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

No. 128

In the Matter of Buffalo
Professional Firefighters
Association, Inc., &c.,
Respondent,

v.

Anthony Masiello, &c. et al.,
Appellants.

Jeffrey F. Swiatek, for appellants.
E. Joseph Giroux, Jr., for respondent.
State of New York Public Employment Relations Board,
amicus curiae.

MEMORANDUM:

The Appellate Division order should be modified,
without costs, by vacating the arbitration award in its entirety
and, as so modified, affirmed.

Recognizing that stalled collective bargaining
negotiations between municipalities and police or firefighters'

unions could jeopardize public safety, the Legislature created a system whereby impasses in such negotiations are first submitted to mediation and then, if they remain unresolved, proceed to compulsory public interest arbitration (see Civil Service Law § 209 [4]). There, an arbitration panel selected by the parties -- one member by the City, one by the Union and a third by both -- is required to make "a just and reasonable determination of the matters in dispute," taking into account certain enumerated factors (id. § 209 [4] [c] [v]). A party may commence a CPLR article 75 proceeding to challenge a compulsory public interest arbitration award (Caso v Coffey, 41 NY2d 153, 156 [1976]); on such a proceeding, the reviewing court examines the award to determine whether it is rational (see id. at 158). Here, the Appellate Division appropriately concluded that the issue of health insurance was not an issue before the arbitration panel, inasmuch as the parties agreed, as part of their Memorandum of Agreement on health insurance, that the City would withdraw its sole health insurance proposal from the panel's consideration. Thus, the Appellate Division appropriately vacated that part of the award.

However, the Appellate Division erred in vacating only the health insurance portion of the arbitration award. The arbitration panel did not consider the issue of wages in isolation. Indeed, the arbitration panel explained that it was rejecting the City's wage proposal, but that it would generate

savings for the City on the health insurance portion of the arbitration award. As the parties agree, the separate portions of the arbitration award were so interdependent, no part thereof could be vacated without affecting the merits of the remainder of the award.* While the parties debate whether CPLR 7511 (c) is applicable here, we need not reach the issue.

* * * * *

Order modified, without costs, by vacating the arbitration award in its entirety and, as so modified, affirmed, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided October 15, 2009

* While this determination appears to award affirmative relief to a non-appellant, the appellant to this Court stated that if this Court agrees with the Appellate Division rationale on the issue of health insurance, a total vacatur of the award is required.