

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

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Argued - December 1, 2009

REINALDO E. RIVERA, J.P.  
HOWARD MILLER  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS, JJ.

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2008-09321

DECISION & ORDER

In the Matter of County of Rockland, appellant,  
v Rockland Association of Management, respondent.

(Index No. 2874/08)

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Saretsky Katz Dranoff & Glass, LLP, New York, N.Y. (Robert B. Weissman of counsel), for appellant.

James R. Sandner, New York, N.Y. (Ann M. Burdick of counsel), for respondent.

In a proceeding pursuant to CPLR article 75 to permanently stay arbitration, the petitioner appeals from an order of the Supreme Court, Rockland County (Nelson, J.), dated September 3, 2008, which denied the petition and granted the cross motion of Rockland Association of Management to compel arbitration.

ORDERED that the order is reversed, on the law, with costs, the petition to permanently stay arbitration is granted, and the cross motion to compel arbitration is denied.

After Zoltan Vaizer was terminated from his employment with the petitioner, County of Rockland, he commenced a proceeding pursuant to CPLR article 78 to review the County's determination. Vaizer alleged, inter alia, breaches of a collective bargaining agreement between the County and the respondent, Rockland Association of Management (hereinafter the association), of which he was a member. Shortly thereafter, the association, on behalf of Vaizer, served a notice of intention to arbitrate, in accordance with the final step in the grievance procedure outlined in the collective bargaining agreement. The County commenced the instant proceeding to permanently stay

January 5, 2010

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the arbitration, and the association cross-moved to compel arbitration. The Supreme Court, determining that there was no waiver of the right to arbitrate, denied the petition and granted the cross motion. We reverse.

A right to arbitration may be modified, waived, or abandoned (*see Sherrill v Grayco Bldrs.*, 64 NY2d 261, 272). The commencement of the CPLR article 78 proceeding seeking a judicial determination of whether the County breached the collective bargaining agreement constituted a waiver of the right to arbitration (*see Hart v Tri-State Consumer, Inc.*, 18 AD3d 610, 612; *Matter of G.J. DiBenedetto, M.D., P.C. Retirement Trust v Nationwide Assoc.*, 297 AD2d 740, 741; *Matter of Worcester Ins. Co. v Sauro*, 251 AD2d 509, 509; *Matter of Hawthorne Dev. Assoc. v Gribin*, 128 AD2d 874, 875). This is not a situation where either the claims pursued and/or the remedies sought are essentially different (*compare Matter of City School Dist. of City of Poughkeepsie v Poughkeepsie Pub. School Teachers Assn.*, 35 NY2d 599).

RIVERA, J.P., MILLER, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court