

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

1328

CA 09-01105

PRESENT: MARTOCHE, J.P., SMITH, PERADOTTO, GREEN, AND PINE, JJ.

IN THE MATTER OF THE ARBITRATION BETWEEN
THE BUFFALO TEACHERS FEDERATION, INC.,
PETITIONER-RESPONDENT,

AND

MEMORANDUM AND ORDER

BOARD OF EDUCATION OF BUFFALO CITY SCHOOL
DISTRICT, RESPONDENT-APPELLANT.

ALISA A. LUKASIEWICZ, CORPORATION COUNSEL, BUFFALO (DENISE M. MALICAN
OF COUNSEL), FOR RESPONDENT-APPELLANT.

JAMES R. SANDNER, LATHAM (ROBERT W. KLINGENSMITH, JR., OF COUNSEL),
FOR PETITIONER-RESPONDENT.

Appeal from an order (denominated judgment) of the Supreme Court,
Erie County (Joseph R. Glowonia, J.), entered August 8, 2008 in a
proceeding pursuant to CPLR article 75. The order, inter alia,
granted the petition seeking to vacate an arbitration 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 petition is granted and the arbitration award is confirmed.

Memorandum: Respondent appeals from an order in this CPLR
article 75 proceeding that, inter alia, granted the petition seeking
to vacate an arbitration award and denied its cross petition to
confirm the award. We reverse. Contrary to petitioner's contention,
the arbitration award was not irrational, inasmuch as it cannot be
said that "there is no proof whatever to justify the award" (*Matter of
Buffalo Teachers Fedn., Inc. v Board of Educ. of City School Dist. of
City of Buffalo*, 50 AD3d 1503, 1505, lv denied 11 NY3d 708 [internal
quotation marks omitted]). Indeed, "[a]n arbitration award must be
upheld when the arbitrator 'offer[s] even a barely colorable
justification for the outcome reached' " (*Wien & Malkin LLP v
Helmsley-Spear, Inc.*, 6 NY3d 471, 479, cert dismissed 548 US 940; see
also *Buffalo Teachers Fedn., Inc.*, 50 AD3d at 1505). Here, the
arbitrator determined that, although respondent violated its
collective bargaining agreement with petitioner by failing to provide
petitioner with written notice of disciplinary proceedings against a
tenured teacher, no remedy was warranted because petitioner had actual
notice of the proceedings before the teacher's employment was
terminated. Although the arbitration award referred to matters
outside the record that was before the arbitrator, the arbitrator's

conclusion that petitioner was aware of the disciplinary proceedings is not irrational because it is supported by documentary evidence that was in the record before the arbitrator (see *Buffalo Teachers Fedn., Inc.*, 50 AD3d at 1505). In fact, the record contains a stipulation by the parties that petitioner's grievance on behalf of the tenured teacher was dated July 10, 2003 but that respondent did not terminate the employment of the tenured teacher until July 16, 2003.