SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, IAS PART 52

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JAMES P. REILLY & GEORGE A. BRENNAN,

Plaintiffs,

- against -

TRANSPORT WORKERS UNION, NEW YORK CITY TRANSIT AUTHORITY, ROGER TOUSSAINT, MARC KAGAN, SONNY HALL, ELAYNE TOPEL, RALPH AGRITELLEY, HARVEY PORIS, MARTIN SCHNABEL & HELEN DUDDY as Trustees and Administrators of Transport Workers Union, New York City Transit Authority - MABSTOA, Health Benefits Trust,

Defendants.

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Index No. 123552/01



Decision and Order

ROBERT D. LIPPMANN, J.

Plaintiff James P. Reilly is an employee of the New York City Transit Authority and a member of the Transport Workers Union. He and co-plaintiff George A. Brennan brought this action seeking, among other things, declaratory and injunctive relief that will require defendants to provide plaintiff Brennan with health benefits based on Brennan's status as Reilly's registered domestic partner.

Facts

Plaintiffs were issued a Certificate of Domestic Partnership by the City of New York on December 27, 1999. In June of 2001, Reilly applied to have Brennan covered by his employee health benefits. The application was denied by the Transport Worker's Union - NYC Transit Authority - MABSTOA Health Benefit

Trust ("Trust") on the ground that the Trustees had not authorized the provision of benefits for domestic partners.

Plaintiffs brought this action naming as defendants the Transport Workers Union ("TWU") and the Trustees appointed by the TWU, Roger Toussaint, Marc Kagan and Sonny Hall ("TWU Trustees)", the New York City Transit Authority ("TA"), the Trustees apppointed by the TA, Ralph Agritelley, Harvey Poris and Martin Schnabel ("TA Trustees"), and Trust Director Elayne Topel and Assistant Director Helen Duddy("Administrators"). Plaintiffs allege that defendants, by their continuing refusal to authorize health benefits for Brennan, are in violation of the internal EEO policy of the TA, the New York City Human Rights Law ("NYCHRL")(Administrative Code of the City of New York City §8-101, et seq.,) and Administrative Code §6-123. The complaint seeks (a) a declaratory judgment declaring that defendants are in violation of the NYCHRL and Administrative Code §6-123, (b) an injunction restraining and enjoining defendants from engaging in further discriminatory acts, (c) an order compelling defendants to authorize benefits for Brennan, (d) appointment of a monitor to eradicate discriminatory practices by the Trustees of the Trust, (e) attorneys fees, (f) costs and disbursements, and (g) interest.

Plaintiffs now seek, by way of the instant motion, the same relief sought in the complaint. Although plaintiffs do not so state, it appears that their motion is one for summary judgment.

Defendants the TA, the TA Trustees and the Administrators (collectively, the "TA defendants") cross-move for summary judgment dismissing the complaint. They contend that the TA is exempt from the provisions of the NYCHRL, that the NYCHRL does not require employers to provide benefits to employees' domestic partners, that the TA Trustees and Administrators cannot be held liable, and the TA's nondiscrimination policy does not enhance plaintiffs' rights. The TWU and the TWU Trustees (the "TWU defendants") are represented by separate counsel and have filed papers in opposition to plaintiffs' motion. Although they do not cross-move for dismissal, they contend that they are not appropriate parties to this action.

Discussion

A. Status of TA Employees

As noted above, plaintiffs' motion is not denominated as a motion for summary judgment. Plaintiffs' written submissions do state that they are asking this court to "deem [TA] employees quasi-city employees entitled to health benefits for employees with domestic partners pursuant to Local Laws of the City of New York, 1998 No. 27." Plaintiffs' Reply Affirmation in Support of the Motion and in Opposition to Cross-Motion, ¶33. Plaintiffs note, among other things, that the TA is "funded in large part by the City of New York" and all of its operations take place within the City of New York. (Id., ¶¶ 31, 32). Since Administrative Code § 3-244(f) provides that the registered domestic partners of employees

of the City of New York are eligible for health benefits, plaintiffs argue that Brennan is entitled to health benefits.

The TA is a public benefit corporation created by Public Authorities Law §1201(1) for the purpose of operating and maintaining mass surface and subway transit facilities owned by the City of New York and leased to the TA. Matter of Subway-Surface Supervisors Assn v New York City Tr. Auth., 44 NY2d 101, 107 [1978]. The Legislature has recognized that "such purposes are in all respects for the benefit of the people of the state of New York and [the TA] shall be regarded as performing a governmental function in carrying out its corporate purpose" and in exercising its statutory powers. Public Authorities Law § 1202(2). Public Authorities Law also provides that Civil Service Law shall apply to TA employees. Public Authorities Law § 1210(2). The Court of Appeals has observed, in the context of imposing a wage freeze on TA employees pursuant to New York State Financial Emergency Act for the City of New York, that it is "wholly unrealistic" to treat the TA as an independent agency separate from the City of New York. Matter of Subway-Surface Supervisors Assn v New York City Tr. Auth., 44 NY2d at 112.

Nonetheless, the TA is not a division of the State or the City. Nor, as plaintiffs argue, can the TA be considered a city contractor within the meaning of Administrative Code §6-123(a)(1). "Although fiscally interdependent with the City of New York, the TA

is an entity separate therefrom." Margolis v New York City Tr. Auth., 157 AD2d 238, 242 [1st Dept 1990]. Clearly, authority exists for requiring the TA, an entity created by the State Legislature, to comply with State law. See, Jered Contracting Corp. v New York City Tr. Auth., 22 NY2d 187 [1968][competitive bidding statutes]; Matter of Subway-Surface Supervisors Assn v New York City Tr. Auth., 44 NY2d 101, supra [statutorily imposed wage freeze]. At the present time, however, State law does not require public authorities, such as the TA, to provide health benefits to the domestic partners of their employees. While the court is sympathetic to the challenges faced by nontraditional families, it cannot, by judicial fiat, create a class of "quasi-city" employees in order to extend health benefits to the domestic partners of TA employees.

B. Applicability of the NYCHRL

In Levy v City Commission on Human Rights, 85 NY2d 740 [1995], the Court of Appeals held that the TA was subject to the jurisdiction of the New York City Commission on Human Rights in the context of a gender discrimination claim by a former TA employee. The Court recognized that while public authorities are "independent and autonomous" to the extent that they should be free from requirements imposed on other State agencies that would interfere with the accomplishment of the public corporation's purpose, it could not be said that "compliance with the prohibitions against

employment discrimination would interfere with its function and purpose, particularly where employment practices are tangential to the Transit Authority's mission." Id. at 745.

The Appellate Division, First Department, relying on Levy, has held that the TA, acting in its proprietary capacity, is not immune from the City's regulatory safety standards regarding escalators. Huerta v New York City Tr. Auth., 290 AD2d 33, 39 [1st Dept 2001]. In Huerta, the TA asserted that it was exempt from Administrative Code §§27-982 and 27-987 under Public Authorities Law §1204(5-a), which authorizes the TA to make rules relating to the maintenance and protection of its facilities and to improve, maintain and operate such facilities.

Here, the TA defendants argue that the TA is exempt from the NYCHRL, relying on Public Authorities Law § 1266(8), as amended in May 2000, and which now provides, in pertinent part, that "no municipality or political subdivision, including but not limited to a county, city, village, town or school or other district[,] shall have jurisdiction over any facilities of the * * * New York City Transit Authority and its subsidiaries * * * or any of [its] activities or operations". Prior to the amendment, Public Authorities Law §1266(8) was applicable only to the Metropolitan Transportation Authority.

The TA defendants have failed to advise this court of the existence of contrary Federal authority. In a decision predating

the May 2000 amendment of Public Authorities Law §1266(8), the United States District Court for the Southern District of New York, relying on Levy, determined that Public Authorities Law §1266(8) did not preclude plaintiff's sexual harassment claim under the NYCHRL against Metropolitan Transportation Authority subsidiary Metro-North Commuter Railroad Co., even though the court dismissed the claim because the incident complained of occurred outside of New York City. Wahlstrom v Metro-North Commuter R. Co., 89 FSupp2d 506, 527 n21 [SDNY 2000]["this court follows Levy in holding that Metro-North is not exempt from the NYCHRL"]. The TA defendants also ignore a decision dated August 12, 2002, in which the United States District Court for the Eastern District of New York held that Public Authorities Law § 1266(8), as amended in May 2000, does not exempt the TA from NYCHRL with respect to claims of employment discrimination. Everson v New York City Tr. Auth., 216 FSupp2d 71 [EDNY 2002].

While a Federal Court's interpretation of a State statute is not binding on this court, the court finds the reasoning of the Everson court to be persuasive and consistent with Huerta v New York City Tr. Auth., 290 AD2d 33, supra, which is cited therein. As the Federal court in Everson observed: "Even though Section 1266(8), on its face, now exempts the TA from local laws, the upshot of the holding Levy is that Section 1266(8) will only exempt the TA from the reach of local laws which 'interfere with the

accomplishment' of the TA's purpose. And, as the Levy Court held, compliance with the local human rights laws will not interfere with the TA's purpose. * * * Thus, there is no reason to conclude that, despite the recent amendment to Section 1266(8), the New York Court of Appeals would today decide that the TA is exempt from the reach of the New York City Administrative Code." Everson, 216 FSupp2d at 80-81.

C. Denial of Benefits as Prohibited Discrimination

Under the NYCHRL, a claim of discrimination based on sexual orientation is established when it is demonstrated that a policy or practice of a covered entity results in a disparate impact to the detriment of any protected group, and the covered entity fails to plead and prove as an affirmative defense that the policy or practice at issue bears a significant relationship to a significant business objective of the covered entity or does not contribute to the disparate impact. New York City Administrative Code § 8-107(17)(a)(1),(2); Levin v Yeshiva University, 96 NY2d 484, 491-492 [2001]. Thus, to establish a disparate impact claim, plaintiffs must demonstrate that gay and lesbian employees are disproportionately burdened by the TA's policy and practice of denying health benefits to domestic partners. Id., at 496.

Although plaintiffs appear to be moving for summary judgment, in their reply affirmation in support of their motion and in opposition to the TA's cross-motion, they concede that the TA's

policy is facially neutral and that they have not made the requisite statistical showing of disparate impact. Thus, plaintiffs appear to acknowledge that the relief they seek is premature. Nonetheless, here, as in Levin, the pleadings are sufficient to state a disparate impact claim under Administrative Code § 8-107(17), even though at this juncture, there are issues of fact precluding summary relief in favor of either the plaintiffs or the TA.

D. The TA's EEO Policy

Plaintiffs also contend that the denial of health benefits to an employee's domestic partner violates the TA's Equal Employment Opportunity ("EEO") policy. That policy, as set forth in letters from President Lawrence G. Reuter, dated April 2002 and June 6, 1997, expressly prohibits discrimination in the terms and conditions of employment in the area of compensation or benefits based on sexual orientation. The EEO policy directs employees who believe they have suffered unlawful discrimination to contact the Division of EEO, their departmental EEO Liaison, or the director of the Office of Civil Rights. It is not indicated whether Reilly ever filed an EEO complaint.

As noted, the TA defendants do not recognize the viability of plaintiffs' claims under the NYCHRL. They argue that the EEO policy in no way enhances plaintiffs' rights and that the EEO policy does not give rise to a cause of action for breach of

contract. As this court understands plaintiffs' claims, however, they are not asserting a cause of action sounding in breach of contract based on an alleged violation of the TA's EEO policy, nor do they seek monetary damages. Thus, it does not appear that plaintiffs seek any additional remedy based on the alleged violation of the EEO policy to which they would not be entitled if they were to prevail on the disparate impact claim under the NYCHRL. Administrative Code § 8-107(17).

E. The Trustees and Administrators as Parties

The TWU defendants have not made a cross-motion for dismissal, but nonetheless argue in opposition to plaintiffs' motion that neither the TWU nor the TWU Trustees are "appropriate" parties to this action. Further, they contend that to the extent that there are factual issues as to whether they are appropriate parties, plaintiffs are not entitled to summary judgment. The TA maintains that the TA Trustees and Administrators cannot be held "liable" for unlawful discrimination in violation of the Administrative Code.

At this juncture, the court declines to dismiss the complaint against the TWU and the Trustees and Administrators. Under CPLR 1001(a), necessary parties include persons "who ought to be parties if complete relief is to be accorded between the persons who are parties to the action" or "who might be inequitably affected by a judgment in the action." "These compulsory joinder

provisions are intended 'not merely to provide a procedural convenience but to implement a requisite of due process-the opportunity to be heard before one's rights or interests are adversely affected.'" Matter of 27th St. Block Assn v Dormitory Authority of the State of New York, _____ AD2d _____, [1st Dept December 3, 2002] quoting Matter of Martin v Ronan, 47 NY2d 486, 490 [1979]. Notably, the relief sought by plaintiffs includes a declaratory judgment, which cannot be granted in the absence of necessary parties. Wood v City of Salamnca, 289 NY 279, 282-283 [1942].

The TWU notes that defendant Sonny Hall is no longer a TWU Trustee. Plaintiffs or the TWU defendants may, if they be so advised, make an application pursuant to CPLR § 1021 to amend the caption to substitute Hall's successor trustee.

Accordingly, it is

ORDERED that plaintiffs' motion, deemed to be a motion for summary judgment is denied; and it is further

ORDERED that the cross-motion for summary judgment of defendants New York City Transit Authority, Ralph Agritelley, Harvey Poris, Martin Schnabel, Elayne Topel and Helen Duddy is denied.

This constitutes the decision and order of the court.



Dated: Dec. 18, 2002
DEC 18 2002

ROBERT D. LIPPMANN, J.S.C.
HON. ROBERT D. LIPPMANN
J.S.C.