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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

METROPOLITAN ATLANTA RAPID
TRANSIT AUTHORITY (MARTA),

Plaintiff,

v.

AMALGAMATED TRANSIT UNION,
LOCAL NO. 732,

Defendant.

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CIVIL ACTION
FILE NO. 2017CV289520

FINAL ORDER

The above-captioned matter is before the Court on Plaintiff Metropolitan Atlanta Rapid Transit Authority’s (“MARTA”) Complaint to Stay and to Vacate Arbitration Award (“Complaint”), which was filed on May 2, 2017. Also before the Court is the Motion for Judgment on the Pleadings of Defendant Amalgamated Transit Union Local No. 732 (“ATU”), which was filed on June 2, 2017. This matter came before the Court for a final hearing on October 12, 2017. Counsel for both sides appeared and were allowed an opportunity for oral argument. Now, having considered MARTA’s Complaint, ATU’s Motion for Judgment on the Pleadings, the entire record in this matter, the arguments of counsel, and applicable Georgia law, the Court herein finds as follows:

I. Introduction and Procedural History

MARTA is a joint public instrumentality of the City of Atlanta and DeKalb, Fulton, Cobb, Clayton, and Gwinnett Counties, created by and existing under the laws of the State of Georgia for the purpose of constructing and operating a public transit system in the Atlanta metropolitan area. ATU is a labor organization located in Atlanta, Georgia and acts as the collective bargaining representative for certain employees of MARTA.

MARTA and ATU are parties to a collective bargaining agreement effective January 1, 2014 through December 31, 2017 (the “CBA”). The CBA provides for a grievance and arbitration procedure to resolve disputes between the parties over the application and interpretation of the CBA.

Pursuant to the CBA’s grievance and arbitration procedure, on or about November 19, 2015, ATU submitted a grievance to MARTA, Collective Grievance No. 954 (the “Grievance”), disputing MARTA’s right to enter into a contract with MV Transportation, Inc. (“MV”) for the provision of transportation services to MARTA’s elderly and disabled patrons (“paratransit services”).

In January 2016, MARTA denied the Grievance during the grievance procedure set forth in the CBA, and ATU appealed the Grievance to arbitration in accordance with the CBA.

On September 7, 8, and 9, 2016, an arbitration hearing was held before a Neutral Arbitrator, an ATU-appointed Arbitrator, and a MARTA-appointed arbitrator (collectively the “Board of Arbitration”). Prior to the arbitration hearing, the parties stipulated that the only issue to be determined during arbitration was: “Did MARTA have the right to subcontract its paratransit services, and if not, what shall be the remedy?”

On February 3, 2017, the Board of Arbitration issued an Opinion and Award (the “Award”) granting the Grievance and finding that MARTA did not have the right to subcontract its paratransit services to MV. In furtherance thereof, the Board of Arbitration directed MARTA to (1) terminate its contract with MV; (2) restore its paratransit services/operations to an in-house operation within one hundred (100) calendar days of the date of the Award; and (3) make affected employees whole for wages and benefits lost or diminished as a result of MARTA’s contracting out its paratransit operations to MV.

On May 2, 2017, MARTA initiated this action by filing its Complaint seeking to stay and vacate the Award. On June 2, 2017, ATU filed the Motion for Judgment on the Pleadings presently before the Court.

I. Factual Background

Turning now to the pertinent facts and timeline giving rise to this litigation, the record reflects that beginning in June 1987 through February 1997, MARTA utilized a third party contractor, DAVE Transportation Systems, to provide paratransit services for MARTA's elderly and disabled patrons. Prior to that time period, MARTA provided paratransit services in-house through its own employees.

In March 1997, MARTA resumed providing paratransit services in-house using MARTA employees.

In 2001, several paratransit customers of MARTA brought a lawsuit against MARTA in the United States District Court for the Northern District of Georgia for MARTA's purported failure to comply with the requirements of the Americans with Disabilities Act – *Vincent Martin, et al. v. MARTA*, Civil Action File No. 1:01-CV-3255-TWT (the "Federal Case"). The Americans with Disabilities Act ("ADA") requires public entities providing public transportation services, like MARTA, to ensure adequate access to such services by the disabled. 42 U.S.C. § 12101, *et seq.*

In December 2002, the federal court entered an order granting a preliminary injunction against MARTA for MARTA's violations of the ADA.

In May 2003, the federal court entered a final order requiring MARTA to comply with the ADA and the provisions of the December 2002 Order, among other requirements, and the federal court retained jurisdiction over the Federal Case.

On June 25, 2014, the federal court issued an order modifying MARTA's injunctive requirements, including requiring MARTA to meet certain performance standards in providing paratransit services and making every effort to achieve and maintain an on-time performance rate of 100%.

Almost a year later, on May 13, 2015, the plaintiffs in the Federal Case filed a motion for contempt ("contempt motion") against MARTA for MARTA's failure to comply with the federal court's June 25, 2014 Order and MARTA's continued violations of the ADA.

MARTA admits that during this time period, MARTA was experiencing quality of service problems. Additionally, MARTA showed that its cost per revenue hour had increased, and MARTA was having trouble maintaining an active duty staff of qualified mobility operators. MARTA also showed that full-time operator turnover was a problem, employee attendance was poor, and employees transferring into other MARTA departments was an ongoing issue. MARTA attempted to improve its mobility services by increasing wages, increasing spending allocated to mobility services, increasing the number of paratransit operators, improving fleet availability, improving scheduling, and adding GPS navigation to its vehicles, but these measures did not improve MARTA's paratransit services or MARTA's on-time performance. Instead, MARTA's problems in this area were worsening.

As a consequence of the above challenges, MARTA recognized that it was in violation of the federal court's June 25, 2014 Order. Accordingly, approximately two months prior to the filing of the plaintiffs' contempt motion in the Federal Case, MARTA's Board of Directors approved a resolution authorizing the solicitation of bids to outsource MARTA's paratransit operations.

In furtherance thereof, on April 9, 2015, MARTA issued Request for Proposal P34324 ("RFP") for the outsourcing of MARTA's paratransit operations/services. The Court notes that

the RFP specifically required the contractor who ultimately received the contract to give preference to MARTA employees during the hiring process.

MV was one of the contractors that submitted a proposal in response to the RFP, and on November 5, 2015, MARTA's Board of Directors approved the selection of MV to provide paratransit services for MARTA.

On November 16, 2015, the federal court granted the plaintiffs' contempt motion in the Federal Case, finding that MARTA had not achieved and maintained an acceptable on-time performance rate and was not complying with MARTA's obligation to use its best efforts to increase on-time performance to 100%.

On March 4, 2016, MARTA and MV entered into a services contract for the outsourcing of MARTA's paratransit operations ("MV Agreement"). At that time, MARTA issued a WARN Act Notice to its 322 paratransit operators, approximately 286 of whom were ATU/MARTA bargaining unit employees. MARTA's paratransit operators were then given the opportunity to apply for employment with MV.

The MV Agreement went into effect on May 21, 2016. Under the MV Agreement, MARTA retains responsibility for trip reservations and the certification and eligibility processing for paratransit customers, and MV is responsible for the operation of paratransit vehicles and the maintenance, servicing, and cleaning of paratransit vehicles. All of the paratransit vehicles used by MV are owned by MARTA.

The record reflects that in furtherance of the MV Agreement, MV agreed to and has met its obligation to (1) recognize ATU as the collective bargaining representative of the employees MV hired to perform the MARTA paratransit contract; (2) pay former MARTA employees the same pay rates they were earning at MARTA; (3) keep former MARTA paratransit operators now employed by MV in the MARTA health plan by making COBRA payments on their behalf;

(4) protect other benefits of former MARTA employees; (5) offer jobs to former MARTA paratransit employees, other than operators; and (6) negotiate with ATU to arrive at a collective bargaining agreement.

II. Legal Findings

Neither Georgia nor federal law provides this Court with an explicit standard of review to be applied in this case. However, existing legal precedent gives this Court some direction as to how to proceed, and the Court is mindful that in considering this case, the Court is required to give the Board of Arbitration great deference. Furthermore, as correctly argued by ATU, this Court should confirm the Award of the Board of Arbitration *if* the Award draws its essence from the CBA and does not violate public policy. In other words, this Court should review the Award for clear errors of law, deviation from the terms of the CBA, and findings that are against public policy.

In applying this standard and after a review of the entire record herein, the Court finds that the Board of Arbitration's Award was not supported by the evidence, did not draw its essence from the clear terms of the CBA, was against public policy, and was contrary to the law.

First, looking specifically at the language of the CBA, which the Court finds to be clear and unambiguous, the only express limitation contained in the CBA on MARTA's ability to subcontract its services is a restriction on MARTA's right to subcontract rail car maintenance services, which are not at issue in this case. *See Service Merchandise Co. v. Hunter Fan Co.*, 274 Ga. App. 290, 292 (2005); *Health Service Centers v. Boddy*, 257 Ga. 378, 380 (1987).

The CBA contains no other provision or express limitation on MARTA's right to subcontract its other services. Thus, MARTA had the right to subcontract its paratransit services with MV, and the Board of Arbitration's Award to the contrary was in error.

Additionally, the Court finds that as a matter of public policy, MARTA was required to come into compliance with the federal court's June 25, 2014 and November 16, 2015 Orders and to adhere to the ADA. The record clearly shows that MARTA did not and could not timely and proficiently run its paratransit operations, and as such, was in violation of these federal mandates. As a consequence, MARTA needed to use a third party contractor with the expertise and competence to provide on-time services for MARTA's paratransit operations to comply with the federal court's directives and to restore goodwill with the general public and MARTA's disabled and elderly patrons.

The record also shows that MV had the requisite qualifications, experience, capability, and financial stability to provide adequate and compliant paratransit services. In fact, the record reflects that since MARTA contracted with MV, ridership of disabled patrons has increased, as has the use of MARTA's paratransit services, and on-time performance has risen significantly. Further, as detailed above, MV has been more than accommodating to MARTA's former bargaining unit employees who worked in paratransit operations. These former employees were offered jobs at MV with the same pay and benefits they had while employed with MARTA, as well as the opportunity to unionize, among other benefits.

The Court further finds that the evidence of record does not support a finding that MARTA's decision to subcontract its paratransit services was the result of an anti-union animus or intent to injure MARTA's bargaining unit employees as held by the Board of Arbitration. Instead, the record clearly shows that MARTA made a sound business and public policy decision based not only on the needs of its disabled patrons, but also in response to a court order directing compliance with the ADA, as well as the meeting of certain performance standards and maintenance of an on-time performance rate.

In light of the overwhelming evidence that MARTA was unsuccessful in improving its on-time performance, despite substantial efforts and costs and despite the federal court's mandate that MARTA provide the best possible service to the disabled community, the Court finds that MARTA needed and was authorized to subcontract its paratransit services to MV.

Paratransit services are services essential to "the least of us," and an obligation exists to ensure that those for whom life already presents many challenges do not find themselves with the odds stacked even higher against them. The ability to timely, safely, and ably travel around the metro-Atlanta area when the need arises is of significant importance, particularly to those whose options are few.

Accordingly, for the reasons set forth above, IT IS HEREBY ORDERED AND ADJUDGED that the Complaint to Stay and to Vacate Arbitration Award of Metropolitan Atlanta Rapid Transit Authority is GRANTED; the Motion for Judgment on the Pleadings of Defendant Amalgamated Transit Union Local No. 732 is DENIED; and the Award of the Board of Arbitration is hereby SET ASIDE.

SO ORDERED this the 29 day of January, 2018.


SHAWN ELLEN LaGRUA, Judge
Fulton County Superior Court
Atlanta Judicial Circuit

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