

STATE OF NEW YORK  
SUPREME COURT

CLINTON COUNTY

PRESENT: HON. MARK L. POWERS  
SUPREME COURT JUSTICE

DECISION and ORDER  
Index No. 2017-1782  
RJI No. 09-1-2017-0608

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In the Matter of the Arbitration between  
CITY OF PLATTSBURGH,  
Petitioner,

-and-

PLATTSBURGH PERMANENT FIREMEN'S ASSOCIATION,  
Respondent.

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APPEARANCES:

For Petitioner:

Robert H. McKertich, Esq.  
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For Respondent:

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HON. MARK L. POWERS

The underlying facts and much of the relevant law are set forth in the Court's Decision and Order in the companion case (Index No. 17-1780 [decided herewith]). The current case implicates the June 2011 memorandum of agreement (hereinafter MOA) reached by the parties following a dispute about replacing a firefighter who had resigned in 2010. Petitioner contends in this proceeding that public policy prevents arbitration of the dispute and also that the parties did not agree to arbitrate the dispute.

Petitioner's contention that arbitration is precluded by public policy is unpersuasive for the same reasons set forth at length in the companion case, which is incorporated herein by reference.

Petitioner further argues that arbitration is precluded in this case on the additional ground that it fails the second prong of the arbitrability test; i.e.,

whether the parties agreed to arbitrate. Petitioner asserts that the arbitration provision of the collective bargaining agreement (hereinafter CBA) does not encompass a grievance relying, in part, on an MOA.

Initially, it merits noting that the arbitration in the current case seeks the same remedy as the arbitration in the companion case and, thus, this second arbitration may well be rendered academic. Nonetheless, the merits of petitioner's argument challenging whether the parties agreed to arbitrate will be briefly addressed.

Where the "CBA contains a broad arbitration clause, [the] analysis in resolving whether the parties have agreed [to arbitrate] is limited to 'determining whether there is a reasonable relationship between the subject matter of the dispute and the general subject matter of the CBA'" (Matter of City of Elmira [Elmira Professional Firefighters' Assn., AFL-CIO, I.A.F.F.-Local 709], 34 AD3d 1075, 1076 [3rd Dept 2006], quoting Matter of City of Johnstown [Johnstown Police Benevolent Assn.], 99 NY2d 273, 279 [2002]; see Matter of Cortland

Educ. of Rondout Val. Cent. Sch. Dist. [Rondout Val. Fed. of Teachers], 101

AD3d 1446 [3rd Dept 2012], lv(denied 22 NY3d 853 [2013]). Instead, the MOA

may be relevant with respect to how the CBA has been interpreted and applied

(see generally 53 NY Jur2d, Employment Relations § 676; cf. Matter of Franklin

Cent. School Dist. [Franklin Teachers Assn.], 238 AD2d 848 [3rd Dept 1997]).

Accordingly, the Court is unpersuaded that this second grievance is not arbitrable.

The remaining issues have either been rendered academic by the Court's Decision and Order in the companion case or are otherwise unavailing.

Based upon the foregoing analysis (and the incorporated analysis set forth in the companion case) and upon review of the papers as set forth hereinafter, it is

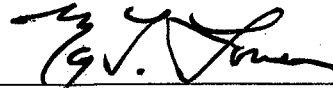
ORDERED that petitioner's application to permanently stay the demanded arbitration is DENIED; and it is further

ORDERED that respondent's cross motion to compel arbitration is GRANTED; and it is further

ORDERED that any relief not specifically addressed has nonetheless been

considered and is hereby expressly DENIED.

The above constitutes the Decision and Order of this Court.



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HON. MARK L. POWERS  
Supreme Court Justice

Signed at Plattsburgh, New York

this 23 day of May, 2018

Papers Reviewed:

Verified Petition (dated November 1, 2017) and Annexed Exhibits; Memorandum of Law (dated November 1, 2017).

Notice of Counter Petition (dated November 21, 2017); Verified Answer (dated November 13, 2017); Affidavit of Douglas Walker (dated November 13, 2017) and Annexed Exhibits; Affidavit of Scott Barshaw (dated November 8, 2017) and Annexed Exhibits; Affidavit of Kevin Decker (dated November 16, 2017) and Annexed Exhibits; Memorandum of Law (dated November 27, 2017).

Affirmation of Robert H. McKertich, Esq. (dated December 1, 2017); Reply Memorandum of Law (dated December 1, 2017).