

**Bridge & Tunnel Officers Benevolent Assn., Inc. v
Triborough Bridge & Tunnel Auth.**

2024 NY Slip Op 34405(U)

December 6, 2024

Supreme Court, New York County

Docket Number: Index No. 652428/2024

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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BRIDGE AND TUNNEL OFFICERS BENEVOLENT
ASSOCIATION, INC.

Petitioner,

INDEX NO. 652428/2024

MOTION DATE 05/10/2024

MOTION SEQ. NO. 001

- v -

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,

Respondent.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 9, 10, 11 were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

Upon the foregoing documents, petitioner’s motion is granted in part ¹

Background

The Bridge and Tunnel Officers Benevolent Association, Inc. (“Petitioner”) has a series of collective bargaining agreements (collectively, the “CBA”) with the Triborough Bridge and Tunnel Authority (“Respondent”). The CBA contains a broad arbitration clause to handle grievances. In 2015, Petitioner invoked this clause and complained that Respondent was impermissibly attempting to implement Plaza, Patrol, Tolls type schedules (“PPT”). The parties appeared before Arbitrator Robert L. Douglas according to the arbitration clause, which resulted in a Stipulation of Settlement (“Stipulation”). This Stipulation had a sunset provision and expired in February of 2020. It also set forth an expedited arbitration process to govern future claims by Petitioner that Respondent was in violation of the CBA by implementing a PPT-type schedule.

¹ The Court disclosed at oral argument that the Court’s principal law clerk, Diana Cruz, is married to Ricardo Cruz, a Vice-President of petitioner. The Court informed the parties, as the Court had previously via email, that Ms. Cruz would take no part in this matter, and she has not. The Court also disclosed a long-standing friendship with Eduardo Miyashiro, who was served this petition as Acting Deputy Chief, Labor Relations, for respondent. Mr. Miyashiro did not submit papers nor appear at oral argument. Following these disclosures, both parties consented to proceed.

Petitioner alleges that in 2017, Respondent attempted to implement PPT-type schedules in violation of the CBA, and they filed a grievance accordingly. There then followed a series of hearings before Arbitrator Douglas that lasted until 2020, during which time there was an interim award. Then in 2023, Arbitrator Douglas issued an award finding that Respondent had violated the CBA in issuing the 2017 schedules (the “2023 Award”). In the 2023 Award, Arbitrator Douglas also issued a statement that “[a]s a provisional remedy, [Respondent] shall cease and desist from violating the collective bargaining agreement by implementing such Plaza, Patrol, Toll Type schedules.”

Petitioner alleges that to date, Respondent has violated the cease-and-desist order contained in the 2023 Award at several facilities. They bring the present Petition seeking an order confirming the 2023 Award. Respondent opposes the Petition and seeks an order either vacating or modifying the 2023 Award.

Standard of Review

A court may vacate an arbitration award pursuant to CPLR § 7511(b)(1)(iii) if the arbitrator exceeded the authority that was conferred on him by the parties in the arbitration agreement. The Court of Appeals has held that “[s]uch an excess of power occurs only where the arbitrator’s award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator’s power” and that courts are “obligated to give deference to the decision of the arbitrator.” *N.Y. City Transit Auth. v. Transp. Workers’ Union, Local 100*, 6 N.Y.3d 332, 336 (2005).

Discussion

Respondent argues that the Stipulation does not grant an arbitrator the authority to issue a provisional remedy in the form of a cease-and-desist order. They also argue that because the

Stipulation expired in 2020, violations of the CBA after that date should be pursued through the contractual grievance process rather than the expedited arbitration process provided for in the Stipulation. Petitioner argues that these contentions do not provide a proper basis to vacate or modify the 2023 Award, and that the Stipulation can be interpreted to authorize an arbitrator to issue a cease-and-desist order for schedules going forward.

The relevant language in the Stipulation reads: “[i]f the Arbitrator determines that [Respondent] is seeking to implement a ‘Plaza, Patrol, Tolls’ type schedule, then the TBTA agrees to stay the implementation of the proposed schedule until the Arbitrator decides whether or not the ‘Plaza, Patrol, Tolls’ type schedule violates the Collective Bargaining Agreement between the parties.” In the 2023 Award, Arbitrator Douglas stated that the 2020 sunset provision in the Stipulation did not preclude a proceeding initiated prior to 2020 from concluding. He also stated that a cease-and-desist order was not barred by the Stipulation because “[n]othing in the record indicates that the parties intended to limit the normal potential contractual remedies that would have existed had the parties continued to litigate” instead of utilizing the expedited arbitration process of the Stipulation.

But by issuing a forward-facing cease-and-desist order, which the Petitioner is attempting to use to contest current scheduling practices by Respondent, the 2023 Award clearly exceeded the specifically enumerated sunset provision in the Stipulation. The Court does not need to reach whether the cease-and-desist provision in the 2023 Award exceeded any authority granted to an arbitrator to stay a schedule under the Stipulation, in part because the issue is by now moot. But in bypassing the contractual grievance procedure set forth in the CBA for contested schedules post-2020, the 2023 Award extended the expedited arbitration procedure in the Stipulation past the clearly enumerated sunset provision. Such a decision would render future scheduling

conflicts subject to the intentionally time-limited expedited arbitration process indefinitely, thus rendering the sunset provision in the Settlement void. The Court notes that Petitioner is not prejudiced by this holding, as there is a well-defined contractual grievance procedure laid out for all claims of impermissible PPT-type schedules that Respondent attempts to set forth in the upcoming years.

However, as the petition seeks to confirm that arbitration award of the 2017 schedule, that part of the award is confirmed. That issue was fully litigated before the arbitrator and for a time period prior to the sunseting of the agreement between the parties Accordingly, it is hereby

ADJUDGED that the petition to confirm the arbitration award is granted as to the May and August 2017 schedules and otherwise denied; and it is further

ORDERED that the supplemental interim opinion and arbitration award for the Bridge and Tunnel Officers Benevolent Association by Robert L. Douglas, dated December 11, 2023, is hereby modified, striking the cease-and-desist order.

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LYLE E. FRANK, J.S.C.

12/6/2024
DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE