

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 **SUMMARY ORDER**

4 RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED
5 AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 0.23 AND
6 FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT
7 CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION
8 MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)."
9 UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE
10 WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV), THE
11 PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER
12 WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE
13 AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT
14 DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

15 At a stated term of the United States Court of Appeals for the
16 Second Circuit, held at the Daniel Patrick Moynihan United States
17 Courthouse, 500 Pearl Street, in the City of New York, on the 4th
18 day of May, two thousand seven.

19 PRESENT:

20 HON. AMALYA L. KEARSE,
21 HON. ROBERT D. SACK,
22 Circuit Judges,
23 HON. RICHARD MILLS,
24 District Judge.*

25 -----

26 DISTRICT COUNCIL 1707, AMERICAN
27 FEDERATION OF STATE, COUNTY, and
28 MUNICIPAL EMPLOYEES, AFL-CIO, LOCAL
29 205,

No. 06-0325-cv

30 Plaintiffs-Appellees,

31 - v -

32 HOPE DAY NURSERY, INC.,

33 Defendant-Appellant.

*The Honorable Richard Mills, of the United States District Court for the Central District of Illinois, sitting by designation.

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2 Appearing for Appellant: Lendsey H. Jones, New York, NY.

3 Appearing for Appellees: Thomas M. Murray, Kennedy, Jennik,
4 & Murray, New York, NY.

5 Appeal from a judgment of the United States District Court
6 for the Southern District of New York (Richard M. Berman, Judge).

7 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND
8 DECREED that the judgment of the district court be, and it hereby
9 is, AFFIRMED.

10 Hope Day Nursery, Inc., appeals from a January 5, 2006
11 judgment of the United States District Court for the Southern
12 District of New York granting the plaintiffs' motion to confirm
13 and denying the defendant's cross-motion to vacate two
14 arbitration awards that (1) reinstated a discharged employee with
15 back pay; and (2) instructed Hope Day Nursery to "cease and
16 desist from hiring and/or assigning substitute teachers to work
17 extra hours" before first offering those hours to qualified
18 existing employees. We assume the parties' and counsel's
19 familiarity with the facts and procedural history of this case.

20 The district court properly found that Hope Day Nursery's
21 challenge to the first arbitration award was untimely.
22 "[G]rounds for vacating an arbitration award may not be raised as
23 an affirmative defense after the period provided in the
24 appropriate statute of limitations governing applications to
25 vacate an arbitration award has lapsed (in New York's case,
26 ninety days)." Local 802, Associated Musicians of Greater New
27 York v. Parker Meridien Hotel, 145 F.3d 85, 89 (2d Cir. 1998).
28 The first arbitration award, dated January 20, 2005, was
29 delivered to Hope Day Nursery by the American Arbitration
30 Association "on or about January 26, 2005." District Council
31 1707 v. Hope Day Nursery, Inc., No. 05 Civ. 3642 (RMB), 2006 WL
32 17791, at *3 (S.D.N.Y. Jan. 3, 2006). Hope Day Nursery was
33 therefore required to file its motion to vacate by April 26,
34 2005. Thus, its June 9, 2005 motion to vacate was untimely.

35 Hope Day Nursery challenges the second arbitration award as
36 "a clear violation of the public policy of the State of New
37 York." (Hope Day Nursery brief on appeal at 9.) While a court
38 may "refus[e] to enforce an arbitrator's award under a
39 collective-bargaining agreement because it is contrary to public
40 policy," such a refusal "is limited to situations where the
41 contract as interpreted would violate some explicit public policy

1 that is well defined and dominant, and is to be ascertained by
2 reference to the laws and legal precedents and not from general
3 considerations of supposed public interests." United
4 Paperworkers Int'l Union, AFL-CIO v. Misco, Inc., 484 U.S. 29,
5 42-43 (1987) (internal quotation marks omitted). Hope Day
6 Nursery has not pointed to a "well defined and dominant" public
7 policy that would be violated by enforcement of the collective
8 bargaining agreement's requirement that Hope Day Nursery offer
9 any extra work to "qualified, permanent, part-time employees"
10 before offering the work to substitute teachers.

11 We note that Hope Day Nursery's appeal is arguably moot,
12 inasmuch as it conceded at oral argument that it no longer exists
13 as a corporate entity. In light of the fact that the record is
14 silent as to defendant's current status either as a corporate
15 entity or as a contractor for the City of New York, however, we
16 decline to rest our decision on mootness grounds.

17 For the foregoing reasons, the judgment of the District
18 Court is hereby AFFIRMED.

19 FOR THE COURT:
20 THOMAS ASREEN, Acting Clerk of the Court

21 _____
22 By: Oliva M. George, Deputy Clerk
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