

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

Matter of Meegan v. Brown

92 CA 10-01993 · No. 92 CA 10-01993 · Decided February 18, 2011

SUMMARY

The New York Appellate Division, Fourth Department, affirmed an order denying the City of Buffalo respondents’ motion to stay arbitration of a grievance concerning collective bargaining agreement benefits for police officers receiving General Municipal Law § 207-c benefits. The court held that the City could not unilaterally discontinue a longstanding past practice of paying those benefits and was required to negotiate any change with the bargaining representative. The scope and intent of the collective bargaining agreement’s maintenance-of-benefits clause and the past practice were held to be proper subjects for arbitration.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Smith, J.P.; Fahey, J.; Carni, J.; Sconiers, J.; Martoche, J.
JURISDICTION	New York
DECIDED	February 18, 2011
DOCKET	92 CA 10-01993
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of Supreme Court, Erie County, in a CPLR article 75 proceeding. The order denied respondents' motion to stay arbitration and directed the police commissioner to conduct a Step 3 grievance hearing and issue a Step 3 response under the collective bargaining agreement.
STANDARD OF REVIEW	Review of whether the grievance was arbitrable and whether respondents were entitled to a stay of arbitration under CPLR article 75.
PRECEDENTIAL VALUE	published
PARTIES	Byron W. Brown, as Mayor of City of Buffalo, H. McCarthy Gipson, as Commissioner of Police, City of Buffalo v. Robert P. Meegan, Jr.,

individually and as President of Buffalo Police Benevolent Association, Buffalo Police Benevolent Association

TOPICS

municipal law collective bargaining employment contracts arbitration appellate procedure

PRACTICE AREAS

municipal law labor law employment law contracts arbitration

QUESTIONS PRESENTED

1. Whether respondents could obtain a stay of arbitration of a grievance concerning the unilateral discontinuance of collective bargaining agreement benefits paid to police officers receiving General Municipal Law § 207-c benefits.
2. Whether the City could unilaterally discontinue a longstanding past practice of paying collective bargaining agreement benefits to officers receiving General Municipal Law § 207-c benefits.
3. Whether the grievance improperly sought arbitration of respondents' statutory obligation to pay General Municipal Law § 207-c benefits.

HOLDINGS

1. The grievance concerning the scope and intent of the collective bargaining agreement's Maintenance of Benefits clause and the parties' longstanding past practice was properly subject to arbitration, and respondents were not entitled to a stay.
2. Respondents lacked authority to unilaterally discontinue payment of the benefits because the longstanding past practice could not be unilaterally modified and the collective bargaining agreement imposed a duty to negotiate changes to that practice.
3. The grievance did not improperly seek arbitration of the statutory § 207-c benefits obligation; it concerned additional collective bargaining agreement benefits and the unilateral discontinuance of a past practice.

KEY QUOTATIONS

“A past practice concerning [fringe] benefits for current employees, even where unrelated to any specific contractual provision, cannot be unilaterally modified by the public employer” (at 2)

“a duty to negotiate with the bargaining representative of current employees regarding any change in past practice affecting [such] benefits” (at 2)

FACTUAL BACKGROUND

The City of Buffalo had paid collective bargaining agreement benefits to police officers receiving General Municipal Law § 207-c benefits for more than 40 years. Respondents notified petitioners that they were unilaterally discontinuing contractual benefits not expressly provided by the collective bargaining agreement for

officers receiving § 207-c benefits. The collective bargaining agreement also contained a Maintenance of Benefits clause preserving beneficial conditions not specifically provided for or replaced by the agreement.

PROCEDURAL HISTORY

Petitioners filed a grievance concerning respondents' refusal to pay certain collective bargaining agreement benefits to police officers receiving General Municipal Law § 207-c benefits. Supreme Court denied petitioners' application for a preliminary injunction and denied respondents' motion to stay arbitration, while directing a Step 3 grievance hearing and response. Respondents appealed, and the Appellate Division unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Matter of Uniform Firefighters of Cohoes, Local 2562, IAFF, AFL-CIO v City of Cohoes, 94 N.Y.2d 686, 694-695
- Matter of Aeneas McDonald Police Benevolent Assn. v City of Geneva, 92 N.Y.2d 326, 332
- Matter of Board of Educ. of Norwood-Norfolk Cent. School Dist. [Hess], 49 N.Y.2d 145, 153
- Matter of Village of Spring Val. v Policemen's Benevolent Assn. of Vil. of Spring Val., 271 A.D.2d 615, lv denied 95 N.Y.2d 760
- Matter of Board of Educ. of N. Babylon Union Free School Dist. v North Babylon Teachers' Org., 155 A.D.2d 599

OPINION

PER CURIAM.

SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department 92 CA 10-01993 PRESENT: SMITH, J.P., FAHEY, CARNI, SCONIERS, AND MARTOCHE, JJ. IN THE MATTER OF ROBERT P. MEEGAN, JR., INDIVIDUALLY AND AS PRESIDENT OF BUFFALO POLICE BENEVOLENT ASSOCIATION, AND BUFFALO POLICE BENEVOLENT ASSOCIATION, PETITIONERS-RESPONDENTS, V MEMORANDUM AND ORDER BYRON W. BROWN, AS MAYOR OF CITY OF BUFFALO, H. MCCARTHY GIPSON, AS COMMISSIONER OF POLICE, AND CITY OF BUFFALO, RESPONDENTS-APPELLANTS.

GOLDBERG SEGALLA LLP, BUFFALO (MATTHEW C. VAN VESSEM OF COUNSEL), FOR RESPONDENTS-APPELLANTS. LAW OFFICES OF W. JAMES SCHWAN, BUFFALO (W. JAMES SCHWAN OF COUNSEL), FOR PETITIONERS-RESPONDENTS. Appeal from an order of the Supreme Court, Erie County (Timothy J. Drury, J.), entered February 22, 2010 in a proceeding pursuant to CPLR article 75.

The order, insofar as appealed from, denied the motion of respondents for a stay of arbitration and directed respondent H. McCarthy Gipson, as Commissioner of Police promptly to conduct a Step 3 grievance hearing and issue a Step 3 response in accordance with the contract. It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Respondents appeal from an order denying their motion seeking, inter alia, to stay arbitration of a grievance filed by petitioners with respect to respondents' refusal to pay certain collective bargaining agreement (CBA) benefits to police officers receiving General Municipal Law § 207-c benefits. Respondents had notified petitioners that respondents were unilaterally discontinuing payment of "[a]ny contractual benefits [that] are not expressly provided by the [CBA]" to individuals receiving section 207-c benefits.

Supreme Court denied petitioners' application for a preliminary injunction prohibiting respondents from discontinuing the benefits at issue until the arbitrator rendered a decision with respect to the grievance, and the court also denied respondents' motion.

We affirm. We reject respondents' contention that the court erred in denying -2- 92 CA 10-01993 that part of their motion seeking to stay the arbitration of petitioners' grievance. It is well settled that the benefits provided to a police officer pursuant to General Municipal Law § 207-c are exclusive, and a CBA will not be construed as impliedly expanding such benefits (see generally *Matter of Uniform Firefighters of Cohoes, Local 2562, IAFF, AFL-CIO v City of Cohoes*, 94 NY2d 686, 694-695).

There is, however, no prohibition against a CBA that provides for the extension of the benefits set forth therein to police officers (see generally *id.*). Here, respondents conceded at oral argument on the application and the motion that respondent City of Buffalo (City) had been paying CBA benefits to police officers receiving General Municipal Law § 207-c benefits for over 40 years. "[A] past practice concerning [fringe] benefits for current employees, even where unrelated to any specific contractual provision, cannot be unilaterally modified by the public employer" (*Matter of Aeneas McDonald Police Benevolent Assn. v City of Geneva*, 92 NY2d 326, 332).

The public employer has "a duty to negotiate with the bargaining representative of current employees regarding any change in past practice affecting [such] benefits" (*id.*). In addition, the CBA contains a "Maintenance of Benefits" clause pursuant to which "[a]ll conditions or provisions beneficial to employees now in effect [that] are not specifically provided for in [the CBA] or [that] have not been replaced by provisions of [the CBA] shall remain in effect for the duration of [the CBA], unless mutually agreed otherwise between the City and [petitioner Buffalo Police Benevolent Association]." Thus, respondents also had a contractual duty to negotiate a change in the past practice and lacked the authority to discontinue unilaterally the payment of the benefits at issue to police officers receiving General Municipal Law § 207-c benefits.

Questions with respect to the scope and intent of the “Maintenance of Benefits” clause and the past practice are the proper subjects of arbitration, and past practice may be relied upon by the arbitrator in rendering a decision (see generally *Matter of Board of Educ. of Norwood-Norfolk Cent. School Dist. [Hess]*, 49 NY2d 145, 153; *Matter of Village of Spring Val. v Policemen’s Benevolent Assn. of Vil. of Spring Val.*, 271 AD2d 615, lv denied 95 NY2d 760; *Matter of Board of Educ. of N. Babylon Union Free School Dist. v North Babylon Teachers’ Org.*, 155 AD2d 599).

We reject respondents’ further contention that petitioners are improperly seeking to arbitrate issues with respect to respondents’ obligation to pay General Municipal Law § 207-c benefits. Petitioners’ grievance arises out of the CBA and respondents’ unilateral discontinuance of a past practice spanning 40 years.

The result of arbitration with respect to that grievance will have no impact upon respondents’ obligation to pay section 207-c benefits. Entered: February 18, 2011 Patricia L. Morgan Clerk of the Court