

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ULSTER

Application of the CITY OF KINGSTON and JAMES M.
SOTTILE, Mayor, City of Kingston,

Petitioners,

-against-

DECISION
AND
ORDER

KINGSTON PROFESSIONAL FIREFIGHTERS, ASSN.,
LOCAL 461, IAFF, AFL-CIO,

Respondents.

(Supreme Court, Ulster County, Motion Term, March 25, 2012)

Index No. 11-4498

(RJI No. 55-11-01744)

FILED
LHLM

(Acting Justice Michael H. Melkonian, Presiding)

MAY 17 2012

APPEARANCES: Roemer Wallens Gold and Mineaux, LLP
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COPY
Nina Postupack
Ulster County Clerk

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MELKONIAN, J.:

Petitioners the City of Kingston and James M. Sottile, Mayor of the City of Kingston

(hereinafter referred to collectively as "the City"), move for an order staying the arbitration requested by respondent Kingston Professional Firefighters Association, Local 461, IAFF, AFL-CIO, a union representing firefighter personnel (hereinafter referred to as "respondent" or "the Union") (CPLR § 7503). The Union opposes the application.

These parties are bound by a collective bargaining agreement covering January 1, 2008 through December 31, 2011 (hereinafter the "CBA"). This CBA contains an Article XXVI, entitled "Manpower," which contains an obligation that the City maintain standing lists of eligible candidates and that appointment from such lists shall, with few exceptions, "be required to be made within 60 days except for entry level fire fighter positions which will be filled within 180 days or by the next scheduled NYSRFFT (recruit f.f.) class, whichever is sooner from the creation of a vacancy in a position that there be no legal impediment thereto." On July 28, 2011, after the retirement of firefighter John Maxwell, and when the position remained unfilled by the City, the Union filed a grievance claiming that the City had violated Article XXVI of the CBA.

Without responding to the grievance, by letter dated August 17, 2011, citing the City's fiscal position, Mayor Sottile requested that the City's Common Council, the legislative body of the City, immediately abolish the vacant firefighter position. On that same day, by Resolution 149 of 2011, the City abolished the position. The Resolution states that "for purposes of economy and to aid in meeting the budget requirements for the current year and in future years, adjustments to manpower in the Fire Department require the positions be

abolished.”

On September 30, 2011, the Union served a demand for arbitration with the New York State Public Employee Relations Board upon the City. The City received that demand on October 3, 2011 and thereafter commenced this special proceeding pursuant to CPLR Article 75 seeking to enjoin arbitration of the dispute. According to the City, it never agreed to arbitrate the matter in dispute and that the CBA cannot, as a matter of public policy, supplant or impede the City’s undisputed management prerogative to determine its staffing and budgetary needs. Moreover, the City contends that the position left vacant by firefighter Maxwell has been abolished by Resolution and that requiring the City to fill an abolished position violates also public policy by negating the City’s undisputed management prerogative to determine its staffing and budgetary needs.

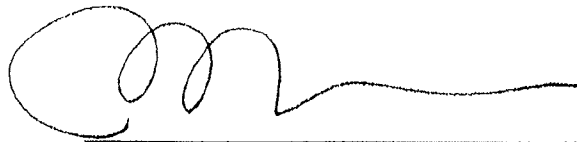
The Court notes that in a prior proceeding between these parties commenced in 2009, the City sought a stay of the Union’s request for arbitration claiming that the City violated Article XXVI by refusing to fill three (3) vacant positions left by retirements (see, Matter of City of Kingston v KPFFA, Index No. 09-5297 [Cahill, J.]). In affirming the dismissal of the City’s petition to stay arbitration, the Third Department held that Article XXVI does not clearly conflict with statute, decisional law, or public policy, and thus held that the dispute over whether the City could abolish firefighter positions for fiscal reasons was arbitrable, since the financial condition of City was appropriate consideration for arbitration (In re Arbitration between City of Kingston, 83 AD3d 1254).

Accordingly, without determining the merit of the Union's grievance, this Court hereby dismisses this petition in its entirety.

This constitutes the Decision and Order of the Court. This Decision and Order is returned to the attorneys for respondent. All other papers are delivered to the County Clerk. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of this rule with regard to filing, entry and Notice of Entry.

SO ORDERED.
ENTER.

Dated: Troy, New York
May 3, 2012



MICHAEL H. MELKONIAN
Acting Supreme Court Justice

Papers Considered:

- (1) Notice of Petition dated October 20, 2011;
- (2) Petition dated October 20, 2011;
- (3) Memorandum of Law dated October 20, 2011;
- (4) Affidavit of Thomas Tiano dated February 15, 2012, with exhibit annexed;
- (5) Memorandum of Law dated March 15, 2012, with exhibits annexed;
- (6) Memorandum of Law dated April 8, 2012;
- (7) Affirmation of Earl T. Redding, Esq., dated April 9, 2012, with exhibits annexed.

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