



Detectives' Endowment Assn., Inc. of the Police Dept. of the City of New York v City of New York

Supreme Court of New York, Appellate Division, First Department

February 10, 2015, Decided; February 10, 2015, Entered

14198, 100946/12

Reporter

125 A.D.3d 475 *; 4 N.Y.S.3d 9 **; 2015 N.Y. App. Div. LEXIS 1178 ***; 2015 NY Slip Op 01183 ****

New York (Michael Thomas Fois and Karine Spencer of counsel), for The New York City Board of Collective Bargaining and Marlene Gold, appellants.

[***1] In the Matter of Detectives' Endowment Association, Inc. of the Police Department of the City of New York, Respondent, v City of New York et al., Appellants.

Pitta & Gibling, LLP, New York (Michael G. Dzialo of counsel), for respondent.

Prior History: *Detectives' Endowment Assn., Inc. v City of New York, 2012 N.Y. Misc. LEXIS 5473, 2012 NY Slip Op 32873(U) (N.Y. Sup. Ct., Nov. 20, 2012)*

Judges: Concur—Sweeny, J.P., Renwick, Moskowitz, Feinman, Kapnick, JJ.

Opinion

Core Terms

contractual, grievance, past practice, arbitrable, salaries, inequitable, Bargaining, departed, annul

[**10] [*475] Judgment, Supreme Court, New York County (Geoffrey D. Wright, J.), entered May 17, 2013, inter alia, granting the petition to annul a determination of respondent New York City Board of Collective Bargaining (Board), dated December 20, 2011, which denied a request for arbitration of a grievance filed by petitioner, annulling the determination, and directing the parties to proceed to arbitration of the grievance forthwith, unanimously reversed, on the law, without costs, the judgment vacated, the petition denied, and the proceeding brought pursuant to CPLR article 78 dismissed.

Headnotes/Summary

Headnotes

Arbitration—Matters Arbitrable—Lack of Reasonable Relationship between Collective Bargaining Agreement and Claim

Arbitration—Collective Bargaining Agreement—Arbitrable Grievance—Alleged "Inequitable Application" of Parties' Contracts

Counsel: [***1] Zachary W. Carter, Corporation Counsel, New York (Kathy Chang Park of counsel), for The City of New York and The City of New York Office of Labor Relations, appellants.

Philip L. Maier, Office of Collective Bargaining,

The Board's determination finding the grievance not arbitrable due to the lack of a reasonable relationship between the collective bargaining [***2] agreements and the claim that the New York City Police Department improperly departed from its past practice by paying salaries to detectives that were lower than those paid to

officers (*see Matter of Board of Educ. of Watertown City School Dist. [Watertown Educ. Assn.]*, 93 NY2d 132, 140, 710 NE2d 1064, 688 NYS2d 463 [1999]), had a rational basis and was not arbitrary and capricious (*Matter of New York City Dept. of Sanitation v MacDonald*, 87 NY2d 650, 656, 664 NE2d 1218, 642 NYS2d 156 [1996]).

Petitioner contends that its grievance alleged an "inequitable [*476] application" of the parties' contracts, thereby satisfying the contractual definition of an arbitrable grievance, which includes such an "inequitable application." On the contrary, petitioner's claim that the contractually provided salary schedule improperly departed from the alleged past practice is not "relevant to the parties' contractual rights and responsibilities," in the absence of any contractual provision requiring the continuation of past practices as to salaries (*Matter of Chenango Forks Cent. Sch. Dist. v New York State Pub. Empl. Relations Bd.*, 21 NY3d 255, 266, 993 NE2d 386, 970 NYS2d 900 [2013]; *see also Matter of [****2] Good Samaritan Hosp. v 1199 Natl. Health & Human Servs. Empls. Union*, 69 AD3d 721, 722, 893 NYS2d 192 [2d Dept 2010]). There is no claim that the alleged past practice would have been relevant to any contractual issue, such as the interpretation of an ambiguous provision (*see Matter of Aeneas McDonald Police Benevolent Assn. v City of Geneva*, 92 NY2d 326, 332, 703 NE2d 745, 680 NYS2d 887 [1998]). Concur—Sweeny, J.P., Renwick, Moskowitz, Feinman and Kapnick, JJ.