

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LOCAL 36 AFL-CIO, : CIVIL ACTION
Plaintiff, :
 :
v. : NO. 01-CV-4147
 :
FAB MAINTENANCE CORP., et al., :
Defendants. :

ORDER

AND NOW, this day of March, 2003, upon consideration of: (i) the Stipulation of Facts (Document No. 15, filed June 5, 2002); (ii) Plaintiff Local 36 AFL-CIO's ("Union") Motion for Summary Judgment (Document No. 16, filed July 1, 2002); (iii) the Cross-Motion of Defendants ACE USA ("ACE") and Jones Lang LaSalle Americas, Inc. ("JLL") for Summary Judgment (Document No. 19, filed July 19, 2002); (iv) the Cross-Motion of Defendant FAB Maintenance Corp., ("FAB") for Summary Judgment; and (v) the Union's reply to ACE, JLL, and FAB's Response to its Motion and the Union's Response to ACE, JLL, and FAB's Cross-Motions for Summary Judgment (Document No. 21, filed August 14, 2002), it is hereby **ORDERED** that Defendants' Motions are **GRANTED** and Plaintiff's Motion is **DENIED**.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The Union is an unincorporated labor organization, and signatory to a collective bargaining agreement known as the "BOLR Agreement," with the Building Operators Labor Relations ("BOLR") Division of the Building Owners and Managers Association of Philadelphia ("BOMA). (Stip. at ¶¶ 3, 8). ACE is the lessee of Two Liberty Place and JLL is the building manager, acting as ACE's agent. FAB is a maintenance and custodial contractor whose employees maintain Two Liberty Place. The BOLR is a corporation in which the owners and operators of major center city Philadelphia buildings participate as members. (Stip. at ¶ 10).

The current BOLR Agreement runs from October 16, 2000 to October 15, 2003. (Stip. at ex. 1). Article III of the Bylaws contemplates three classes of members: regular members, site agreement members, and contractor members. (Stip. at ¶ 8). According to the Bylaws, Regular, or Schedule “A” Members, are defined as, “owners or agents of owners of buildings situated in the City of Philadelphia or environs which directly employ members of the Union in such buildings.” Site Agreement Members, or Schedule “B” Members, are defined as, “owners or agents of owners of buildings situated in City of Philadelphia or environs which engage Contractors which directly employ members of the Union in such buildings under a Collective Bargaining Agreement with the Union,” and Contractor, or Schedule “C” members, are defined as, “contractors operating in the City of Philadelphia or environs at least some of the employees of which are members of the Union working in buildings covered by the Division’s Collective Bargaining Agreement with the Union and which Contractors have an annual gross sales volume of not less than one million dollars (\$1,000,000) from combined contract cleaning operations in buildings where the Union represents employees working for the Contractor.” (Stip. at ex. 2). On April 24, 2000, ACE’s agent executed a Membership Reaffirmation Agreement, thereby joining the BOLR as a Site Agreement, or Schedule “B” Member. (Stip. at ex. 3). FAB is not a signatory to the BOLR agreement, and neither ACE nor JLL are Regular, or Schedule “A” Members to the BOLR agreement. (Stip. at ¶ 13).

FAB was contracted by ACE to maintain Two Liberty Place, FAB’s only custodial or maintenance contract in Philadelphia. (Stip. at ¶ 24). On April 19, 2001, FAB terminated Maxwell Mason, an employee working at Two Liberty Place and a member of the Union, for the alleged use of profanity and threatening to physically harm a contract security guard at Two

Liberty Place. (Stip. at ¶ 14). Mason felt that he was unjustly terminated from his employment at FAB, and filed a grievance under Article XXI, “Grievance, Arbitration Procedure” of the Collective Bargaining Agreement. (Stip. at ¶ 15). On May 15, 2001, a BOLR Grievance Committee held that Mason was unjustly terminated and ordered FAB to reinstate Mason on May 21, 2001, at Two Liberty Place, with no back pay. (Stip at. ¶ 17 and ex. 5). Neither ACE nor JLL were notified of the grievance hearing, and neither attended. (Stip. at ¶¶ 18,19). FAB was notified and attended the meeting. (Stip. at ¶ 20). FAB sought to comply with the Grievance Committee’s ruling, however ACE and JLL have refused to allow Mason to return to Two Liberty Place or any of its other facilities, citing the potential safety risks to its employees, visitors, or subcontractors. (Stip. at ¶¶ 22, 24). Plaintiff brings this action to enforce the Grievance Committee’s award and to compel ACE and JLL to allow FAB to carry out its legal obligation.

II. DISCUSSION

This Court exercises subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 185. Textron Lycoming Reciprocating Engine Div., AVCO Corp. v. U.A.W., 523 U.S. 653, 658, 118 S. Ct. 1626, 1629, 140 L. Ed. 2d 863 (1998); Kilkenny v. Guy C. Long, Inc., 288 F.3d 116, 119 (3d Cir. 2002). Summary judgment may be granted only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). Upon a motion for summary judgment, the non-moving party “may not rest upon the mere allegations or denials of the adverse party’s pleadings, but the adverse party’s response . . . must set forth specific facts

showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). An issue is genuine if the evidence is such that a reasonable jury could return a judgment in favor of the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct 2505, 2510, 91 L. Ed. 2d 202 (1986); Williams v. Borough of West Chester, Pa., 891 F.2d 458, 459 (3d Cir. 1989). Lastly, all facts must be viewed in the light most favorable to the non-moving party, and all reasonable inferences should be drawn from the evidence presented by the non-moving party. Anderson, 477 U.S. at 255; Gass v. Virgin Islands Telephone Corp., 311 F.3d 237, 240 (3d Cir. 2002).

The issue is whether the Grievance Committee’s award is enforceable against ACE and JLL. An arbitration award can only be enforced against a party if that party agreed to be bound by the arbitration proceeding and was given notice of the proceeding and the opportunity to be present at the arbitration proceeding.¹ Ryan-Walsh Stevedoring Co. v. General Longshore Workers Union, Local No. 3000, 509 F. Supp. 463, 467 (E.D. La. 1981); See also United Steelworkers of America v. Bldg. & Constr. Trades Dep’t, 1996 WL 596125 at * 3 (E.D. Pa.) (“[a]n arbitration award in a labor dispute, cannot be enforced against a party who was not bound by the agreement authorizing arbitration.”). “[T]he question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator.” AT&T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643, 649, 106 S. Ct. 1415, 1419, 89 L. Ed. 2d 648 (1986); Bokunewicz v. Purolator Prod., Inc., 907 F.2d 1396, 1400 (3d Cir.1990). Furthermore, “whether or not [the parties are] bound to arbitrate,” and therefore ostensibly constrained by the arbitrator’s award, “is a matter to be determined by the Court on the basis of

¹ The Grievance Committee is formally structured as a joint-labor management committee, but it is not disputed that the Committee’s decision has the same force as an arbitration proceeding. (Stip. at ex. 1, Art. XXI, § 1)

the contract entered into by the parties.” John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 547, 84 S. Ct. 909, 913-14, 11 L. Ed. 2d 898 (1964)(quoting Atkinson v. Sinclair Refining Co., 370 U.S. 238, 241. 82 S. Ct. 1318, 1320, 8 L. Ed. 2d 462 (1962)); Graphic Communications Intern. Union, Local 735-S v. North America Directory Corp. II, 98 F.3d 97, 102 (3d Cir. 1996).

The BOLR Agreement, its Bylaws, and the Reaffirmation Agreement are the operative documents for resolving whether the Grievance Committee’s award in favor of Mason is enforceable against ACE and JLL.

The intention of the preamble to the BOLR Agreement is to make the BOLR Agreement enforceable only upon Regular, or Schedule “A” Members, and makes no reference to a similar affect upon Site Agreement, or Schedule “B” Members.

THIS Multi-Employer Agreement entered into the sixteenth day of October, 2000 by and between BUILDING OPERATORS LABOR RELATIONS DIVISION OF BUILDING OWNERS’ AND MANAGERS’ ASSOCIATION OF PHILADELPHIA, (herein called the “Corporation”), acting for and on behalf of such of its Member Buildings as are listed on Schedule “A” attached hereto (each of who is hereafter referred to as “Employer”), on the one hand, and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL #36, AFL-CIO (hereinafter called the “Union”), on the other hand.

(Stip. at ex. 1, preamble).

By virtue of signing the Membership Reaffirmation Agreement for Site Agreement, or Schedule “B” Membership, ACE has explicitly agreed to be a Site Agreement, or Schedule “B” Member of the BOLR and, “to abide by all of the terms of the Association Bylaws.” (Stip. at ex. 3). The Reaffirmation Agreement further states that Site Agreement, or Schedule “B” Members shall affirm that:

any contractor hired by us will assent to the terms of the currently existing Office Building Agreement between the Building Operators' Labor Relations, Inc. and Service Employees International Union Local 36, AFL-CIO, (hereafter called "Labor Agreement") and any subsequent agreement between the said parties, and that the contractor will agree to faithfully observe all of the terms and conditions of the said Labor Agreement and accept all the obligations of the Owner and/or Agent thereunder in connection with the building. Said Site Agreement shall be solely between *the contractor and the Union* and shall not at any time *require us* to deal with, negotiate with or in any other way to recognize the Union. The Union members shall be the contractor's employees and not the employees of the Building Owner, Owner's Agent or the building.

(Stip. at ex. 3)(emphasis added).

The Reaffirmation Agreement reflects that as a Site Agreement, or Schedule "B" Member, ACE has only agreed to: (i) hire contractors that will assent to the terms of the BOLR agreement; and (ii) abide by the Bylaws. Id. A plain reading of the language in the Reaffirmation Agreement establishes that the BOLR Agreement is not intended to be binding upon ACE, but rather upon ACE's contractor--such as FAB. Accordingly, unless the terms of the Bylaws affirmative binds Site Agreement, or Schedule "B" Members to the Grievance Committee's decisions, then the award in favor of Mason will have no affect against ACE or JLL.

The terms of the Bylaws read consistently with the BOLR Agreement preamble and the Reaffirmation Agreement. For example, Article III, § 4.B, of the Bylaws states, in relevant parts, that:

The Division shall, with the assent of the Site Agreement Member's Contractor, which Contractor has agreed to be bound by the Division's Collective Bargaining Agreement with the Union, represent the Contractor in its dealings with the Union with respect

to those of the Contractor's employees who are members of the Union and are employed at the building for which the Site Agreement Member is Owner or Agent. . . . The above representation by the Division shall only be for the Contractor employed by the Site Agreement Member and *not for the Site Agreement Member. In no event shall such representation or legal action constitute recognition of the Union by the Site Agreement Member.*

(Stip. at ex. 2)(emphasis added).

Furthermore, Article III, § 7.C.i., of the Bylaws states that subject to the differences between a Regular, or Schedule "A" Member, a Site Agreement, or Schedule "B" Member, and a Contractor, or Schedule "C" Member, each individual Member hereby authorizes the Division to:

Negotiate conclude and execute Collective Bargaining Agreements with the Union in the name of the Division on behalf of and binding upon the individual Members *except*, in the case of the *Site Agreement Member said Collective Bargaining Agreements shall be binding on the Site Agreement Member's Contractor and not upon the Site Agreement Member.*

(Stip. at ex. 2)(emphasis added).

Plaintiff's most inspiring argument in favor of applying the arbitration award against the will of ACE and JLL is that the "Object and Purposes" of the BOLR, as described in Article II of the Bylaws, "is to foster sound labor relations between members and workers represented by the Union in buildings in Philadelphia and environs," and by assenting to the Reaffirmation Agreement, ACE and its agent, JLL, have agreed to participate in "sound labor relations" with Local 36. This broad policy argument must fail where explicit language in the Bylaws and the Reaffirmation Agreement reveal the true intended rights for a Site Agreement Member. Therefore, the Grievance Committee's award reinstating Maxwell Mason to work at Two Liberty Place cannot be enforced against ACE, or its agent JLL, since: (i) neither was bound by the

“Grievance, Arbitration Procedure” provision of the Collective Bargaining Agreement; (ii) neither was a party to the arbitration proceeding; (iii) neither was given notice of the arbitration proceeding; and (iv) neither was present or given an opportunity to be heard at the arbitration proceeding.

FAB, as a contractor of a Site Agreement, or Schedule “B” Member, is contractually bound to all Grievance Committee decisions, pursuant to the terms of the BOLR Agreement, the Bylaws, and the Reaffirmation Agreement. FAB does not contest the validity of the Committee’s award in favor of Mason, and has sought to fully carry out its legal obligation. FAB intended to comply with grievance award and reinstate Mason at Two Liberty Place, but for ACE and JLL’s objection to Mason’s reinstatement on ACE’s premises. FAB cannot compel ACE and JLL to accept Mason’s employment because the arbitration proceeding is not binding upon ACE or JLL, and FAB cannot find alternative work for Mason in Philadelphia, or elsewhere, because all of FAB’s employment contracts are for the maintenance of ACE owned buildings. FAB has done everything within its power to enforce the grievance award.

Based on the foregoing reasons, ACE and JLL’s motion for summary judgment and FAB’s motion for summary judgment are **GRANTED** and the Union’s motion for summary judgment is **DENIED**. This is a final legal adjudication and the Clerk of Court is directed to statistically close this matter.

BY THE COURT:

Legrome D. Davis, U.S.D.J.

