

Court of Appeals Update: Contractual No-Layoff Provisions

By Sharon N. Berlin and Richard K. Zuckerman

A recent New York Court of Appeals decision has important implications for public employers and unions whose collective bargaining agreements (CBAs) contain a no-layoff provision, or which are considering agreeing to one. At a time when many public employers are considering reductions in force, the decision appears to signal a judicial shift away from deferring to arbitrators to decide questions involving the scope of a CBA's no-layoff provision, and towards a requirement that a job security clause be explicit in its scope in order to be enforceable through the arbitration process.

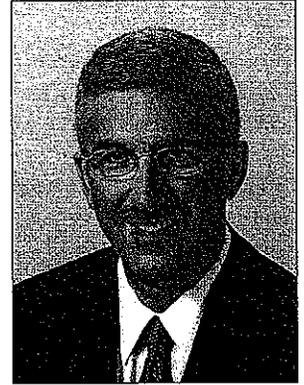


In *Matter of the Arbitration Between Johnson City Professional Firefighters and Village of Johnson City*, the Court of Appeals granted a stay of arbitration precluding a union from arbitrating a CBA's no-layoff clause that stated, "[t]he Village shall not lay-off any member of the bargaining unit during the term of this contract." 18 N.Y.3d 32, 36 (2011). The union sought to enforce this provision through a grievance arbitration following the layoff of several of its members due to budgetary constraints.

In considering the Village's objection to arbitrability, the Court explained that it "has long held that a purported job security provision does not violate public policy, and therefore is valid and enforceable, only if the provision is 'explicit,' the CBA extends for a 'reasonable period of time,' and the CBA 'was not negotiated in a period of a legislatively declared financial emergency between parties of unequal bargaining power'... A purported 'job security' clause that is not explicit in its terms is violative of public policy, rendering it invalid and unenforceable." *Id.* at 37.

The Court held that the contract did not define the term "layoff," did not expressly prohibit the abolition of positions due to budgetary necessity, was not "explicit, unambiguous and comprehensive" in its restriction on the Village's right to eliminate positions for "budgetary, economic or other reasons" and did not "explicitly protect the firefighters from the abolition of their positions due to economic and budgetary strin-

gencies." *Id.* In finding the provision to be unclear, the Court noted that "[t]he term 'layoff' is undefined in the CBA, and is open to different and reasonable interpretations. Indeed, the parties' disagreement over whether the term 'layoff' constitutes a permanent or non-permanent job loss, and whether the Village's abolition of the firefighter positions constituted a layoff, underscores its ambiguity." *Id.* at 38. The Court concluded, therefore, that "[s]imply put, because the clause is not explicit, unambiguous and comprehensive, there is nothing for the Union to grieve or for an arbitrator to decide." *Id.*



The Court further explained that "[f]rom a public policy standpoint, our requirement that 'job security' clauses meet this stringent test derives from the notion that before a municipality bargains away its right to eliminate positions or terminate or lay off workers for budgetary, economic or other reasons, the parties must explicitly agree that the municipality is doing so and the scope of the provision must evidence that intent. Absent compliance with these requirements, a municipality's budgetary decisions will be routinely challenged by employees, and its ability to abolish positions or terminate workers will be subject to the whim of arbitrators." *Id.* at 37-38.

The Court provided examples of the wording for no-layoff clauses that would meet its "stringent test" for arbitrability. One was a clause providing that "[d]uring the life of this contract no person in this bargaining unit shall be terminated due to budgetary reasons or abolition of programs but only for unsatisfactory job performance and provided for under Tenure Law." *Id.* at 37. This, the Court explained, explicitly restricted the public employer's right to eliminate positions and terminate workers for economic reasons.

Now that the Court has provided updated guidance with regard to this issue, a CBA's no-layoff provision, or one to which an employer or union may be considering agreeing, should be examined to determine whether it meets the test for being enforceable through arbitration; *i.e.*, that it is sufficiently comprehensive,

unambiguous and explicit in limiting the employer's right to eliminate positions for economic or budgetary reasons. This review should also include whether the provision was negotiated at a time when the parties had equal power at the bargaining table and whether the provision restricts layoffs for only a reasonable period of time. Depending upon the answers to these questions, a reduction in force might be implemented

without having a concern about an arbitrator interpreting and perhaps enforcing the provision against the employer.

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