

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 17-02122

PRESENT: SMITH, J.P., CARNI, DEJOSEPH, NEMOYER, AND TROUTMAN, JJ.

IN THE MATTER OF ARBITRATION BETWEEN TOWN OF
TONAWANDA, PETITIONER-RESPONDENT,

AND

MEMORANDUM AND ORDER

TOWN OF TONAWANDA SALARIED WORKERS ASSOCIATION,
L. EDWARD ALLEN, PRESIDENT, TOWN OF TONAWANDA
SALARIED WORKERS ASSOCIATION, AND MARK KOCHER,
TREASURER, TOWN OF TONAWANDA SALARIED WORKERS
ASSOCIATION, RESPONDENTS-APPELLANTS.

BARTLO, HETTLER, WEISS & TRIPI, KENMORE (PAUL D. WEISS OF COUNSEL),
FOR RESPONDENTS-APPELLANTS.

GOLDBERG SEGALLA, BUFFALO (SEAN P. BEITER OF COUNSEL), FOR
PETITIONER-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (E. Jeannette Ogden, J.), entered October 5, 2017 in a proceeding pursuant to CPLR article 75. The order granted the petition to vacate an arbitration award and denied respondents' cross motion to confirm that award.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the petition is denied, the cross motion is granted, and the award is confirmed.

Memorandum: Petitioner commenced this proceeding to vacate or modify an arbitration award, and respondents filed an "answer and cross motion" to confirm the award. We agree with respondents that Supreme Court erred in granting the petition and vacating the award. The award does not violate a strong public policy, is not irrational, and does not " 'clearly exceed[] a specifically enumerated limitation on the arbitrator's power' " (*Matter of United Fedn. of Teachers, Local 2, AFT, AFL-CIO v Board of Educ. of City Sch. Dist. of City of N.Y.*, 1 NY3d 72, 79 [2003]; see *Matter of Lucas [City of Buffalo]*, 93 AD3d 1160, 1163-1164 [4th Dept 2012]). We note in particular that the award is not irrational inasmuch as the arbitrator offered at least "a barely colorable justification for the outcome reached" (*Matter of Monroe County Sheriff's Off. [Monroe County Deputy Sheriffs' Assn., Inc.]*, 79 AD3d 1797, 1799 [4th Dept 2010] [internal quotation marks omitted]). Contrary to petitioner's alternative contention, the award cannot be modified "without affecting the merits of the decision upon the issues submitted" (CPLR 7511 [c] [2]), and thus we see no basis

for such modification. We therefore reverse the order, deny the petition, grant the cross motion, and confirm the award.

Entered: April 27, 2018

Mark W. Bennett
Clerk of the Court