

## Appellate Division, Fourth Department Vacates Imperfectly Executed Arbitration Award



### Imperfectly Executed 1

New York Civil Practice Law & Rules (CPLR) Section 7511(b)(1)(iii) provides that an arbitration award "shall be vacated" where the arbitrator "so imperfectly executed [the award] that a final and definite award upon the subject matter submitted was not made" CPLR 7511(b)(1)(iii). The Federal Arbitration Act similarly authorizes vacatur "where the arbitrators"so imperfectly executed [their powers] that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4).

In *Professional, Clerical, Tech. Emps. Ass'n v. Board of Ed. for Buffalo City School Dist.*, \_\_\_ A.D.3d \_\_\_, 2018 N.Y. Slip Op. 04128, at \*1 (4th Dep't June 8, 2018), the New York Supreme Court, Appellate Division, Fourth Department, held that the trial court erred by confirming a labor arbitration award that did not adequately explain the basis for the compensation to be awarded or how it should be calculated.

The labor arbitration arose out of a Buffalo School District's "plan to transfer certain employees previously assigned to work at a single location to new positions requiring them to alternate between two different work locations." 2018 N.Y. Slip Op. 04128, at \*1. The arbitrator ruled in favor of the Union, finding "that [the School District] involuntarily transferred the grievants in violation of the collective bargaining agreement between the parties, and directed respondent to compensate the grievants "for work performed at more than one location from November 30, 2013 until the end of the 2016 Budget Year." 2018 N.Y. Slip Op. 04128, at \*1 (quoting Award).

In support of the School District's cross-petition to vacate the award, the School District's Chief of Staff submitted an affidavit stating "that none of the affected employees was terminated or had his or her compensation reduced as a result of the allegedly wrongful transfers." 2018 N.Y. Slip Op. 04128, at \*1. Accordingly, it apparently was unclear to the School District what compensation, if any, it was supposed to pay to satisfy the award.



## Imperfectly Executed 2

The Court agreed that the award was imperfectly executed. "An award[,] said the Court, is indefinite or nonfinal within the meaning of [CPLR § 7511(b)(1)(iii)] only if it leaves the parties unable to determine their rights and obligations, if it does not resolve the controversy submitted or if it creates a new controversy." 2018 N.Y. Slip Op. 04128, at \*1 (citations and quotations omitted). An award is "indefinite and nonfinal," and "[v]acatur" is warranted, "where the award failed to set forth the manner of computing monetary damages." 2018 N.Y. Slip Op. 04128, at \*1 (citations omitted).

Here, "[t]he award [did] not explain the basis for the compensation allegedly owed to the grievants, nor [did] it detail how that compensation should be calculated." 2018 N.Y. Slip Op. 04128, at \*1. It "appear[ed]" to the Court "that the arbitrator merely copied verbatim the remedy requested by petitioner rather than making findings of his own." 2018 N.Y. Slip Op. 04128, at \*1.

The Court "therefore reverse[d] the order, den[ied] the petition [to confirm], grant[ed] the cross petition [to vacate], vacate[d] the award, and remit the matter to [the trial court], which," said the Court, "shall remit the matter to the arbitrator to determine whether any compensation is owed to the grievants, and, if so, to determine the amount of such compensation or how it can be calculated with reasonable precision." 2018 N.Y. Slip Op. 04128, at \*1 (citations omitted).

More on final versus non-final awards here, [here](#), and here.

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