

SHORT FORM ORDER

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

PRESENT: HON. ROBERT A. BRUNO, J.S.C.

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In the Matter of the Application of the
VILLAGE OF GARDEN CITY,
Petitioner,

TRIAL/IAS PART 14

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

-against-

Index No.: 609205-17
Submission Date: 9-27-17
Motion Sequence: 001

PROFESSIONAL FIREFIGHTERS ASSOCIATION
OF NASSAU COUNTY, LOCAL 1588,

DECISION & ORDER

Respondent.
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Upon the foregoing papers, the petition for an Order pursuant to CPLR Article 75, permanently staying arbitration of the contract grievance identified in respondent’s Demand for Arbitration (American Arbitration Case No. 01-17-0005-1878), is determined as set forth below.

The events underlying this proceeding are essentially undisputed. The following facts are taken from the parties’ submissions and do not constitute findings of fact by the Court.

Non-party Vincent DiBona is a firefighter employed by petitioner the VILLAGE OF GARDEN CITY (“petitioner” or the “VILLAGE”). On March 17, 2016, Mr. DiBona sustained an injury in the performance of his duties as a firefighter for the VILLAGE. In accordance with the terms of the applicable Collective Bargaining Agreement (“CBA”) (*Pet. Exh. A*), Mr. DiBona received extended sick leave benefits for a period of one year following his injury,

which terminated on June 30, 2017. On or about July 14, 2017, Mr. DiBona requested disability benefits pursuant to NYS General Municipal Law (“GML”) 207-a(1) (*Pet. Exh. D*). By letter dated August 4, 2017, the VILLAGE granted Mr. DiBona’s request for Section 207-a disability benefits. The letter advised Mr. DiBona that he would be restored to the payroll retroactively, effective June 30, 2017, and that, pursuant to statute, he would continue to receive salary and coverage for all medical costs associated with his work-related injury, but that he would not continue to receive health insurance benefits, which would terminate effective August 31, 2017 (*Pet. Exh. E*).

On or about August 10, 2017, respondent PROFESSIONAL FIREFIGHTERS ASSOCIATION OF NASSAU COUNTY, LOCAL 1588 (“respondent” or the “UNION”) commenced a grievance on behalf of Mr. DiBona regarding the termination of his health insurance benefits (*Pet. Exh. F*). By letter dated August 23, 2017, the grievance was denied (*Pet. Exh. G*). On or about August 25, 2017, the UNION filed a Demand for Arbitration with the American Arbitration Association (*Pet. Exh. H*), which is the subject of the instant petition.

Petitioner now seeks an Order permanently staying the arbitration (American Arbitration Case No. 01-17-0005-1878), on the ground that there is no basis for the grievance. Petitioner asserts that a firefighter who is on disability leave pursuant to GML §207-a is only entitled to receive the full amount of his salary plus the costs of all medical treatment and hospitalization for the line-of-duty injury. He is not entitled to health insurance or other benefits enjoyed by employees on active status unless his contract so provides. The provision for such additional benefits must be express; statutory rights cannot be expanded by implication. Insofar as the CBA does not explicitly provide that firefighters on Section 207-a disability leave are entitled to health insurance benefits, petitioner argues, Mr. DiBona’s health insurance is properly terminated. Moreover, insofar the CBA is silent on the issue, there is no basis for arbitration – i.e., the dispute does not arise out of the interpretation or breach of the terms of the CBA so as to constitute an arbitrable grievance. Petitioner cites *Uniform Firefighters of Cohoes, Local 2562, IAFF, AFL-CIO v City of Cohoes*, 94 NY2d 686 (2000); *Matter of Chalachan v City of Binghamton*, 55 NY2d 989 (1982) and appellate division cases that hold accordingly.

In opposition, respondent argues, essentially, that the contract is *not* silent on the issue. Article IX, Section 6 of the CBA provides (in relevant part):

“An employee shall receive holiday pay and earn vacation and disability sick leave for only the first year of a job related or non-job related disability leave but will continue to receive all other contract benefits.”

Health insurance is one of the contract benefits provided for in the CBA (see Article X, Section 1 [*Pet. Exh. A*]). Thus, respondent maintains, the CBA expressly provides that firefighters on disability leave are entitled to all contract benefits, including health insurance, extending beyond the first year of leave. At minimum, respondent argues, the scope of benefits afforded under Article IX, Section 6 of the CBA is a matter of contract interpretation, which is within the province of the arbitrator.

In determining whether a grievance is arbitrable, the Court of Appeals has articulated a two-prong test; that is: (1) whether there is any statutory or public policy prohibition against arbitration of the grievance (i.e., the “may-they-arbitrate” prong); and (2) whether the parties have agreed to arbitrate the dispute at issue (the “did-they-agree-to-arbitrate”) prong. *Matter of City of Johnstown (Johnstown Police Benevolent Assn.)*, 99 NY2d 273 (2002), citing *Matter of Acting Supt. Of Schools of Liverpool Cent. School Dist. (United Liverpool Faculty Assn.)*, 42 NY2d 509 (1977).

Under the second prong, where a collective bargaining agreement contains a broad arbitration clause, the dispute is generally arbitrable if it bears a reasonable relationship to the general subject matter of the agreement. *Johnstown*, 99 NY2d at 279; *Matter of Board of Educ. of Watertown City School Dist.*, 93 NY2d 132 (1999). The merits of the grievance are appropriately determined by the arbitrator. *Id.*

Notwithstanding the existence of a broad arbitration clause, if the collective bargaining agreement is entirely silent as to whether a contractual right accorded to regular duty firefighters extends to firefighters on disability, then a grievance regarding such right is not arbitrable. *Cohoes*, 94 NY2d at 694-695. See also *Chalachan*, 55 NY2d at 990; *Matter of Incorporated Vil. of Floral Park v Floral Park Police Benevolent Assn.*, 89 AD3d 731 (2d Dept. 2011); *Matter of Town of Tuxedo v Town of Tuxedo Police Benevolent Assn.*, 78 AD3d 849 (2d Dept. 2010); *Matter of Town of Niskayuna (Fortune)*, 14 AD3d 913 (3d Dept. 2005). The collective bargaining agreement cannot be read to implicitly expand the rights of disabled firefighters under GML§207-a, nor to authorize arbitration of grievances which do not effectively allege any breach of the collective bargaining agreement. *Id.*

Applying the above principles to the case at bar, the Court does not find that any statute or public policy bars arbitration of the grievance. Section §207-a may have a bearing on the merits of the grievance, but does not speak to the threshold question of arbitrability. See *Johnstown*, 99 NY2d at 279.

With respect to the question of whether the parties agreed to arbitrate, the Court notes that the CBA provides for arbitration of any grievance that is not resolved within the time period specified therein (Article XIV, Section 1). “Grievance” is defined as “a dispute arising out of the interpretation, application, performance or construction of the terms of this agreement or any alleged breach thereof” (Article XIII, Section 1). Thus, if the dispute arises out of the interpretation or breach of any contractual provision, it is an arbitrable grievance.

Here, the Court finds that the CBA is not “entirely silent” with respect to the subject dispute. Article IX, Section 6 expressly provides for the continuation of “all other contract benefits” for employees who are on job-related or non-job-related disability leave. The case law cited by petitioner does not require a particular level of specificity, nor any formulaic language, to articulate an express contractual benefit in excess of statutory rights. Rather, the rule of law articulated therein applies only where the contract is “entirely silent” or there is a “total absence” of any express provision in the CBA pertaining to the right at issue. The CBA provision cited herein, although broadly worded, contains express language relating to the dispute at issue – whether disabled firefighters who are out on disability leave are entitled to a continuation of contractual health insurance benefits. The merits of the grievance turn on the precise scope of such provision, which is subject to interpretation, and which, accordingly, is a matter properly referred to arbitration.

The Court has considered the remaining contentions of the parties and finds that they do not require discussion or alter the determination herein. Based upon the foregoing, it is

ORDERED, that the petition for an Order pursuant to CPLR Article 75, permanently staying arbitration of the contract grievance identified in respondent’s Demand for Arbitration (American Arbitration Case No. 01-17-0005-1878), is *denied*.

All matters not decided herein are denied.

This constitutes the Decision and Order of this Court.

Dated: November 15, 2017
Mineola, New York

ENTER:



Hon. Robert A. Bruno, J.S.C.