SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

Present: HON. FRANCIS RICIGLIANO
Supreme Court Justice

X

In the Matter of the Applicant of

THE CITY OF LONG BEACH,

Petitioner,

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

-against-

LONG BEACH PROFESSIONAL FIRE FIGHTERS ASSOCIATION, LOCAL 287

Respondent(s).

X

SHORT FORM ORDER

PART 26

INDEX NO.: 607492/2024

Motion Seq. 1

The following e-filed documents were reviewed in the consideration of this motion:

NYSCEF documents 18-39.

The petitioner's motion, pursuant to CPLR §7503, to permanently stay the respondent's demand for arbitration is determined as hereinafter provided.

The petitioner's fire department is comprised of approximately 135 volunteer members and 24 paid members including one captain, three lieutenants and twenty firefighters. In the 2021-2022 and 2022-2023 fiscal years, the department expended $1,225,913.59 and $1,554,144.86 on overtime, which comprised approximately 36% and 44% of its annual budget, respectively (*see* Petition, paras. 19-21). On February 5, 2024, the petitioner's newly appointed City Manager therefore issued Order 24-001 in an attempt to reduce the department's annual overtime expenditure. More specifically, the directive (*see* petitioner's exhibit 11) declares, inter alia, that, effective February 7, 2024, "[f]our (4) firefighters shall be scheduled to work on the

engine each tour". Between February 7, 2024, and April 26, 2024, the order has reportedly resulted in $171,216.00 budgetary savings (*see* Petition, para. 25).

On March 1, 2024, the respondent's filed a "step 1" grievance with the Fire Commissioner which was denied on March 14, 2024, (see Petitioner's exhibit 13). Its March 27, 2024, "step 2" grievance to the City Manager was likewise denied on April 9, 2024, (*id.*, exhibit 15). On or about April 10, 2024, the respondent thereafter submitted a demand for arbitration to the Public Employment Relations Board ("PERB") which, in sum, seeks to arbitrate whether the petitioner violated article II(c) of the parties' collective bargaining agreement (see *id.*, exhibit 1) and section 15(c) of their March 17, 2021, memorandum of agreement (*id.*, exhibit 3).

Section 15(c) states "[a] minimum of 4 firefighters working per shift including at least one fire officer together on the engine will be maintained at all times." Article II(c) of the collective bargaining agreement provides as follows: "[t]he City shall recognize the members of the Association (paid employees) as the primary emergency response unit, including EMS, EMS transportation, fire suppression, and hazardous materials incidents." The petitioner contends, in essence, that compliance with the aforementioned provisions mandates the employment of at least three firefighters and one officer on each of the four (4) shifts, or a total of sixteen employees, without fear of unemployment, which constitutes an unenforceable "job security provision" which is violative of public policy and may therefore not be arbitrated.

"A job security provision insures that, at least for the duration of the agreement, the employee need not fear being put out of a job" (*Board of Education v. Yonkers Federation of Teachers*, 40 NY2d 268, 275 [1976]). The Court of Appeals "has long held that a purported job security provision does not violate public policy, and therefore is valid and enforceable, only if the provision is 'explicit', the CBA extends for a 'reasonable period of time', and CBA 'was not negotiated in a period of a legislatively declared financial emergency between parties of unequal bargaining power'" (*Matter of Johnson City Professional Firefighters Local 921 v. Village of Johnson City*, 18 NY3d 32, 36 [2011] quoting *Matter of Burke v. Bowen*, 40 NY2d 264, 266 [1976]).

From a public policy perspective, the requirement that "job security" clauses meet this stringent standard "derives from the notion that before a municipality bargains away its right to eliminate positions or terminate or lay off workers for budgetary, economic or other reasons, the

parties must explicitly agree that the municipality is doing so and the scope of the provision must evidence that intent" *(Matter of Johnson City supra* at 37). Otherwise, "a municipality's budget decisions will be routinely challenged by employees, and its ability to abolish positions or terminate workers will be subject to the whim of arbitrators" (*id.* at 37-38).

Here, while Section 15(c) and article II(c) unambiguously identify a minimum number of firefighters, they do not explicitly bargain away the petitioner's right to prospectively manage its budget and the commensurate level of services available due to the economy or other contingencies (*see Matter of City of Plattsburgh (Plattsburgh Permanent Fireman's Assn.)*, 174 AD3d 1017, 1020 [3rd Dept., 2019]; *Matter of Johnson City supra* at 37). Moreover, each provision is, in effect, temporally unlimited and was plainly negotiated during a period of fiscal distress (*see* petitioner's exhibits 5-9). Accordingly, the relevant sections do not meet the stringent public policy test to be arbitrable enunciated in *Burke v. Bowen and Matter of Johnson City Professional Firefighters Local 921 v. Village of Johnson City supra*, and the petitioner's application, pursuant to CPLR §7503, to permanently stay arbitration is granted.

Accordingly, it is hereby

ORDERED, that the petitioner's application to permanently stay arbitration pursuant to CPLR §7503 is GRANTED.

This constitutes the Decision and Order of this Court. Any and all other relief not specifically addressed herein is denied.

Dated: 9/4/24

ENTER:

Hon. Francis Ricigliano
Supreme Court Justice

ENTERED
Sep 24 2024
NASSAU COUNTY
COUNTY CLERK'S OFFICE