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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 215 SSM 29
In the Matter of Asset Protection
& Security Services, LP,
Respondent,
v.
Service Employees International
Union, Local 200 United,
Appellant.

Submitted by Drew Blanton, for appellant.
Submitted by Steven E. Carr and Matthew K. Pelkey, for
respondent.

MEMORANDUM:

The order of the Appellate Division, insofar as
appealed from, should be reversed, with costs, the petition to
vacate the arbitrator's award dismissed, and the cross petition
to confirm the arbitrator's award granted in the entirety.

Petitioner failed to meet its heavy burden to establish that the arbitrator exceeded his authority by ordering petitioner to reinstate grievant Kristin Osterman with back pay (see CPLR 7511 [b]; North Syracuse Cent. School Dist. v North Syracuse Educ. Assn., 45 NY2d 195, 200 [1978]). Although the collective bargaining agreement between the parties limits an arbitrator's authority to award lost wages where an employee is "placed on unpaid administrative leave or suspended during an investigation mandated by [the Bureau of Immigration and Customs Enforcement] for an employee action," petitioner failed to establish that the circumstances of grievant's termination fell within the terms of that provision.

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On review of submissions pursuant to section 500.11 of the Rules, order, insofar as appealed from, reversed, with costs, petition to vacate the arbitration award dismissed, and cross petition to confirm the arbitration award granted in the entirety, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided September 11, 2012