SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE
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In the Matter of the Application of the
TOWN OF MONROE

Petitioner,

-against-

For a Judgment pursuant to Article 75 of the CPLR, Staying Arbitration Demanded by

TEAMSTERS LOCAL 445,

Respondent.
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DECISION AND ORDER

Index No.: ef005663-2025

Sherri L. Eisenpress, J.

The following papers, electronically filed on the NYSCEF system as documents numbered 1-15, 22-25 and 28-29, were considered in connection with Petitioner's application for an Order granting a permanent stay of arbitration of the claims set forth in the Demand for Arbitration filed by Teamsters Local 445 ("Respondent"), on behalf of Jose Garcia ("Grievant"), with the New York State Public Employment Relations Board ("PERB") on May 28, 2025.

Upon the foregoing papers, the Court now rules as follows:

Factual Background

The Town of Monroe is a municipal corporation organized and existing under the laws of the State of New York. Respondent is a labor organization and the designated bargaining representative for all full-time and part-time members of Teamsters Local 445 town of Monroe Dial-a-Bus Bargaining Unit. Grievant, Jose Garcia, was employed in the civil service title of Bus Driver in the Town of Monroe Dial-a Bus Program. The description of the job does not include dispatching duties.

The Town and Respondent had previously entered into a Collective Bargaining Agreement ("CBA") for the Town Dial-A-Bus unit for the period of January 1, 2023, through December 31, 2025. The Grievance Procedure is outlined in section 11.1 of the CBA and sets forth a three-stop process which includes a formal complaint, an appeal to the Town

Board and Binding Arbitration. The third step of the grievance procedure is arbitration which is commenced by filing a Demand for Arbitration. Section 11.1.5 states that "[A]n arbitrator shall be designated by filing with PERB. However, Section 11.2, entitled "Disciplinary Procedure" states as follows:

> 11.2.1 Civil Service Rules: Discipline shall be in accordance with the statutory provisions set forth in Section 75 and Section 76 of the New York State Civil Service Law.

According to the Affidavit of Anthony Cardone, Monroe Town Supervisor, he had personally participated in prior labor negotiations during which the CBA was amended to add a higher hourly wage for Bus Drivers during the time that they performed additional duties. No additional civil service titles were created in the Town or added to the bargaining unit as a result of the inclusion of that additional wage rate. The primary additional duty that is performed by Bus Drivers when they receive such additional wage rate is dispatching the Town's Dial-A-Bus vehicles. The Town employs a "Head Bus Driver," a position that is outside of the bargaining unit whose job description includes dispatching. Within the Dial-A-Bus bargaining unit, there is also a civil service title of Dispatcher which is not currently filled by any Town employee.

Prior to January 9, 2025, Grievant had been performing dispatcher duties and received the corresponding wage rate for a Bus Driver with Additional Duties ("DWAD"), while performing those duties. After January 9, 2025, Grievant was assigned to perform only Bus Driver duties. On February 25, 2025, the Town's Head Bus Driver was assigned to perform the dispatcher duties. The Town did not immediately remove the additional DWAD wage rate from Grievant's pay until it was adjusted on or about March 7, 2025.

On March 24, 2025, Respondent commenced the grievance process under the CBA by filing a Step 1 grievance on behalf of the Grievant. The first two steps of the process did not result in resolution. On May 28, 2025, Respondent served a Demand for Arbitration on the Town and filed same with PERB. The Notice of Intention to Arbitrate states that "the

undersigned intends to proceed to arbitration of the dispute between the said parties concerning the employer's failure to follow disciplinary procedure concerning Jose Garcia. The description of the nature of the dispute to be arbitrated and the remedies sought are set forth as follows:

> Jose Garcia was constructively demoted when he was removed from the position of Driver with Additional Duties. The Employer failed to follow the disciplinary procedure described under §11.2 of the Collective Bargaining Agreement. Remedy sought for Mr. Garcia: to be returned to the position of Driver with Additional Duties along with the relevant pay rate and for him to be made whole.

The Parties' Contention

Petitioner moves to permanently stay the aforementioned arbitration before PARB pursuant to CPLR § 7503(b). It argues that granting the relief sought by Respondent in arbitration violates public policy, statutory and decisional law. More specifically, it argues that New York State Civil Service Law ("CSL") § 61, expressly prohibits a public employee from performing out-of-title work, particularly on a permanent basis. It notes that the New York State Court of Appeals, recognizing the state constitutional requirement and public policy that appointments be made based upon merit and fitness, has rejected such out-of-title assignments beyond a temporary basis. Matter of O'Reilly v. Grumet, 308 N.Y.351, 126 N.E.2d 275 (1951). See also Matter of MacRae v. Dolce, 273 A.D.2d 389, 273 N.Y.S.2d 389 (2d Dept. 2000).

Petitioner argues that in the instant case, the Grievant holds the civil service title of Bus Driver which does not include the performance of dispatching duties. Accordingly, it argues that the relief sought by Respondent in its Demand-that Grievant must be permanently placed in the DWAD position and cannot be removed from such position unless the Town follows the disciplinary procedures under CBA § 11.2-is directly contrary to and prohibited by the provisions of CSL §§ 61, and relevant case law. Specifically, it would require permanently assigning Grievant to perform civil services duties of the Head Bus

Driver or Dial-A-Bus Dispatcher without the Grievant having been qualified and duly appointed or otherwise placed in such position in accordance with the Civil Service Law.

Alternatively, Petitioner argues that arbitration should be stayed as the parties did not agree to arbitrate disciplinary matters. The Town notes that in Article 11 of CBA, the parties agreed to arbitrate certain disputes and also separately agreed to not arbitrate discipline, which was to be resolved through the statutory procedures of CSL § 75, which in this case was before the Monroe Town Board. Petitioner notes that in order to compel a CSL 75 disciplinary hearing, Respondent would be required to bring an Article 78 proceeding in Supreme Court. Petitioner contends that Respondent cannot use the PERB arbitration demand to evade the express disciplinary hearing procedures.

In opposition, Respondent argues that the Town has not shown that the demanded arbitration would violate the law. It contends that the Arbitrator could grant the Grievance regarding this change of duties and wage rate without granting it permanently. Respondent argues that the contractual disciplinary procedure was not invoked. Alternatively, Respondent argues that the Town has not shown that the union seeks to arbitrate an issue not without the scope of the arbitration agreement. More specifically, it asserts that the Town served no written notice of the charges or the specification as to those charges and made no arrangements for a hearing.

Legal Discussion

CPLR§ 7503(b) permits a party, who has not participated in arbitration and who has not been served with a petition to compel arbitration, to apply to the Court to stay arbitration on grounds, including that there is a statutory, constitutional, or public policy prohibition against arbitration and/or that a valid agreement was not made or has not been complied with under CPLR § 7503(b).

The New York State Court of Appeals has long recognized a two-step framework for determining arbitrability as initially set forth in Matter of Acting Supt. Of

Schools of Liverpool Ent. School Dist., 42 N.Y.2d 509, 299 N.Y.S.2d 189 (1977). In Teamsters Local 445 v. Town of Monroe, 40 N.Y.3d 18, 22, 192 N.Y.S.3d 45 (2023), the Court of Appeals reiterated this framework:

> With respect to disputes between public employers and employees, we have established a two-step framework for determining arbitrability (see Matter of Acting Supt. of Schools of Liverpool Cent. School Dist. (United Liverpool Faculty Assn.), 42 N.Y.2d 509, 513, 399 N.Y.S.2d 189, 369 N.E.2d 746 [1977]). "[T]he test centers on two distinct inquiries as to the public parties' purported entry into the arbitral forum: may they do so and, if yes, did they do so" (Matter of Board of Educ. of Watertown City School Dist. (Watertown Educ. Assn), 93 N.Y.2d 132, 138, 688 N.Y.S.2d 463, 710 N.E.2d 1064 [1999]). "The first ('may-they-do-so') step calls for an examination, by the court, of the subject matter of the dispute" (id.). We have repeatedly held that a dispute is not arbitrable if granting the relief sought would violate a statute, decisional law, or public policy (see Long Beach, 8 N.Y.3d at 470, 835 N.Y.S.2d 538, 867 N.E.2d 389).

If the court determines that the relief sought would not violate a statute, decisional law, or public policy, the courts then turn to the "did they do so?" question. See Liverpool, supra.

In the instant matter, the Court finds that the relief sought in the Arbitration demand-to be returned to the position of Driver with Additional Duties along with the relevant pay rate- would violate Civil Service Law § 61 and is therefore not arbitrable. Moreover, there is no merit to Respondent's contention that an arbitrator could grant this relief on a temporary basis. As is made clear in Matter of MacRae v. Dolce, 273 A.D.2d 389, 273 N.Y.S.2d 389 (2d Dept. 2000), a temporary assignment cannot harden into a permanent assignment that violates Civil Service Law § 61.

Even if the Court did not grant a permanent stay of arbitration on the ground that said relief would violate a statute, the Court also finds that the parties did not agree to arbitrate disciplinary matters before PERB. The Demand for Arbitration served by Respondent clearly invokes an alleged violation of CBA § 11.2, "Disciplinary Matters," which section requires that disciplinary issues be resolved in accordance with the statutory provisions set forth in Section 75 and 76 of the New York State Civil Service Law.

Accordingly, it is hereby

ORDERED that the Notice of Petition filed by the Town of Monroe to permanently stay the arbitration before PERB with respect this matter is GRANTED in its entirety.

The foregoing constitutes the Decision and Order of this Court on Motion #1.

Dated: Goshen, New York
January 12, 2026

HON. SHERRI L. EISENPRESS
Justice of the Supreme Court

To: All Partis via NYSCEF