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

Decided and Entered: June 20, 2019 527824

In the Matter of the
Arbitration between CAPITAL
DISTRICT TRANSPORTATION
AUTHORITY et al.,
Appellants,
and MEMORANDUM AND ORDER

AMALGAMATED TRANSIT UNION,
LOCAL 1321,
Respondent.

(And Another Related Proceeding.)

Calendar Date: April 24, 2019

Before: Lynch, J.P., Mulvey, Devine, Aarons and Rumsey, JJ.

Girvin & Ferlazzo, PC, Albany (Patrick J. Fitzgerald of counsel), for appellants.

Gleason, Dunn, Walsh & O'Shea, Albany (Brendan D. Sansivero of counsel), for respondent.

Rumsey, J.

Appeal from a judgment of the Supreme Court (Ryba, J.), entered April 23, 2018 in Albany County, which, among other things, denied petitioners' application pursuant to CPLR 7511 to vacate an arbitration award.

Petitioners operate a fleet of approximately 300 fixed-route public transit vehicles in and around the Counties of Albany, Schenectady, Rensselaer and Saratoga. Respondent is the collective bargaining representative of bus operators employed by petitioner. Petitioners and respondent are parties to a collective bargaining agreement (hereinafter CBA), effective June 16, 2009 through June 15, 2018, which sets forth the terms and conditions of employment of bus operators and mechanical employees. In 2016, petitioners altered the process by which they developed the particular bus runs from which bus operators could select their work assignments. Because these changes eliminated bus operators' ability to select their work hours and days off, respondent filed a grievance on their behalf alleging that petitioners had violated the CBA by improperly altering the scheduling process without prior negotiation and agreement and requesting reinstatement of the prior scheduling procedure. After the parties failed to reach a resolution during the three-step grievance process specified in the CBA, respondent submitted the grievance to arbitration.

Following a hearing, the arbitrator issued an opinion and award finding that the new scheduling procedure adopted by petitioners violated articles 10 (c) and 32 of the CBA by eliminating the opportunity for bus operators to select their schedules, specifically their bus runs and days off. The arbitrator directed petitioners to resume use of the scheduling procedure that they had utilized prior to 2016 and, further, to negotiate with respondent before implementing any changes to that procedure. Petitioners thereafter commenced this proceeding pursuant to CPLR 7511 seeking to vacate the arbitration award on the basis that the arbitrator exceeded the scope of his authority under the CBA. Respondent answered and filed a cross petition seeking to confirm the arbitration award. Finding that the CBA was reasonably susceptible to the construction applied by the arbitrator, Supreme Court denied petitioners' application to vacate the arbitration award and granted respondent's cross petition to confirm the award. Petitioners appeal.

We affirm. "Judicial review of arbitral awards is extremely limited. Pursuant to CPLR 7511 (b) (1), a court may vacate an award when it violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on an arbitrator's power. Aside from those circumstances, courts may not vacate an award based on their disagreement with the reasoning or outcome, even if the arbitrator made errors of law or fact. Although an arbitrator's interpretation of contract language is generally beyond the scope of judicial review, where a benefit not recognized under the governing CBA is granted, the arbitrator will be deemed to have exceeded his or her authority. If the contract is reasonably susceptible to different conclusions, including the one given by the arbitrator, courts will not disturb the award, but if the arbitrator imposes requirements not supported by any reasonable construction of the CBA, then the arbitrator's construction[,] in effect, made a new contract for the parties, which is a basis for vacating the award" (Matter of Livermore-Johnson [New York State Dept. of Corr. & Community Supervision], 155 AD3d 1391, 1392-1393 [2017] [internal quotation marks, brackets and citations omitted]).

The underlying arbitration involves a dispute about the complex procedure utilized to create work schedules for bus operators to ensure coverage seven days per week. Petitioners first create a timetable of the particular bus runs, or work assignments, based on the level of service they plan to provide, i.e., the specific routes, the days and times of operation and service frequency. Bus operators then select available routes on a seniority basis. For more than 40 years – from 1975 until 2016 – bus operators could choose among five, six or seven-day bus runs, each including a specific route, set hours and two days off. Bus operators who selected a five-day bus run would automatically have Saturday and Sunday off, and those who selected a six-day bus run would automatically have Sunday off and would choose their second regular day off. Bus operators who selected a seven-day bus run would select both of their regular days off on a seniority basis. Runs that were not staffed during the initial selection process were classified as "NRA" runs, and bus operators also had the option of

establishing a work schedule comprised of NRA runs. This process afforded bus operators significant flexibility in setting their regular work schedules. In 2016, for the first time in 40 years, petitioners unilaterally issued a timetable consisting entirely of five-day run packages with two prescheduled days off, thereby eliminating the ability of bus operators to select the length of their bus runs and their days off.

After a hearing, the arbitrator issued an opinion and award based on his interpretation of the relevant provisions of the CBA. He specifically found that the new scheduling procedure imposed by petitioners violated articles 10 (c), 11 (c) and 32 of the CBA because petitioners had unilaterally changed the terms and conditions of employment by altering the method in which hours of work were scheduled. In article 10 (c), petitioners recognized "the right of [respondent] to negotiate on any . . . matters involving working conditions, hours, wages and benefits normally within the purview of collective bargaining." The arbitrator found that article 10 (c) created a contractual obligation for petitioners to negotiate changes to the route scheduling procedure by incorporating the provisions of the Taylor Law that require public employers to bargain in good faith concerning all terms and conditions of employment, including employee work schedules (see Civil Service Law §§ 201 [4]; 204 [2]; 209-a [1] [d]). The arbitrator concluded that petitioners violated article 10 (c) by unilaterally changing the process by which employee work schedules were determined.

The arbitrator further determined that the new scheduling procedure violated article 11 (c) of the CBA by depriving bus operators of the ability to separately select bus runs and days off. In reaching that conclusion, the arbitrator found that article 11 (c) – which provides that "[a]ll regular runs [and] days off . . . shall be picked on a division seniority basis" – was facially ambiguous and construed it as requiring that bus operators be permitted to separately select bus runs and days off. Finally, the arbitrator also determined that petitioners' unilateral adoption of the new scheduling procedure violated

article 32 of the CBA, which provides that all past practices must be continued unless changed by mutual agreement.[1] The arbitrator found that the work selection procedure that had existed for over 40 years was a well-established past practice that could not be unilaterally altered by petitioners. We find that the CBA is reasonably susceptible of the interpretation given to it by the arbitrator and, therefore, Supreme Court properly dismissed petitioners' application to vacate the arbitration award and granted respondent's application to confirm the award.

Lynch, J.P., Mulvey, Devine and Aarons, JJ., concur.

ORDERED that the judgment is affirmed, with costs.

ENTER:

Robert D. Mayberger
Clerk of the Court

[1] The petition makes only a single reference to article 32 when it describes the CBA provisions that were at issue in the arbitration. Notably, however, petitioners did not pursue relief on this ground and, accordingly, did not preserve their contention that the arbitrator exceeded his authority when he determined that the schedule change violated article 32 of the CBA (see Albany Eng'g Corp. v Hudson River/Black Riv. Regulating Dist., 110 AD3d 1220, 1223 [2013]).