

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: January 26, 2012

512892

In the Matter of the
Arbitration between TOWN OF
SAUGERTIES et al.,
Appellants,
and

MEMORANDUM AND ORDER

TOWN OF SAUGERTIES POLICEMAN'S
BENEVOLENT ASSOCIATION,
Respondent.

Calendar Date: November 21, 2011

Before: Peters, J.P., Rose, Garry and Egan Jr., JJ.

Roemer, Wallens, Gold & Mineaux, Albany (Earl T. Redding of counsel), for appellants.

Ennio J. Corsi, New York State Law Enforcement Officers Union, Albany (Christine Caputo Granich of counsel), for respondent.

Rose, J.

Appeal from an order of the Supreme Court (Cahill, J.), entered April 4, 2011 in Ulster County, which, among other things, denied petitioners' application pursuant to CPLR 7503 to stay arbitration between the parties.

The parties' collective bargaining agreement (hereinafter CBA) contains a section entitled "Hours of Work and Overtime." It states, among other things, that petitioner Town of Saugerties "agrees to comply with the requirements of Section 971 of the Unconsolidated Laws of New York." That statute provides, in

relevant part, that police officers shall not be assigned to tours of duty exceeding eight consecutive hours of each consecutive 24 hours, with certain exceptions. When respondent sought to arbitrate a grievance concerning an order that required an officer to work in excess of an eight-hour tour, petitioners commenced this proceeding to stay arbitration. Respondent then cross-moved to compel arbitration. Supreme Court granted respondent's cross motion and dismissed the petition, giving rise to this appeal.

Courts determine arbitrability according to a two-prong test – whether the parties may arbitrate the dispute and, if so, whether they in fact agreed to do so (see e.g. Matter of County of Chautauqua v Civil Serv. Empls. Assn., Local 1000, AFSCME, AFL-CIO, County of Chautauqua Unit 6300, Chautauqua County Local 807, 8 NY3d 513, 519 [2007]). Petitioners claim that arbitration fails under both prongs here because, they argue, resolution of the dispute requires the application or interpretation of the terms of a statute. They contend that public policy will not permit an arbitrator to apply or interpret a statute and, as to the second prong, that the parties did not agree to arbitrate the application or interpretation of the statute at issue here. Neither of petitioners' arguments has merit.

The CBA incorporates McKinney's Unconsolidated Laws of NY § 971 by reference, making the language of the statute a substantive provision of the CBA, and petitioners have not identified any public policy that would preclude the arbitrator from interpreting such language (see e.g. Matter of City of Johnstown [Johnstown Police Benevolent Assn.], 99 NY2d 273, 278-279 [2002]). Petitioners' reliance on Matter of Barnes (Council 82, AFSCME) (235 AD2d 695 [1997]) is misplaced as that decision in no way suggests that public policy prohibits interpretation of the language of a statute that has been incorporated by reference into the terms and conditions of a CBA.

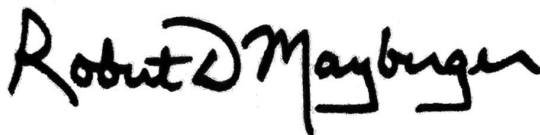
As for the second prong, the broad arbitration clause here provides that any unresolved disputes that have gone through the grievance process may be submitted to arbitration. Disputes are defined as "[a]ny grievance arising concerning the interpretation or application of the terms of this contract or the rights

claimed thereunder and/or working conditions." Here, the dispute concerns overtime, which is clearly a working condition (see Spring Valley PBA v Village of Spring Val., 80 AD2d 910, 910-911 [1981]). Moreover, it involves the application of the terms of the CBA. Thus, it is clearly one that the parties intended to arbitrate (see Matter of City of Johnstown [Johnstown Police Benevolent Assn.], 99 NY2d at 279-280; Matter of City of Elmira [Elmira Professional Firefighters' Assn., AFL-CIO, I.A.F.F.-Local 709], 34 AD3d 1075, 1076 [2006]; Matter of City of Plattsburgh [Plattsburgh Police Officers Union AFSCME Local 82], 250 AD2d 327, 329 [1998], lv denied 93 NY2d 807 [1999]). Accordingly, Supreme Court correctly granted respondent's cross motion to compel arbitration and dismissed the petition.

Peters, J.P., Garry and Egan Jr., JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court