UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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1199SEIU UNITED HEALTHCARE WORKERS EAST,

Petitioner,

ECF CASE

v.

Case No. 2:20-cv-17154 (SDW-LDW)

MANHATTANVIEW HEALTHCARE CENTER,

Respondent.

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UNION'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO ENFORCE AWARD

Motion Day: January 4, 2021

Katherine H. Hansen
GLADSTEIN, REIF & MEGINNISS, LLP
39 Broadway, Suite 2430
New York, NY 10006
(212) 228-7727

Attorneys for 1199SEIU United Healthcare Workers East

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PRELIMINARY STATEMENT

This is a straightforward action by 1199SEIU United Healthcare Workers East ("1199SEIU" or "the Union") to enforce a straightforward arbitration award.

1199SEIU and Manhattanview Healthcare Center ("Manhattanview" or "Employer") have, for many years, been parties to a Collective Bargaining Agreement ("CBA") which has been extended, and modified in part, through a number of Memoranda of Agreements ("MOAs"). In 2012, pursuant to the CBA's grievance and arbitration procedure, the Union processed a grievance to arbitration concerning the Employer's failure to make required 401k contributions on behalf of certain bargaining unit employees. After an arbitration hearing, the Arbitrator issued an award finding that the Employer had failed to make certain required 401k contributions, ordering the Employer to make those required payments, and retaining jurisdiction until all such payments were made. Shortly after issuance of that arbitration award, the Union calculated the damages owed to the affected employees, submitted those figures to the Employer, and demanded payment. The Employer did not dispute the damages owed. Yet, despite the Union's repeated requests over many years, the Employer failed and refused to make the required payments.

In May of 2020, the Union asked the Arbitrator to issue a supplemental arbitration award setting forth the specific payments owed, plus interest, and directing the Employer to the required payments. On August 23, 2020, the Arbitrator issued a supplemental award doing just that. To date, the Employer has failed to comply with the August 23, 2020 arbitration award and has failed to issue any of the required payments. For the reasons set forth herein, the arbitration award should be summarily enforced.

STATEMENT OF FACTS

The Union is the exclusive bargaining representative of certain of the Employer's employees at its facility located in Union City, New Jersey. For many years, the Union and the Employer have been parties to a Collective Bargaining Agreement which has been extended, and modified in part, by a series of Memoranda of Agreements ("MOAs"). The MOAs did not modify the CBA in any ways that are relevant to this matter. (*See* CBA and MOAs, Exhibits B-D to Certification of Katherine H. Hansen in Support of Petition to Enforce Arbitration Award ["Hansen Certification"].)

Article 11 of the CBA provides that any dispute or complaint arising between the parties "under or out of this agreement or the interpretation, application, performance, termination, or any alleged breach thereof," shall be processed according to the grievance and arbitration procedure set forth in the CBA. (*See* CBA, Art. 11, Ex. B to Hansen Certification.) Article 11 further provides that a grievance may be referred to arbitration by either party and that "the decision of the Arbitrator shall be final and binding upon the parties and the employees and shall conclusively determine the matter and there shall be no appeal from said decision and the decision. Judgment shall be entered upon the award in a court of competent jurisdiction." Article 11 also empowers the arbitrator "to determine his jurisdiction, all questions of arbitrability and to grant all appropriate remedies and to include in his award mandatory and injunctive relief and to determine the appropriate measure of damages." (*Id.*) Article 21 of the CBA required the Employer to make certain 401k contributions on behalf of bargaining unit employees. (*See* CBA, Art. 21, Ex. B to Hansen Certification.)

In 2012, the Union processed to arbitration a grievance concerning the Employer's failure to make certain 401k contributions required by Article 21 of the CBA. On May 22, 2012,

Arbitrator Wellington J. Davis, Jr. ("the Arbitrator") issued an arbitration award finding that the Employer had failed to make required 401k contributions and directing the Employer to make the required payments ("2012 Award"). (*See* 2012 Award, Ex. F to Hansen Certification.) The Arbitrator also retained jurisdiction over the matter until the required payments were made. (*Id.*)

In August of 2012, the Union notified the Employer of the specific payments owed pursuant to the 2012 Award. (*See* August 24, 2012 letter, Ex. G to Hansen Certification.) The Employer did not dispute the Union's calculations. However, for many years and despite the Union's repeated requests, the Employer failed to make any of the required payments.

In May of 2020, the Union notified the Arbitrator that the Employer had failed to make the payments required by the 2012 Award and asked the Arbitrator to issue a supplemental damages award setting forth the specific damages owed to the affected employees. The Arbitrator gave the Employer until close of business on July 15, 2020 to demonstrate why such a supplemental award should not issue. (*See* email correspondence, Ex. H to Hansen Certification.) The Employer made no submission or argument by July 15, 2020 and the Union again asked the Arbitrator to issue a supplemental arbitration award setting forth the specific damages owed. (*Id.*) On July 16, 2020, the Employer submitted a short letter to the Arbitrator in which it claimed that the Union was improperly seeking to modify the 2012 Award. The Union responded on July 20, 2020, explaining that it was not seeking to modify the 2012 Award but, rather, was simply seeking a supplemental damages award that set forth the specific damages owed to the affected employees. (*Id.*) On August 10, 2020, the Arbitrator held a conference call with counsel for the Union, Katherine H. Hansen, and counsel for the Employer, David F. Jasinski, to discuss the parties' position regarding a supplemental damages award.

On August 23, 2020, the Arbitrator issued a supplemental arbitration award that set forth the specific damages owed to the affected employees, with interest, and directed the Employer to pay the monies owed as set forth therein ("2020 Award"). (*See* 2020 Award, Ex. A to Hansen Certification.) To date, the Employer has failed to comply with the 2020 Award and has paid none of the monies owed.

ARGUMENT

The Court should grant the Union's motion to enforce the 2020 Award because the arbitration award draws its essence from the parties' collective bargaining agreement. In addition, the Court should grant the Union prejudgment interest, as the damages owed by the Employer are ascertainable with mathematical precision.

I. JUDICIAL REVIEW OF AN ARBITRATION AWARD IS EXCEEDINGLY NARROW

"A court must enforce any arbitration award that 'draws its essence from the collective bargaining agreement.'" *News Am. Publ'ns, Inc., Daily Racing Form Div. v. Newark Typographical Union, Local 103*, 918 F.2d 21, 24 (3d Cir. 1990) (quoting *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36 (1987)). "In reviewing an arbitral award, courts must recognize that the parties bargained for the arbitrator's construction of the agreement." *Id*. Thus, "[a] court may not overrule an arbitrator simply because it disagrees with the arbitrator's construction of the contract, or because it believes its interpretation of the contract is better than that of the arbitrator." *Id.* (internal citation omitted).

An arbitration award will not be disturbed if "the interpretation can in any rational way be derived from the agreement, viewed in light of its language, its context, and any other indicia of the parties' intention." *Akers Nat'l Roll Co. v. United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus*., 712 F.3d 155, 160 (3d Cir. 2013); *Ludwig Honold Mfg. Co., v. Fletcher*,

405 F.2d 1123, 1128 (3d Cir. 1969). Only where there has been "manifest disregard of the agreement, totally unsupported by principles of contract construction" may the court disturb the award. *News Am. Publ'ns, Inc.*, 918 F.2d at 24.

As the Third Circuit explained in *Kane Gas Light & Heating Co. v. Int'l Bhd. of Firemen & Oilers*, 687 F.2d 673 (3d Cir. 1982) "[t]his narrow scope of review is mandated by the strong Congressional policy of encouraging the peaceful resolution of labor disputes by means of binding arbitration." *Id*. at 678. To ignore the constraints on judicial review imposed by the Third Circuit's precedent would annul the parties' agreement not to use a judicial forum to resolve their disputes and, at the same time, delay and drive up the costs of a final resolution of such disputes thereby undermining the very purpose of the federal policy favoring resolution of labor disputes in arbitration. *See, e.g., Misco, Inc.*, 484 U.S. at 36; *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598 (1960).

II. THE ARBITRATOR'S AWARD DRAWS ITS ESSENCE FROM THE PARTIES' COLLECTIVE BARGAINING AGREEMENT

The Arbitrator's 2020 Award must be enforced because it draws its essence from the parties' collective bargaining agreement.

The CBA provides that any dispute or complaint arising between the parties "under or out of this agreement or the interpretation, application, performance, termination, or any alleged breach thereof" shall be processed according to the CBA's grievance and arbitration procedure. (*See* CBA, Art. 11, Ex. B to Hansen Certification.) The CBA's board arbitration clause provides that the "Arbitrator is empowered to determine his jurisdiction, all questions of arbitrability and to grant all appropriate remedies and to include in his award mandatory and injunctive relief and to determine the appropriate measure of damages." The CBA further provides that "the decision of the Arbitrator shall be final and binding upon the parties and the employees and shall

conclusively determine the matter and there shall be no appeal from said decision and the decision. Judgment shall be entered upon the award in a court of competent jurisdiction**."** (*Id.*)

Here, applying the plain language of the CBA, the Arbitrator simply ordered the Employer to pay the monies owed as a result of the Employer's undisputed failure to make 401k contributions required by the parties' CBA. In so doing, the Arbitrator acted well within his authority under the CBA and the Award must be enforced.

III. THE UNION SHOULD BE AWARDED PRE-JUDGMENT INTEREST

The Court should award the Union prejudgment interest. Courts "have discretion to award prejudgment interest in claims arising under federal labor law." *Glass, Molders. Pottery, Plastics & Allied Workers Int'l Union v. Owens-Ill., Inc*., 758 F. Supp. 962, 974 (D. N.J. 1991) (citing *Ambrovage v. United Mine Workers of Am.*, 726 F.2d 972, 982 (3d Cir. 1984)). "Prejudgment interest is usually available when the damages 'are ascertainable with mathematical precision.'" *Local Union No. 825, 825A, 825B, 825C, 825D, 825R, 825RH v. Int'l Union of Operating Engineers*, No. Civ. 05-3269 (RBK), 2006 WL 1540997, at *6 (D. N.J. May 30, 2006) (quoting *Eazor Express, Inc. v. Int'l Bhd. of Teamsters*, 520 F.2d 951, 973 (3d Cir. 1975)); *see Owens-Ill., Inc*., 758 F. Supp. at 974. That is obviously the case here, as the Arbitrator has ordered a specific amount of damages owed.

As such, the Court should grant prejudgment interest for the period of August 23, 2020 to the date of the Court's order.

CONCLUSION

For the foregoing reasons, the Union's motion to enforce the 2020 arbitration award must be granted. The Court should order Manhattanview to comply with the 2020 Award and pay the

damages ordered by the Arbitrator, with prejudgment interest, along with costs and reasonable attorneys' fees.

Dated: December 8, 2020

Respectfully submitted,

/s Katherine H. Hansen
Katherine H. Hansen
Gladstein, Reif & Meginniss, LLP
39 Broadway, Suite 2430
New York, NY 10006
(212) 228-7727

Attorneys for 1199SEIU United Healthcare Workers East