

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

1024

CA 10-00465

PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, FAHEY, AND GREEN, JJ.

IN THE MATTER OF GENEVA CITY SCHOOL DISTRICT,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ANONYMOUS, A TENURED TEACHER,
RESPONDENT-RESPONDENT.

FERRARA, FIORENZA, LARRISON, BARRETT & REITZ, P.C., EAST SYRACUSE
(MILES G. LAWLOR OF COUNSEL), FOR PETITIONER-APPELLANT.

JAMES R. SANDNER, LATHAM (TIMOTHY S. TAYLOR OF COUNSEL), FOR
RESPONDENT-RESPONDENT.

TIMOTHY G. KREMER, EXECUTIVE DIRECTOR, LATHAM (JAY WORONA OF COUNSEL),
FOR NEW YORK STATE SCHOOL BOARDS ASSOCIATION, INC., AMICUS CURIAE.

O'HARA, O'CONNELL & CIOTOLI, FAYETTEVILLE (DENNIS G. O'HARA OF
COUNSEL), FOR NEW YORK STATE ASSOCIATION OF MANAGEMENT ADVOCATES FOR
SCHOOL LABOR AFFAIRS, AMICUS CURIAE.

Appeal from an order of the Supreme Court, Ontario County
(Frederick G. Reed, A.J.), entered April 23, 2009. The order denied
the petition to vacate an arbitration award.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioner filed 16 disciplinary charges pursuant to
Education Law § 3020-a against respondent, a tenured teacher employed
by petitioner as a high school librarian. Respondent requested a
hearing, and the parties selected, "by mutual agreement," an
arbitrator to serve as the Hearing Officer (§ 3020-a [3] [b] [ii]).
At the commencement of the hearing, respondent moved for summary
judgment dismissing 11 of the 16 charges. The Hearing Officer made an
"interim award" granting the motion. Before the hearing reconvened on
the remaining charges, petitioner commenced this proceeding seeking to
vacate the interim award, contending that it was irrational and
violated an important public policy. Supreme Court rejected those
contentions and denied the petition.

We affirm, but for a different reason. The interim award was not
"a final and definite award" resolving the matter submitted for
arbitration (CPLR 7511 [b] [1] [iii]; see *Matter of Town of*

Southampton v Patrolman's Benevolent Assn. of Southampton Town, Inc., 8 AD3d 580). Inasmuch as the interim award does not constitute a "final determination[] made at the conclusion of the arbitration proceedings" (*Mobil Oil Indonesia v Asamera Oil [Indonesia]*, 43 NY2d 276, 281), there is no authority for judicial intervention at this juncture (see *Town of Southampton*, 8 AD3d 580; *Matter of Adelstein v Thomas J. Manzo, Inc.*, 61 AD2d 933).

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court