Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____ Argued - September 24, 2009

A. GAIL PRUDENTI, P.J.
HOWARD MILLER
CHERYL E. CHAMBERS
SHERI S. ROMAN, JJ.

2008-06462 DECISION & ORDER

In the Matter of Manhattan and Bronx Surface Transit Operating Authority, appellant, v Transport Workers Union of America, Local 100, et al., respondents.

(Index No. 39603/07)

Martin B. Schnabel, Brooklyn, N.Y. (Baimusa Kamara and Kimberly Westcott of counsel), for appellant.

Schwartz, Lichten & Bright, P.C., New York, N.Y. (Stuart Lichten of counsel), for respondents.

In a proceeding pursuant to CPLR article 75 to vacate an arbitration award dated July 27, 2007, the petitioner appeals from an order of the Supreme Court, Kings County (Solomon, J.), dated May 1, 2008, which denied the petition and granted the cross petition to confirm the award.

ORDERED that the order is reversed, on the law, with costs, the petition to vacate the award is granted, the cross petition to confirm the award is denied, and the arbitration award is vacated.

The arbitrator exceeded his authority in modifying the original arbitration award by reaching the merits of an issue which he had deemed uncontested in the original award (*see* CPLR 7509, 7511[c]). Accordingly, the arbitrator "went beyond correcting a miscalculation or mistake, correcting an award upon a matter not submitted to him without affecting the merits of the decision,

or correcting a matter of form not affecting the merits of the controversy" (*Matter of Outback Steakhouse, Inc. v Contracting Mgt., Inc.*, 58 AD3d 855, 855; *see Matter of New York Cent. Mut. Fire Ins. Co. v Pinckney*, 303 AD2d 757, 758). Therefore, the modified award dated July 27, 2007, must be vacated (*see* CPLR 7511[b][iii]).

PRUDENTI, P.J., MILLER, CHAMBERS and ROMAN, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court