SUPREME COURT - STATE OF NEW YORK
DUTCHESS COUNTY

Present:

Hon. MARIA G. ROSA

Justice.

TEAMSTERS LOCAL 445,

Petitioner,

-against-

TOWN OF MONROE,

Respondent.

DECISION AND ORDER

Index No: 52247/2017

The following papers were read and considered on respondent's motion to dismiss:

NOTICE OF MOTION
AFFIRMATION IN SUPPORT
AFFIDAVIT IN SUPPORT
AFFIDAVIT IN SUPPORT
EXHIBITS 1-11

AFFIRMATION IN OPPOSITION

Respondent Town of Monroe moves to dismiss this special proceeding petitioner commenced pursuant to CPLR 7503 to compel arbitration. On or about February 27, 2017, the Town terminated Catherine Troiano who was employed as secretary to the Town Planning Board. Petitioner asserts that Troiano was a union member covered by a collective bargaining agreement ("CBA") in which the Town agreed to arbitrate any unresolved grievances of covered members. Respondent moves to dismiss the petition asserting that Troiano was an at-will employee in the exempt class of Civil Service not entitled to Civil Service protection. Respondent also claims that petitioners failed to make a timely demand for arbitration.

Generally, "public policy in this State favors arbitral resolution of public sector labor disputes." City of Long Beach v CSEA, Inc.-Long Beach Unit, 8 NY3d 465 (2007). However, arbitration is essentially a creature of contract and thus parties may not be compelled to participate in an arbitration unless they have clearly agreed to do so. See Intl. Aviation Services of New York, Inc. v Flagsim Co, Inc., 43 AD2d 971 (2nd Dep't 1974). A public employer is free to negotiate any controversy only in the absence of plain and clear prohibitions in statute, controlling decisional law

or restricted public policy. City of Oneida v Oneida City Unit, 78 AD2d 727 (3rd Dep't 1980). "The question of arbitrability in the public sector is subject to a two-tiered analysis. It must first be determined whether there is any statute, decisional law or public policy precluding a public employer from agreeing to refer the dispute to arbitration." Id. The parties must also have agreed in their collective bargaining agreement to refer the particular matter to arbitration. Id; Matter of City of Johnstown, 99 NY2d 273 (2002).

Respondent maintains that Troiano did not hold a non-competitive Civil Service position in the Town that would afford her the benefit of arbitration and grievance procedures in the CBA and under Civil Service Law§75. It emphasizes that the secretary to a planning board is statutorily classified as an exempt position under Civil Service Law §41. However, the mere fact that her position was classified as exempt under the Civil Service Law is not dispositive of whether she is entitled to grieve and arbitrate her termination under the CBA entered into between the parties. If the CBA affords her such protections and requiring the Town to arbitrate would not violate a statute, decisional law or public policy, there is no bar to arbitration.

CBA §3.2 expressly provides that the secretary to the planning board is included in the bargaining unit governed by the CBA. Article 11 of the agreement further provides that the union may file a formal complaint on behalf of aggrieved members of the bargaining unit and submit a matter to arbitration if not satisfied with the Town's written response to a grievance. §11.2 of the CBA entitled "Disciplinary Procedure" provides that discipline shall be in accordance with the statutory provisions set forth in Civil Service Law §§75 and 76 and that the Town will provide written notices of discipline containing all charges and specifications and the penalty sought. Notably, that section expressly exempts the bookkeeper to the Town Supervisor from such procedures, stating that the union may not challenge the termination of the bookkeeper under any circumstances. There is no similar provision pertaining to the planning board secretary.

The foregoing terms of the CBA clearly gave Troiano, in her capacity as planning board secretary, the right to pursue the grievance procedures and ultimately arbitration. The mere fact that she was exempt as a Civil Service employee did not bar the Town from providing her such protections as a matter of contract. Nor has the Town demonstrated that affording Troiano such protections violates any statute, decisional law or public policy. None of the cases respondent cites involve a collective bargaining agreement that expressly grants an exempt employee the right to challenge disciplinary actions or termination. Contract provisions in collective bargaining agreements may modify, supplement or replace the more traditional forms of protection afforded public employees under the Civil Service Law. See generally Dye v New York City Transit Authority, 88 AD2d 899 (2nd Dep't 1982). Respondent's reliance on City of Long Beach v CSEA, Inc., 8 NY3d 465 (2007) is misplaced. In that case, the court held that it was against public policy for a contract to require an arbitration pertaining to the termination of provisional appointments. In contrast, Troiano was not a provisional appointment. She was a non-provisional employee hired to work as secretary to the Town Planning Board and was expressly afforded rights to challenge her termination under the CBA. Because she worked in a position classified as exempt, this is not a situation where allowing her to pursue arbitration would undermine the public policy in the Civil

Service Law designed to insure adherence to the constitutional preference of merit selection.

The court further rejects respondent's claim that petitioners failed to properly file a demand for arbitration. The CBA provides that the union is required to file a demand for arbitration with the Town Supervisor within 14 days of receiving the Town Board's response to a grievance or when such response should have been received. On April 3, 2017, the union's attorney sent an e-mail to various individuals, including the Town Supervisor at his e-mail address, stating that the union had not received a second step decision concerning Troiano's termination, and that pursuant to CBA §11.1.4 "the Union is submitting to the Town Supervisor a demand for arbitration." The e-mail further requests that the Town have someone contact counsel for the purpose of facilitating the selection of a panel of arbitrators. There is nothing in the CBA barring a demand for arbitration to be filed by e-mail and it is undisputed that the April 3, 2017 e-mail was timely sent to the Town Supervisor. The mere fact that it was sent to other individuals as well as the Town Supervisor does not make it invalid. It was sent to the supervisor and it stated that the union is submitting a demand for arbitration. Its content was sufficient to constitute a demand as required under the CBA.

Based on the foregoing, it is hereby

ORDERED that respondent's motion to dismiss the verified petition is denied. Respondent is hereby directed to either file an answer to the petition or notify the court that they do not intend to oppose the petition within 30 days of the entry of this decision and order.

This constitutes the decision and order of the court.

Dated: September 29, 2017
Poughkeepsie, New York

ENTER:

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Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of

its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.