondent

*Town of Southampton
3000 Marcus Avenue, Suite 1W10
Lake Success, New York 11042*

Upon the following papers numbered 1 to 104 read on these motions for disqualification and preliminary injunction; Notice of Motion/ Order to Show Cause and supporting papers 1 - 22 (#01), 23 - 34 (#02); Notice of Cross Motion and supporting papers; Answering Affidavits and supporting papers 35-71 (#1) & 72-92 (2); Replying Affidavits and supporting papers 93-100 (#01) & 101-104 (#02); Other ___; (and after hearing counsel in support and opposed to the motion) it is,

In this proceeding pursuant to CPLR Article 75, the petitioner, Alexander Gregor, as Superintendent of Highways of the Town of Southampton, moves for an order pursuant to CPLR 7503 permanently staying the arbitration demanded by the respondents on the grounds that no valid agreement exists between the parties as to the matter which is the subject of the intended arbitration and the issue to be arbitrated is barred by the laws of the State of New York.

Respondents Civil Service Employees Association Inc., Local 1000, AFSCME, AFL-CIO, Suffolk County Local 852, Southampton Unit 875600, (hereinafter "CSEA"), and the Town of Southampton, (hereinafter "the Town"), oppose the petitioner's request for relief and by motion dated August 10, 2016, the CSEA moves for an order pursuant to CPLR 3211 and 3212 dismissing the petition against all named respondents. The Town has joined in this application.

The petitioner is the elected Superintendent of Highways of the Town of Southampton. Pursuant to Highway Law Section 140(4) the Town Superintendent of Highways:

"4. Within the limits of appropriations employ such persons as may be necessary for the maintenance and repair of town highways and bridges and the removal of obstructions caused by snow, subject to the approval of the town board, and provide for the supervision of such persons."

The petitioner along with the then Supervisor of the Town of Southampton, Anna Throne-Holst, CSEA Unit President Laura Smith and CSEA Local 1000 Labor Relations Specialist James G. Wall executed a collective bargaining agreement governing the period January 1, 2014, through December 31, 2017. The petitioner and the Town were recognized in the agreement as "Joint Employers".

In relevant part the collective bargaining agreement provided:

WHEREAS, the Town/Highway Department having recognized the CSEA as the sole and exclusive bargaining representative for all employees of the Town/Highway Department as hereinafter delineated; and,

WHEREAS, it is recognized that the Highway Department has jurisdiction over its "blue collar" workers pursuant to Section 140 of the Highway Law; and,

WHEREAS, the parties desire to enter into a collective bargaining agreement setting forth the amount of wages to be paid to the employees and the terms and conditions under which the employees work and perform their duties.

There are about 298 employees in the CSEA bargaining unit. Approximately 59 of those employees work in the Highway Department. Three positions in the Highway Department: Accounting Clerk, Senior Clerk Typist and Automotive Mechanic V work in the Highway

Department but are appointees of the Southampton Town Board. The remaining employees in the Highway Department are workers for whom the petition has appointing authority.

On or about November 19, 2015, James Wall, on behalf of the CSEA executed a petition for unit clarification/unit placement with the State of New York Public Employees Relations Board, (hereinafter "PERB"), seeking the inclusion of certain titles in the bargaining unit represented by the CSEA. The petitioner herein was not named in that petition. By letter dated May 23, 2016, counsel for the petitioner requested that PERB Administrative Law Judge Cacavas dismiss the petition or in the alternative allow him to appear in the matter. According to the Town, on June 21, 2016, the petitioner, the Town and the CSEA appeared at a conference before ALJ Cacavas. ALJ Cacavas denied the petitioner's request to intervene in the PERB proceeding concluding that the petitioner was not a "joint employer". The petitioner did not file exceptions or appeal the ruling. Thereafter the PERB proceeding was held in abeyance pending settlement negotiations.

On or about March 31, 2016, the CSEA and the Town entered into a "Stipulation of Settlement of Unit Clarification Petition Town of Southampton". The Town Supervisor, the CSEA Unit President and the CSEA Labor Relations Specialist were signatories to the agreement. The Court notes that although the agreement had a place for the petitioner to sign he was not a signatory thereto. In the agreement the CSEA and the Town agreed to modify several terms and conditions of the collective bargaining agreement.

On or about May 5, 2016, the CSEA Unit President filed a grievance with the Town Supervisor which stated in relevant part:

Explanation of Grievance: Management has violated the contract including but not limited to the past practice, bargaining obligations and standards of reasonableness and fairness when Town failed to implement the conditions of a settlement which was executed by the Town Supervisor as authorized by Town Board resolution. (See attached.)

Contract Article(s) alleged violated: Article 2: Section 4 and all related articles.

* * *

Relief Requested: That management implement and enforce the terms of the attached settlement, and that the grievant (entire membership) be made whole in every way, specifically with raises retroactive to March 1, 2016, and all other conditions of the settlement agreement retroactive to April 1, 2016.

This is CSEA's formal request to the Town of Southampton to submit this matter for arbitration.

The Town Supervisor, by memorandum, denied the grievance stating:

I am in receipt of your grievance dated April 20, 2016, which was served upon my office rather than that of the Superintendent of Highways.

Your grievance provides as follows:

Management has violated the contract including but not limited to the past practice, bargaining obligations and standard of reasonableness and fairness when Town failed to implement the conditions of a settlement which was executed by the Town Supervisor as authorized by Town Board resolution.

The Town Board would like to honor the agreement executed by the Town Supervisor and CSEA on March 31, 2016. However, the collective bargaining agreement is a three-party contract, which may require that the Highway Superintendent to also agree to the Stipulation of Agreement. Superintendent Gregor has indicated that he is unwilling to execute the agreement. Absent the Superintendent's consent, there is a question as to whether the Town Board can implement the terms of the agreement. Therefore, I believe that a court of proper jurisdiction should rule on the question as to the necessity of the Highway Superintendent consent in order to effectuate the collective bargaining agreement.

I believe clarity is required in determining the rights of the respective parties to the agreement, therefore, I am denying the grievance.

On June 21, 2016, the Town and the CSEA appeared at conference with ALJ Cacavas. It is alleged that ALJ Cacavas instructed the Town and the CSEA to modify their stipulation to address only the matters before the PERB regarding the placement of titles in the bargaining unit. Thereafter, the Town and the CSEA executed another stipulation of settlement which in relevant part states:

WHEREAS, Town of Southampton (the "Town"), the Superintendent of Highways of the Town of Southampton (the "Superintendent") and CSEA, Local 1000 AFSCME, AFL-CIO (the "CSEA"), are parties to a collective bargaining agreement for the contract term January 1, 2014 through December 31, 2017 (the "Agreement"); and

WHEREAS, the Town and CSEA are parties to a legal proceeding commenced at the Public Employment Relations Board Case No. CP-1469, which seeks to clarify which positions and titles are included in the bargaining unit and represented by the CSEA; and

WHEREAS, the Town and the CSEA are desirous of resolving this matter without the time, expense and uncertainty of litigation; and

NOW, THEREFORE, in exchange for the mutual promises contained herein, the sufficiency of which is hereby acknowledged, it is stipulated and agreed as follows:

1. This Stipulation of Settlement shall be considered consistent with the prior agreement between CSEA and the Town of Southampton executed on March 31, 2016 addressing the placement of certain titles in the CSEA bargaining unit, and modifying salary schedules and health insurance contribution rates. Nothing in this Stipulation shall be construed to supersede the March 31, 2016 agreement or render the prior agreement and its addendums null and void. The purpose of this Stipulation is to expedite the placement of the titles referred to in the March 31, 2016 settlement agreement and as addressed in PERB CP-1469 in order to avoid further litigation at PERB with respect to the placement of the titles at issue.

In support of his request for relief the petitioner contends that there is no agreement between the parties to arbitrate the current dispute and therefore the petition to the stay the arbitration should be granted. The petitioner argues that as Superintendent of Highways he is a joint employer and therefore he is a necessary party to any stipulation of settlement related to the collective bargaining agreement.

In opposition to the petition and in support of the motion to dismiss the respondents contend, that the petition should be dismissed because the petitioner failed to exhaust his administrative remedies before PERB. Moreover, arbitration of CSEA's claims is not barred by law or public policy and a valid agreement to arbitrate exists as to some or all of the employees of the Town in the bargaining unit represented by the CSEA. The respondents aver that the subject matter of the stipulation is within the sole and non delegable authority of the Town and there is no requirement for the Highway Superintendent to sign or approve the stipulation of settlement.

"In the public sector context, determining whether a grievance is arbitrable requires a court to first determine whether "there is any statutory constitutional or public policy prohibition against arbitration of the grievance" (*Matter of County of Chautauqua v. Civil Serv. Empls. Assn., Local 1000, AFSCME, AFL-CIO, County of Chautauqua Unit 6300, Chautauqua County Local 807*, 8 N.Y.3d 513, 519, 838 N.Y.S.2d 1, 869 N.E.2d 1, quoting *Matter of City of Johnstown [Johnstown Police Benevolent Assn.]*, 99 N.Y.2d 273, 278, 755 N.Y.S.2d 49, 784 N.E.2d 1158). If there is no prohibition against arbitration, then the court must determine "whether the parties in fact agreed to arbitrate the particular dispute by examining their collective bargaining agreement" (*Matter of County of Chautauqua v. Civil Serv. Empls. Assn.*,

Local 1000, AFSCME, AFL-CIO, County of Chautauqua Unit 6300, Chautauqua County Local 807, 8 N.Y.3d at 519, 838 N.Y.S.2d 1, 869 N.E.2d 1).”

(Matter of New York City Tr. Auth. v Transport Workers Union of Am., Local 100, 88 A.D.3d 889, 890-891).

Here there is no statutory, constitutional or public policy prohibition against arbitration of the grievance. However, under the circumstances herein the petitioner did not agree to arbitrate the dispute at issue to the extent that it pertains to employees under his purview pursuant to Highway Law § 140(4) and the collective bargaining agreement clearly recognizes that the petitioner has jurisdiction over “blue collar” workers. Therefore, the petitioner is a necessary party to any stipulation or agreement relating to his employees. The Court notes that throughout the collective bargaining agreement, to which the petitioner was a signatory, the words “Town/Highway Department” were utilized. Moreover, in the papers submitted in this proceeding there was evidence presented that the petitioner approved Town Resolutions involving employees under his jurisdiction. While the petitioner lacks standing under the collective bargaining agreement to challenge the arbitration with respect to the many employees who are not under his jurisdiction, to the extent that the arbitration pertains to issues involving employees who are under the jurisdiction of the petitioner the application to permanently stay the arbitration is granted. The Court has reviewed the parties remaining contentions and concludes that they are without merit.

Thus it is Ordered that the petitioner’s application to permanently stay the arbitration demanded by the respondents is granted to the extent heretofore indicated. The respondents’ motion to dismiss the proceeding is in all respects denied.

The foregoing constitutes the decision and Order of this Court.

Dated: October 17, 2016



HON. JOSEPH A. SANTORELLI
J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION