

Appellate Division, First Department Vacates Arbitration Award Because it Rewrote the Parties' Collective Bargaining Agreement



New York's arbitration law (Article 75 of the CPLR), like the Federal Arbitration Act (the "FAA"), strictly limits award challenges premised on an arbitrator's disregard of the parties' contract. Arbitrator interpretations of the parties' agreement cannot be second-guessed, even if the arbitrator has "disregarded" "the apparent, or even the plain, meaning of the words of the contract"?.
Maross Constr. v Central N. Y. Regional Transp. Auth., 66 N.Y 2d 341, 346 (1985) (quotations and citations omitted). To succeed, an award challenger must show that the award "is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power." *Kowaleski v. New York State Dep't Correctional Serv.*, 16 N.Y. 3d 85, 91 (2010).

In *City of New York v. District Council 37*, ___ A.D. 3d ___, 2018 NY Slip Op 3220 (1st Dep't May 3, 2018), the New York's Supreme Court, Appellate Division, First Department set aside an award because it exceeded "a specifically enumerated limitation" on arbitral power: The parties' agreement prohibited the arbitrator from adding to or modifying the agreement.

"The arbitrator's decision," said the Court, "rewrote the contract for the parties by expanding the number of workers entitled to the [collective bargaining agreement's] assignment differential, when the contract expressly limited the differential to workers at a specific facility." 2018 N.Y. Slip Op. 3220 at *1.

Acknowledging that "[a] provision in a contract that the arbitrator may not alter or modify a contract does not limit the arbitrator's power to resolve the dispute by interpreting the contract based on his or her findings as to the parties' intent[,]?" the Court explained that "an award should be vacated where it is not derived from the contract, but from the deliberate and intentional consideration of matters outside the contract." 2018 N.Y. Slip Op. 3220 at *1.

To learn more about vacating awards based on an arbitrator's manifest disregard of the contract click [here](#), [here](#), [here](#), [here](#), [here](#), and [here](#).

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