

State of New York
Supreme Court

County of Lewis

In the Matter of the Application of

Lewis County,

Petitioner,

For an Order Staying Arbitration Pursuant
to Article 75 of the CPLR

v.

**CSEA Local 1000 AFSCME, AFL-CIO, Lewis
County Sheriff's Employees Unit #7250-03,
Lewis County Local 825,**

Respondents.

NOTICE OF PETITION

Index No: *CA2016-000087*

RJI No:

Judge Assigned:

Date Filed:

Upon the annexed Verified Petition in the above entitled proceeding, signed and affirmed on March 17, 2016 together with the Affidavit of Frank W. Miller, Sworn to March 17, 2016, the Petitioner, by and through its counsel, the Law Firm of Frank W. Miller, will move this Court at a motion term of the Supreme Court, Lewis County Courthouse on April ___, 2016, Lowville, New York, for an Order pursuant to CPLR §7503(b) to permanently stay arbitration upon the grounds that the claim is not arbitrable, and that the arbitration cannot proceed because to allow such arbitration on this issue would violate the terms of the Collective Bargaining Agreement, and further, the subject matter of such grievance is not a proper subject of arbitration, and such other and further relief as to this Court seems just and proper.

Answering Affidavits and Memorandum of Law in Opposition or other responsive papers, if any, shall be served seven (7) days before the return date hereof, pursuant to CPLR 403(b).

Dated: March 17, 2016
East Syracuse, New York

Respectfully Submitted,
THE LAW FIRM OF FRANK W. MILLER

By: 

Frank W. Miller

Attorney for Petitioner
County of Lewis
Office and Post Office Address
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East Syracuse, New York 13057
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VERIFIED PETITION

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The Petitioner, by and through its attorneys, the Law Firm of Frank W. Miller, as and for its Verified Petition hereby alleges as follows:

1. This is a Petition filed pursuant to CPLR Article 75 seeking to permanently stay Arbitration of two demands for arbitration filed by the Respondents, the Civil Service Employees Local 1000, Lewis County Sheriff's Employees Unit 7250-03, Lewis County Local 825 in connection with the action of the Sheriff increasing the hours of a part-time Dispatcher/ Corrections Officer to full-time. A copy of the Demand for Arbitration filed on behalf of the grievant Denyse Hastwell is attached as Exhibit "A". The grievance filed on behalf of Anna Austin is attached as Exhibit "B".

2. Upon information and belief, the Respondent CSEA is a corporation which represents public sector employees in the State of New York. The Civil Service Employees Association Local 1000 AFSCME, AFL-CIO Lewis County Sheriff's Employee Unit #7250-03, Lewis County Local 825 is, upon information and belief, an unincorporated association with offices in Lewis County, New York.

3. The Demand for Arbitration seeks to obtain arbitration over the decision by the Sheriff of

Lewis County to select an employee who was previously part-time to work more hours in a full-time capacity. Upon information and belief, the Collective Bargaining Agreement (hereafter referred to as CBA), a copy of which is attached hereto as Exhibit "C", commits that issue to the sole discretion of the Sheriff of Lewis County.

4. The District contends that the decision whether to assign an employee part-time or full-time work is not a matter that is the proper subject for arbitration and may not properly be submitted to arbitration, especially under the present circumstances and the language of the agreement.

5. Upon information and belief, the Sheriff's Department employed three part-time corrections officers/dispatchers in the Sheriff's Department. They were Rebecca McKenzie, Anna Austin and Denyse Hastwell. Each of these persons had taken the open competitive Civil Service examination for the position and was then appointed to the position. Their hours were part-time or 20 hours per week.

6. Thereafter, the Sheriff of Lewis County elected to present one of those three part-time persons, all in the same Civil Service classification, with an opportunity to work full-time or 40 hours per week with all the commensurate benefits.

7. In his discretion, the Sheriff of Lewis County selected Rebecca McKenzie as the person who, in his judgment, had the greatest ability and qualification for the position as determined by the Sheriff in his discretion.

8. Upon information and belief, the grievants each challenged this selection alleging a violation of Article VIII, Section 3 of the Collective Bargaining Agreement. Upon information and belief, Article VIII, Section 3 relates to "promotion". The term "promotion" is a term of art as that is defined under the New York Civil Service Law, specifically, Section 61 of the Civil Service Law.

9. Each of the grievances incorrectly allege that a "non-employee applicant was hired off of the street for this position". This assertion is utterly false as Rebecca McKenzie, who was selected for full-time duties was an active part-time employee serving in the same classification as the two grievants all of whom had satisfactorily completed civil service testing and had been appointed to their respective positions in accordance with the Civil Service Law.

10. Upon information and belief, to the extent that this section is applicable, the contract in

Article VIII, Section 3(c) refers the authority in the sole discretion of the Sheriff to make this determination as to the number of hours any employee will work, assuming that that section of the agreement is even applicable as no promotion is involved.

11. Petitioner also contends that Article I, Section 2 of the Collective Bargaining Agreement provides that all rights and functions of management that it has by law, including the right to hire, lay-off, assign, transfer, promote, discipline, discharge and suspend are retained by the County. This provides a further basis for Petitioner's contention.

12. Petitioner further contends that Article IV of the Collective Bargaining Agreement which describes the "grievance/arbitration" process defines a grievance in a narrow fashion, and is a narrow arbitration article.

13. Article IV, Section 2(d) defines a "grievance" as "any claimed violation, misinterpretation or inequitable application of the articles or sections of this contract".

14. Upon information and belief, there is no section of the contract that limits, restricts or in any way curtails the authority of the Sheriff to determine the number of hours a duly appointed civil service employee will work, with the limits of the laws and contract.

15. The Collective Bargaining Agreement also provides for binding arbitration. Upon information and belief, the arbitrator may not grant to the grievants the relief sought in the Demand for Arbitration as to do so would violate the provisions of the agreement. Specifically, the Demands for Arbitration request that the arbitrator rescind the appointment made by the Sheriff and appoint the grievants to the position. In order to grant the requested relief, the arbitrator would have to, by contract, have the authority to rescind the Sheriff's appointment. This he may not do as the Collective Bargaining Agreement clearly leaves the decision solely in the hands of the Sheriff. Upon information and belief, the language of Article VIII, Section 3, subdivision c, to the extent that it is applicable, clearly reserves to the Sheriff the sole and exclusive authority to make the decision. Upon information and belief, the decision whether to have a person work full-time or part-time is a decision that begins and ends with the Sheriff. Upon information and belief, there is no basis, in contract or law, for an arbitrator to review or have any involvement with that decision.

16. Upon information and belief, the parties bargained for the Sheriff to have the unfettered right to decide this issue for himself without the same being reviewed or challenged in arbitration.

17. As more fully set forth in the Affidavit of our counsel, Frank W. Miller, the Collective Bargaining Agreement refers to and maintains for management the authority to make these decisions.

18. Upon information and belief, it would contravene the clear and explicit language of the contract for the arbitrator to make any ruling which overturned or vacated the decision of the Sheriff. Furthermore, the Demands for Arbitration each seek a directive that these two grievants, Austin and Hastwell, be appointed to positions. This would require the arbitrator to create positions for them to fill, something which the contract neither authorizes nor grants authority for and for which the arbitrator is not empowered.

19. The Petitioner therefore requests an Order permanently staying the arbitration in this matter upon the grounds that the Collective Bargaining Agreement does not authorize or permit an arbitrator to dictate or overturn personnel action of the Sheriff and further that the Demand for Arbitration is barred by the language of the Collective Bargaining Agreement and further, there is no agreement between the parties for this issue to be submitted to arbitration and further, that the arbitration agreement between the parties does not authorize or permit the relief sought by the Petitioners.

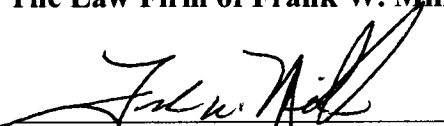
WHEREFORE, the Petitioners demand that the Court grant an application to permanently stay arbitration upon the grounds that the Collective Bargaining Agreement does not authorize or permit the arbitrator to grant the relief requested and that the parties at no time agreed to submit this issue to arbitration and the Petitioners herewith are entitled to the relief of a permanent stay of arbitration, together with other and further relief as to this Court seems just and proper.

Yours, etc.

Dated: March 17, 2016
East Syracuse, New York

The Law Firm of Frank W. Miller

By:


Frank W. Miller

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VERIFICATION

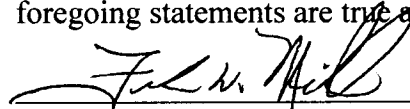
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I, Frank W. Miller, Esq., the principal of the Law Firm of Frank W. Miller in East Syracuse, New York, being duly sworn, depose and say, that I am an attorney duly admitted to practice in the Courts of New York State, that I am the attorney of record for the Petitioner, Lewis County in the above-captioned action. I prepared the foregoing Verified Petition on behalf of the Petitioner. The information in the Verified Petition is true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters I believe them to be true. I have prepared this verification as the Petitioner Lewis County is not present within Onondaga County where I maintain my office for the practice of law. This verification is prepared pursuant to CPLR 3020(a)(3).

I swear under penalty of perjury that the
foregoing statements are true and accurate.



Frank W. Miller, Esq.
The Law Firm of Frank W. Miller

Sworn to me on the 17th
day of March, 2016



Notary Public

PATRICIA GUERIN
Notary Public, State of New York
Qual. in Onondaga Co. No. 01GUG065911
Commission Expires October 29, 2017