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JEREMY A. COLBY
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COUNTY OF ERIE

CHRIS COLLINS

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MARTIN A. POLOWY
FIRST ASSISTANT COUNTY ATTORNEY

THOMAS F. KIRKPATRICK, JR.
SECOND ASSISTANT COUNTY ATTORNEY

September 15, 2011

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name: *Watson, Steven K. vs Ciounty of Erie*

Document Received:
Name of Claimant: Steven K. Watson
3262 Seneca Street
West Seneca, New York 14224

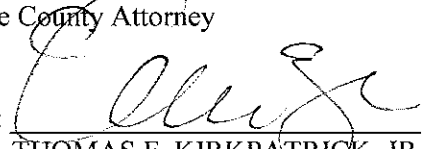
Claimant's attorney: Scott R. Hapeman, Esq.
Personius Melber, LLP
2100 Main Place Tower
Buffalo, New York 14202-3750

Should you have any questions, please call.

Very truly yours,

JEREMY A. COLBY
Erie County Attorney

By:


THOMAS F. KIRKPATRICK, JR.
Second Assistant County Attorney
thomas.kirkpatrick@erie.gov

TFK/mow
Enc.

cc: JEREMY A. COLBY, Erie County Attorney

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

FILED
ACTIONS & PROCEEDINGS

SEP 06 2011

ERIE COUNTY
CLERK'S OFFICE

IN THE MATTER OF AN ARTICLE 78
PROCEEDING
STEVEN K. WATSON

NOTICE OF PETITION

Petitioner,

Index No. _____

and

COUNTY OF ERIE,

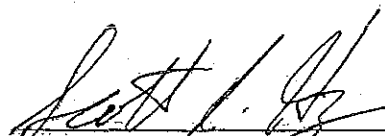
Respondent.

PAID DJF
09/06/2011/ 16:07:46
ERIE COUNTY CLERK
RCPT # 11126769
I 2011003639

PLEASE TAKE NOTICE THAT, upon the annexed Petition of Steven K. Watson, verified on September 6, 2011, and the accompanying Affirmation of Scott R. Hapeman, Esq., dated September 6, 2011, an application will be made to this Court, at a term, part 34, to be held at the courthouse thereof, on the 18th day of October at 9:30 a.m. ^{1:45 p.m.}, or as soon thereafter as counsel can be heard, for an Order and Judgment pursuant to CPLR 7801 granting the relief set forth in the Petition annexed hereto, and in the alternative, for a Judgment pursuant to CPLR 7511 vacating and setting aside the arbitration decision between the parties, and for such other any further relief as may just, proper, and equitable, together with the costs and disbursements of this proceeding.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to CPLR 7804, answering papers, if any, are required to be served upon the undersigned at least five (5) days before the return date of this Petition.

Dated: Buffalo, New York
September 6, 2011.


Scott R. Hapeman, Esq.
PERSONIUS MELBER LLP
Attorneys for Petitioner
STEVEN K. WATSON

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

IN THE MATTER OF AN ARTICLE 78
PROCEEDING STEVEN K. WATSON

Petitioner,

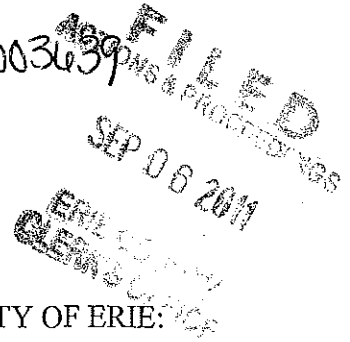
and

COUNTY OF ERIE,

Respondent.

VERIFIED PETITION

Index No. 2011-003639



TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF ERIE:

INTRODUCTION

1. This is a proceeding brought pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR) to challenge the illegal, arbitrary and capricious decision by the County of Erie to terminate the employment of Petitioner Steven K. Watson on December 26, 2007, the same date Petitioner returned to work following the execution of a Return to Work Agreement between Petitioner and Respondent.

2. Respondent's asserted grounds for terminating Mr. Watson pre-existed the Return to Work Agreement, which contemplated termination of his employment only for subsequent violations.

3. By terminating Mr. Watson on grounds already known at the time the Return to Work Agreement was signed, Respondent acted arbitrarily and capriciously by violating the terms of the agreement, the covenant of good faith and fair dealing applicable to the agreement and by not allowing Mr. Watson to perform his part of the agreement.

4. Mr. Watson initially sought review of the decision by the County through an arbitration procedure set forth in a collective bargaining agreement. The arbitrator found the issue was not arbitrable, however, and Mr. Watson therefore seeks judicial review of his termination pursuant to Article 78 of the CPLR.¹

5. In the alternative, Petitioner appeals from the determination of the arbitrator, Dr. James R. McDonnell, wherein the arbitrator in effect upheld Respondent's decision to terminate Petitioner, finding the decision to do so "reasonable."

6. The arbitrator initially found that Petitioner's challenge of the termination was not an arbitrable issue, but also purported to determine that he was required to evaluate the reasonableness of the termination. The arbitrator then upheld the reasonableness of the termination without conducting a hearing to provide evidence of the facts surrounding the termination.

7. Therefore, the arbitrator's decision should be vacated on the basis that by failing to conduct a proper hearing, the arbitrator exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made and that the arbitrator failed to follow the procedures specifically set forth in Article 75 of the CPLR.

JURISDICTION

8. This action pursuant to CPLR Article 78 arises as a result the arbitrary and capricious determination by the Respondent. Jurisdiction of this Court is invoked pursuant to CPLR §7801. The relief requested is authorized by that same law. Pursuant to CPLR §7804(b) and 506(b), venue is proper in this County because the material events occurred in this County.

¹ As described in the accompanying affirmation, CPLR §204(b) tolls the limitations period for the Article 78 proceeding, making this application timely.

9. Alternatively, this Court has jurisdiction over this proceeding pursuant to CPLR §§ 7502, 7510 and 7511.

PARTIES

10. Petitioner, Steven K. Watson, is a resident of the State of New York. He resides at 3262 Seneca Street, West Seneca, New York.

11. Respondent, County of Erie, is a municipal entity and employed the Petitioner through the Erie County Department of Social Services Youth Detention Division.

FACTS

12. Petitioner Steven K. Watson began his employment with the County of Erie Department of Social Services Youth Detention Division in March 1986.

13. Mr. Watson did not report to work on Monday, October 22, 2007 through October 29, 2007 as a result of incarceration in the Erie County Holding Center stemming from an arrest by the Town of Amherst Police for driving while intoxicated and operating a vehicle without a valid driver's license.

14. As a result of this absence, a disciplinary hearing was scheduled on October 30, 2007.

15. Rather than proceed with the disciplinary process, the County of Erie drafted a Return to Work Agreement specifically acknowledging that Mr. Watson's employment could have been terminated for the violations of County policy relating to his absence from work from October 22nd to October 29th, 2007. The agreement was executed on behalf of the County on November 29, 2007 and became fully effective upon Mr. Watson's execution on December 12, 2007.

16. Under the agreement, rather than seek his termination based upon past conduct, the County agreed to allow him back to work in exchange for Mr. Watson's agreement that he would be terminated for any future violation without the option to utilize the grievance and arbitration process under the collective bargaining agreement.

17. Prior to the drafting and execution of the Return to Work Agreement, on September 17, 2007, Petitioner and another staff member were involved in an incident in which a fifteen (15) year old resident of the Erie County Youth Detention Center was restrained.

18. The individual involved alleged an injury as a result of the physical restraint.

19. An initial report of the incident was received by the New York State Central Register on September 18, 2007.

20. By letter dated September 25, 2007 the County of Erie, through Ms. Barbara Leary, was informed the New York State Central Register of Child Abuse and Maltreatment received a report of the incident.

21. On November 16, 2007, the New York State Office of Children and Family Services, Intentional Abuse Unit, indicated the report against Petitioner for inappropriate custodial conduct.

22. Subsequently, through a letter dated November 19, 2007 addressed to Ms. Leary, the County was advised that the report was determined by the New York State Office of Children and Family Services to be "indicated."

23. Ultimately, following a full administrative hearing conducted by an Administrative Law Judge, a decision was issued on February 10, 2011 by the Office of Children and Family Services which ruled that the report of child abuse against Mr. Watson should be amended to reflect that he was not a "subject" of the "indicated report" and that the Office of Children and Family

Services failed to prove that Mr. Watson maltreated the minor as alleged. Essentially, the decision absolved Mr. Watson of any wrongdoing associated with the September 18, 2007 incident.

24. The Return to Work agreement, which became effective on December 12, 2007, acknowledged that Mr. Watson would return to the work schedule as a youth detention worker in the Department of Social Services Youth Detention Division upon his completion of a twenty eight (28) day rehabilitation program at the Buffalo State College campus.

25. Paragraph 4 of the Agreement states in relevant part:

Steven Watson acknowledges that his continued employment is based upon his successful rehabilitation for alcoholism and upon no further violations of Erie County work rules, regulations and policies for a period of two years beginning with the day her returns to work. (emphasis added)

26. Paragraph 6 of the Agreement states in relevant part:

If any time following the date of this agreement, the employee is determined by the employer to have violated any Rules, Regulations or Policies which are grounds for dismissal, or any un-excused and/or unpaid absences, the employee shall be subject to immediate discharge without recourse to contractual due process and/or arbitration. (emphasis added)

27. Following the successful completion of rehabilitation, Mr. Watson returned to work on December 26, 2007. On that same date, and immediately upon his return, Mr. Watson was terminated pursuant to the Return to Work Agreement based exclusively upon the report of child abuse and maltreatment stemming from the September 18, 2007 incident.

PROCEDURAL HISTORY

28. Immediately following his termination, Petitioner Steven K. Watson filed a grievance pursuant to a collective bargaining agreement between the County of Erie and A.F.S.C.M.E. N.Y. Council 66-Local 1095. The grievance process pursuant to the collective bargaining agreement culminates in binding arbitration when challenging terminations of employment such as the termination of Mr. Watson.

29. On January 9, 2008, the County of Erie denied the grievance filed by Mr. Watson.

30. As a result of the County of Erie's denial of the initial step of the grievance process, the County was notified on January 30, 2008 that the termination would be challenged through the mandatory arbitration procedures set forth under the collective bargaining agreement.

31. For various reasons, the arbitration of Mr. Watson's termination was not scheduled until March 28, 2011. Prior to any evidence being presented at the hearing, the County raised various objections to proceeding with the arbitration, including an argument that the matter was not arbitrable.

32. The arbitrator, Dr. James McDonnell, bifurcated the hearing and requested that the parties submit briefs in support of their respective positions as to the County's objections.

33. On June 6, 2011 Dr. James McDonnell issued an arbitration decision finding that the issue of Mr. Watson's termination was not arbitrable pursuant to the Return to Work Agreement executed by the County and Mr. Watson, in December 2007.

34. The arbitrator found the issue was not arbitrable because under paragraph 6 of the Agreement, which refers to violations after the date of the agreement, the County was not obligated to arbitrate Mr. Watson's termination.

35. Dr. McDonnell's decision, however, proceeded to consider the issue of "whether the County's decision to terminate the grievant (under the terms of the return to work agreement) was reasonable." Despite the fact that the arbitrator did not hold a hearing to receive evidence relating to the facts surrounding the termination, the arbitrator ruled the County acted reasonably under the circumstances.

36. The arbitration decision, dated June 6, 2011 was received by the union on June 16, 2011.

37. Petitioner Steven K. Watson now brings the instant Article 78 proceeding challenging the illegal, arbitrary and capricious decision by the County of Erie to terminate him pursuant to the Return to Work Agreement based upon the false child abuse allegation already known to the County of Erie prior to the execution of the Return to Work Agreement.

38. In the alternative, Petitioner seeks to appeal the determination of the arbitrator and vacate the same pursuant to Article 75 of the CPLR based upon the arbitrator's failure to conduct a hearing to receive evidence related to the arbitrator's determination that the County's actions were reasonable, and the improper conclusion that the County's termination of Mr. Watson based upon a known allegation, later determined to be false, was reasonable.

NOTICE OF CLAIM

39. To the extent any notice of claim for the relief requested within the instant Petition is required under County Law Section 52 and/or Section 50-e of the General Municipal Law, the instant Verified Petition is intended to provide such notice to the County.

40. Service of the instant Petition and any accompanying affirmations will be served in accordance with the above provisions.

FIRST CAUSE OF ACTION

41. Petitioner restates and re-alleges paragraphs numbered 1 through 40 as if fully set forth herein.

42. The termination of Mr. Watson by County of Erie is illegal, arbitrary and capricious. The County's action should be annulled and reversed and the Petitioner should be reinstated to his prior position of employment with full back pay and without prejudice to his seniority and other benefits.

43. As described above, the Return to Work Agreement between Petitioner and Respondent became operable upon Petitioner's execution of the agreement on December 12, 2007.

44. At the time of execution of the Return to Work Agreement by the County on November 29, 2007, the County was aware of both the incident giving rise to the initially indicated report by the State of New York Office of Children and Family Services and had been provided written notice of the initial indication as well.

45. The Return to Work Agreement clearly specified that Mr. Watson would be subject to discharge without recourse to contractual due process and/or arbitration if at any time "following the date of this agreement" the County of Erie determined Mr. Watson violated the rules, regulations and policies of the County to indicate a grounds for dismissal.

46. Moreover, the agreement specifically acknowledged that Mr. Watson's employment was based upon his successful rehabilitation for alcoholism and "upon no further violations of Erie

County work rules, regulations, and policies for a period of two (2) years beginning with the day he returns to work." (emphasis added)

47. The above quoted language of the agreement clearly demonstrates a forward looking agreement which provided that Mr. Watson would be permitted to return to work and continue to work absent any further violation of County rules, regulations or policies.

48. The Respondent's decision to terminate the employment of Mr. Watson based upon the indicated report which was known to the County prior to the execution of the Return to Work Agreement and, which was ultimately over turned following a hearing, constitutes an illegal, arbitrary and capricious action by the County of Erie.

49. By terminating Mr. Watson's employment on the very day her returned to work, the County demonstrated an intention to never allow Mr. Watson to fulfill his obligations under the Return to Work Agreement and reap the benefits of the same.

SECOND CAUSE OF ACTION

50. Petitioner restates and re-alleges paragraphs numbered 1 through 49 as is fully set forth herein.

51. The decision of arbitrator Dr. James McDonnell, dated June 6, 2011, must be vacated on the basis that the arbitrator exceeded his power and so imperfectly executed his power that a final and definite award upon the subject matter was not made and upon the failure of the arbitrator to follow the procedures set forth in New York Civil Practice Law and Rules Article 75, specifically, §7506.

52. As described within the June 6, 2011 decision of Dr. James McDonnell, even upon determining that the Return to Work Agreement executed by the County and Mr. Watson provided the County with the exclusive discretion to determine whether Mr. Watson violated the rules, regulations and policies of the County without recourse for Mr. Watson return to the collective bargaining agreement grievance and arbitration procedure, it was incumbent upon the arbitrator to rule upon the reasonableness of the use of that discretion.

53. By ruling on that reasonableness without receiving any evidence pertaining to the issue at a hearing as required by CPLR §7506, the decision of the arbitrator exceeded his power and/or so imperfectly executed that power in a final and definite award upon the issue was not made and was a failure of the arbitrator to follow the procedures set forth in Article 75 of the CPLR.

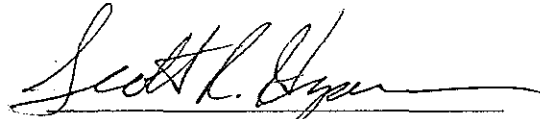
54. In addition, based on the facts set forth above, any review of the County's actions would necessarily result in a finding of unreasonableness. Therefore, the relief granted by the Court should involve reinstatement of Mr. Watson to this employment together with full back pay, without prejudice to his seniority and all other benefits, rather than remittal back to arbitration.

55. On these bases, the arbitrators decision should be vacated.

WHEREFORE, Petitioner respectfully requests that the decision by the County of Erie to terminate Petitioner be annulled and reversed, that he be reinstated to his prior position of employment with full back pay without prejudice to his seniority and all other benefits that he be granted such relief as the Court deems just; and in the alternative, the Court vacate the decision of the arbitrator Dr. James R. McDonnell and reinstate Petitioner to his prior position of employment

with full back pay and without prejudice to his seniority and other benefits and that he be granted such other relief as the Court deems just.

Dated: Buffalo, New York
September 6, 2011.




Scott R. Hapeman, Esq.
PERSONIUS MELBER LLP
Attorneys for Petitioner
STEVEN K. WATSON
2100 Main Place Tower
Buffalo, NY 14202
(716) 855-1050

TO: Jeremy A. Colby, Esq.
Erie County Attorney
95 Franklin Street
Room 1634
Buffalo, NY 14202

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:

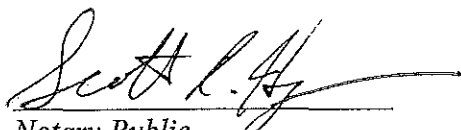
INDIVIDUAL VERIFICATION

STEVEN K. WATSON, being duly sworn, deposes and says that he is the Petitioner in the entitled action, that he has read the foregoing Verified Petition and knows the contents thereof, that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, he believes the allegations to be true.



Steven K. Watson

Sworn to before me this
6 day of September, 2011.



Notary Public

SCOTT R. HAPEMAN
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires 3/18/18