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

---------- x

In the Matter of the Application of

THE CITY OF NEW YORK and THE POLICE DEPARTMENT OF THE CITY OF NEW YORK,

Petitioners,

For a Judgment Pursuant to Articles 75 and 78 of Civil Practice and Rules,

DECISION AND ORDER

- against -

Index No. 401478/98

DETECTIVES ENDOWMENT ASSOCIATION ("DEA"), THOMAS SCOTTO, as President of DEA, THE BOARD OF COLLECTIVE BARGAINING OF THE CITY OF NEW YORK and STEVEN C. DeCOSTA, as Chair of the Board of Collective Bargaining,

Respondents.

---------- x

WILLIAM A. WETZEL, J.:

This is a proceeding pursuant to Articles 75 and 78 of the CPLR in which the petitioners seek a judgment annulling a determination (Decision No B-10-98) of the respondent Board of Collective Bargaining ("BCB") rendered on March 24, 1998. This determination by the BCB denied an application brought by petitioners to dismiss the request for arbitration by respondent Detectives Endowment Association ("DEA") of a grievance relating to detectives who were formerly assigned to the Transit Police and

Housing Police prior to their merger with the New York City Police Department.

The "Request for Arbitration" (Exhibit 2 to Petition) in essence states the grievance as a failure to provide all contract benefits to the detectives formerly assigned to the Transit and Housing Police Departments. The remedy sought is "compliance with 18-month laws. " The thrust of the petitioners' argument is that an arbitrator cannot apply the 18-month law [New York Administrative Code §14-103(b)(2)] without violating public policy and rendering an illegal agreement because said section is inapplicable to the grievants. They conclude therefore, that since the stated relief would be illegal, the arbitration may not proceed without violating public policy.

This court's initial determination has been clearly defined by the Court of Appeals in Committee of Interns v. Dinkins, 86 N.Y.2d 478 (1995). First this court must determine whether the arbitration claim with respect to the subject matter is authorized and secondly whether the terms of the particular arbitration clause includes this subject area. The petitioners argue that this analysis leads to the ineluctable conclusion that because of the relief requested, the arbitrators could render no award which would not violate public policy and therefore cannot proceed.

Petitioners mistakenly rely on Acting Superintendent of Schools of Liverpool Central School District v. United Liverpool Faculty Association, 42 N.Y.2d 509 (1977) as authority that this court must find a "clear and unequivocal agreement" to arbitrate this dispute in order to overcome a "presumption that the public employer did not intend to

refer its differences to arbitration. " That criterion has been held to be inapplicable where as in this case the controlling authority is the Administrative Code of the City of New York and not the Taylor Law. See New York City Sanitation v. McDonald, 87 N.Y.2d 650 (1996). The policy to be followed under the Administrative Code is to favor and to encourage the use of arbitration of grievances. id at 655.

The petitioners would the focus this court solely upon the remedy as stated in the grievance. The Court of Appeals however has allowed arbitration matters where there exists a reasonable possibility that "an arbitrator may be able to fashion a remedy not in violation of public policy." See Committee of Interns, supra at 484. See also Port Washington Union Free-School District v. Port Washington Teacher's Association, 45 N.Y.2d 411 (1978). This court while somewhat skeptical is not convinced that a permissible remedy could not be fashioned here.

This court feels constrained therefore to exercise judicial restraint in preemptively staying an arbitration when the issue is whether the award may violate public policy. This issue could better be determined upon a motion to confirm or set aside the arbitration award rather than upon a presumption of illegality. "Judicial intervention to stay arbitration on public policy grounds is exceptional. " See New York City Sanitation, supra at 656.

The petitioners have therefore not met their heavy burden as defined in New York City Sanitation, supra at 656, "the determination of the Board of Collective

Bargaining in this matter may not be upset unless it is arbitrary and capricious or an abuse of discretion, as the Board is the neutral adjudicative agency statutorily authorized to make specified determinations (Matter of Levitt v. Board of Collective Bargaining, 79 N.Y.2d 120, 127-128; see, Administrative Code of City of New York § 12-309 [a] [3]), or unless arbitration of the dispute offends public policy."

With regard to the cross claim of respondent DEA to strike certain "dicta" from the decision of the BCB, the DEA fails to demonstrate in the first instance that this dicta would be binding on the arbitrator and in fact make a convincing argument to the contrary. This court applying the same reasoning as above will not intervene to pre-empt the arbitrator "in limine whose decision will ultimately be subject to review upon a motion for confirmation or vacatur.

For the reasons stated herein, the petition and the cross motion are denied. This constitutes the Decision and Order of this Court.

Dated: New York, N. Y.
October 23, 1998

WILLIAM A. WETZEL
JUSTICE OF THE SUPREME COURT