

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

In the Matter of the Application of

**BUFFALO PROFESSIONAL
FIREFIGHTERS ASSOCIATION, INC.,
IAFF Local 282,**

Petitioner,

- against -

**ANTHONY MASIELLO, Mayor of the City
of Buffalo, New York and the CITY OF
BUFFALO, NEW YORK,**

Respondents.

NOTICE OF ENTRY

Index No. I 2005-9450

PLEASE TAKE NOTICE that the within is a true copy of an Order executed on January 27, 2012 regarding the above-entitled proceeding, and entered in the Office of the Erie County Clerk on January 30, 2012.

DATED: Buffalo, New York
January 30, 2012

GOLDBERG SEGALLA LLP

By: 

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STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

FILED
ACTIONS & PROCEEDINGS

JAN 30 2012

ERIE COUNTY
CLERK'S OFFICE

In the Matter of the Application of

**BUFFALO PROFESSIONAL
FIREFIGHTERS ASSOCIATION, INC.,
LOCAL 282 IAFF, AFL-CIO,**

ORDER

Index No. I 2005-9450

Petitioner,

Hon. John A. Michalek, J.S.C.

-against-

**ANTHONY MASIELLO, Mayor of the City
of Buffalo, New York and the CITY OF
BUFFALO, NEW YORK,**

Respondents.

Petitioner, Buffalo Professional Firefighters Association, Inc., by its attorneys Creighton, Johnsen & Giroux, Jonathan G. Johnsen, Of Counsel, having moved for a judgment pursuant to CPLR §§ 7510 and 7514 confirming the Opinion and Award on Remand dated April 11, 2011 issued by the Public Interest Arbitration Panel chaired by Thomas Rinaldo, Esq.; and the Respondents, City of Buffalo and its current Mayor Byron Brown, by their attorneys Goldberg Segalla LLP, Matthew C. Van Vessem, Of Counsel, having opposed the motion and having cross-moved to vacate the said Arbitration Award;

NOW, upon reading Petitioner's Notice of Motion dated July 5, 2011 and the Affirmation in Support of Motion to Confirm Arbitration Award signed by Jonathan Johnsen on July 5, 2011, with exhibits; and upon reading Respondents' Notice of Cross-Motion dated October 6, 2011 and the Affirmation in Support of Cross-Motion to Vacate Award signed by Matthew C. Van Vessem on October 6, 2011, with exhibits; and upon reading the Affidavit in Opposition to the Respondents' Cross-Motion to Vacate the

Arbitration Award and In Further Support of Motion to Confirm the Arbitration Award signed by Jonathan Johnsen on October 21, 2011, with exhibits, submitted on behalf of Petitioner; and upon reading the Reply Affirmation signed by Matthew C. Van Vessem on November 1, 2011, submitted on behalf of Respondents; and upon the attorneys for the parties coming to be heard before this Court on November 3, 2011; and this Court having issued a bench decision on January 12, 2012, a transcript of which is attached hereto as Exhibit A and made a part hereof; it is hereby

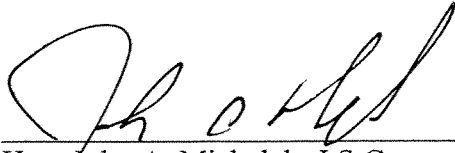
ORDERED, that Petitioner's motion to confirm the Opinion and Award on Remand dated April 11, 2011 issued by the Public Interest Arbitration Panel chaired by Thomas Rinaldo, Esq. is denied; and it is further

ORDERED, that Respondents' motion to vacate the said Opinion and Award is granted; and it is further

ORDERED, ADJUDGED and DECREED, that the said Opinion and Award is vacated; and it is further

ORDERED, ADJUDGED and DECREED, that the Petitioner's underlying petition be and hereby is dismissed.

Dated: Buffalo, New York
January 27, 2012


Hon. John A. Michalek, J.S.C.

GRANTED

ENTER:

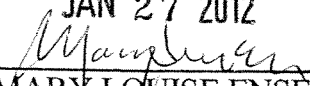
JAN 27 2012
BY 
MARY LOUISE ENSER
COURT CLERK

EXHIBIT A

STATE of NEW YORK : SUPREME COURT

COUNTY of ERIE : PART 26

BUFFALO PROFESSIONAL FIREFIGHTERS
ASSOCIATION, INC.,
LOCAL 282, IAFF, AFL-CIO,

Petitioners,

-vs-

Index #2005-9450
Decision

ANTHONY MASIELLO, Mayor of the
CITY of BUFFALO and the
CITY of BUFFALO, NEW YORK,

Respondents.

25 Delaware Avenue
Buffalo, New York 14202
January 12, 2012

B e f o r e :

HONORABLE JOHN A. MICHALEK,
Supreme Court Justice.

A p p e a r a n c e s :

JONATHAN G. JOHNSEN, ESQ.,
Appearing for the Petitioners.

MATTHEW C. VAN VESSEM, ESQ.,
Appearing for the City of Buffalo.

Sandra A. Lelito,
Supreme Court Reporter.

1 THE COURT: We got two things, we're going to
2 take them -- I don't know what order you guys want
3 them. Buffalo Professional Firefighters Association,
4 Inc. and Local 282, IAFF, AFL-CIO versus Anthony
5 Masiello, City of Buffalo, City of Buffalo, New York.
6 I'm going to do that first. Then we're going to do in
7 the Matter of the Application of Buffalo Professional
8 Firefighters Association, Inc. for an order and
9 judgment pursuant to Article 78 of the Civil Practice
10 Law and Rules against Buffalo Fiscal Stability
11 Authority, City of Buffalo and Byron Brown, Mayor of
12 the City of Buffalo.

13 MR. VAN VESSEM: That's fine, your Honor.

14 THE COURT: So, I'm sure you want this all on
15 the record as well, so let's have appearance of counsel
16 starting from my left.

17 MR. JOHNSEN: Jonathan Johnsen, Creighton,
18 Johnsen & Giroux, for the Buffalo Professional
19 Firefighters Association, Inc.

20 MR. VAN VESSEM: Matthew C. Van Vessem,
21 Goldberg, Segalla, for the City of Buffalo.

22 MR. SULLIVAN: Richard Sullivan of Harris,
23 Beach for the Buffalo Fiscal Stability Board.

24 THE COURT: Okay. So on the second one,
25 we're just reading the decision, I think, or is there

1 argument on the second one, too?

2 MS. CLARKE: Well, both was -- both cases
3 were for decision today, but they -- we did ask for
4 subsequent submissions and you were going to give them
5 an opportunity to speak if they wanted to.

6 THE COURT: Yeah, okay. So, you're going to
7 speak -- speak on the submissions.

8 MS. CLARKE: If they like but --

9 THE COURT: I know, they don't have to.
10 Again, we're doing the first one first, which is a
11 motion to confirm the arbitration award. So that means
12 Johnsen gets to go first. And then we have the
13 cross-motion by Van Vessem to vacate the arbitration
14 award to dismiss the petition. You want to add
15 anything?

16 MR. JOHNSEN: Nothing to add, Judge.

17 THE COURT: God bless you. Not that that
18 will help you but, Van Vessem.

19 MR. VAN VESSEM: Nothing, Judge.

20 THE COURT: Swell.

21 MS. CLARKE: I guess Mr. Sullivan has nothing
22 to add.

23 THE COURT: You're not in this.

24 MR. SULLIVAN: Am I in this?

25 THE COURT: Wait a minute. I'm going to do

1 this. Anything to do on the second one? I'm going to
2 do this all at once. You want to add anything? The
3 second one, by the way, again, is a petition pursuant
4 to CPLR Article 78 for declaratory judgment, again, by
5 the firefighters, and motion to recuse and to dismiss
6 petition. And that's, again, by Van Vessem and Buzard.
7 Anything you want -- anybody want to add anything that?

8 MR. JOHNSEN: It's their motion to dismiss
9 so --

10 THE COURT: No, whose motion for declaratory
11 judgment?

12 MR. VAN VESSEM: It was a motion to dismiss.

13 THE COURT: Yeah. All right.

14 MR. VAN VESSEM: Nothing to add to that
15 matter, your Honor, other than to note in our January
16 6th, 2012 letter to the Court that if the motion of the
17 City or BFSAs is denied, the CPLR 7804(f) grants us the
18 right to submit an answer to discuss the issues of the
19 merits of the case.

20 THE COURT: Yeah.

21 MR. SULLIVAN: I have nothing to add, your
22 Honor.

23 THE COURT: Okay. All right. Now, that all
24 being said, thank you, counsel, we're going to do the
25 first one which, once more, is the Buffalo Professional

1 Firefighters. Again, I'm going to ask someone to
2 submit a copy of the transcript with any proposed order
3 or orders.

4 And again, Buffalo Professional Firefighters
5 Association, Inc. versus Anthony Masiello, City of
6 Buffalo, et cetera. Motion to confirm arbitration
7 award, cross motion to vacate the interest arbitration
8 award and to dismiss the petition. Okay. Just so this
9 makes sense, I'm just going -- usually I don't do this,
10 but a little background.

11 Again, in this proceeding, again, the firefighters
12 seek to confirm what we call the Rinaldo II panel's
13 arbitration award, which was issued on April 11th,
14 2011, and the City seeks to have it vacated.

15 The present litigation arises out of the 2005
16 Rinaldo I panel's arbitration award. And this Court
17 vacated the award on the grounds that the panel had not
18 complied with an age-old Fourth Department holding as
19 to the specificity required with respect to the
20 considerations forming the basis of the award.

21 The Appellate Division reversed this Court,
22 acknowledging the Fourth Department's precedent upon
23 which the Court relied, but stating that it was not
24 going to adhere to their decision in the Matter of the
25 Buffalo Police Benevolent Association versus the City

1 of Buffalo regarding the required specificity as to the
2 bases for the arbitration award.

3 The Appellate Division threw out the health
4 insurance portion of the arbitration award on the
5 ground that this issue had not actually been properly
6 before the Arbitration Panel, but confirmed the wage
7 increase portion of the award.

8 The Court of Appeals reversed the Fourth
9 Department on the ground that the separate portions of
10 the arbitration award were so interdependent no part
11 thereof could be vacated without affecting the merits
12 of the remainder of the award. Matter of Buffalo
13 Professional Firefighters Association, 13 NY3d 803,
14 2009.

15 In 2010 a second arbitration was conducted, and in
16 2011 the Rinaldo II panel issued its arbitration award
17 which gave the firefighters the same percentage wage
18 increases but made no ruling on the health insurance.

19 All right. So relief sought by the petitioner,
20 again, that is, a judgment pursuant to Sections 7510
21 and 7514 of New York's Civil Practice Law and Rules
22 confirming the opinion and award on remand dated April
23 11, 2011, issued by the Public Interest Arbitration
24 Panel chaired by Thomas Rinaldo, i.e., Rinaldo II.
25 Court's going to deny that request.

1 And the relief sought by the respondents, City and
2 the Mayor, that is, for an order vacating the interest
3 arbitration award dated April 11, 2011 and dismissing
4 the motion filed by petitioner. I'm going to grant
5 that.

6 This Court's rationale is that the award of the
7 Rinaldo II panel, this Court finds, is arbitrary and
8 capricious, exceeds the panel's authority, is not
9 consistent with due process, lacks a rational basis and
10 violates or disregards plain and clear existing law
11 and, therefore, must be vacated.

12 Specifically, the Rinaldo II award lacks a
13 rational basis and violates applicable law in that
14 issuing the same award as to wage increases as did the
15 Rinaldo I award without making any award as to health
16 insurance, the Rinaldo II panel disregarded the clear
17 determination and dictate of the Court of Appeals in
18 the Matter of Buffalo Professional Firefighters
19 Association, Inc., Local 282, IAFF, AFL-CIO-CLC, 13
20 NY3d 803, again 2009.

21 In explaining its rationale for reversing the
22 Fourth Department which had upheld the Rinaldo I award
23 as it related to wage increases, but had vacated it as
24 it related to health insurance, the Court of Appeals
25 stated as follows; indeed, the arbitration panel

1 explained that it was rejecting the City's wage
2 proposal but that it would generate savings for the
3 City on the health insurance portion of the arbitration
4 award. As the parties agree, the separate portions of
5 the arbitration award were so interdependent no part
6 thereof could be vacated without affecting the merits
7 of the remainder of the award.

8 In attempting to rationalize its actions which
9 disregard the Court of Appeals' ruling, Rinaldo II
10 award states as follows; the panel is mindful of the
11 language it utilized in the initial award that took
12 into account its now discredited award on health
13 insurance. As seen above, the first panel's reference
14 to the health insurance portion of its award on the
15 issue of wages was limited to one sentence, I'm
16 quoting, in setting forth its conclusions that the
17 City's position on proposals one and two will not be
18 accepted across the board, this panel would point out
19 the award will generate some savings to the City by the
20 panel's award on City proposals three and four, end
21 quotes. This panel observes that the remarks of the
22 first panel were not so much set forth as justification
23 for the wage increase awarded but as part of the
24 justification for rejecting the City's position that no
25 wage increases be awarded for the two year period in

1 question.

2 This Court finds, however, as already noted, the
3 Court of Appeals adjudicated just that rationale the
4 first time around by finding that the arbitrator's
5 tying of the rejection of the City's proposal of zero
6 wage increases with the health care ruling rendered the
7 two issues so interdependent no part thereof could be
8 vacated without affecting the remainder of the award.

9 Thus, the Rinaldo II panel has not only
10 demonstrated that the Court of Appeals had zeroed in on
11 the exact connection between the City's zero wage
12 increase proposal and the Rinaldo I panel's health
13 insurance ruling, but now improperly reiterates that
14 same rationale for the Rinaldo II award. Therefore,
15 the Rinaldo II award violates the law in that it
16 disregards the dictates of the Court of Appeals.

17 Furthermore, the award of the Rinaldo II panel
18 violates the law in that it disregards Public
19 Authorities Law Section 3858 and resolution number
20 04-35, also known as the 2004 wage freeze, and
21 resolution number 11-05 imposed by the Buffalo Fiscal
22 Stability Authority by awarding retroactive wage
23 increases. The Buffalo Fiscal Stability Authority
24 Section 3858 and resolution 04-35 had been upheld by
25 the higher courts. Meegan vs. Brown, 16 NY3d 395,

1 2011, in *Meegan vs. Masiello*, 21 AD3d 1266, Fourth
2 Department, 2005. An arbitration award cannot
3 disregard applicable law. Court cites *Matter of*
4 *Berent*, County of Erie, 86 AD2d 764, Fourth Department,
5 1982.

6 Moreover, the *Rinaldo II* award fails to comply
7 with the Civil Service Law Section 209(c)(v) and *Matter*
8 *of Buffalo Professional Firefighters Association, Inc.,*
9 *Local 282, IAFF, AFL-CIO-CLC, Masiello*, 50 AD3d 106,
10 Fourth Department, 2008. In determining the matters in
11 dispute, the Arbitration Panel must comply with Civil
12 Service Law Section 209(4)(c)(v) by specifying the
13 bases for its findings, taking into consideration the
14 four factors that are then set out in detail, in
15 addition to any other relevant factors.

16 These four factors are as follows; one, a
17 comparison of the wages, hours and conditions of
18 employment of the employees involved in the arbitration
19 proceeding with those of other employees performing
20 similar services and other employees generally in
21 comparable communities. Two, the public welfare and
22 the ability of the public employer to pay. Three, a
23 comparison of peculiarities of the employment at issue
24 with other employment, including hazards of employment,
25 physical qualifications, educational qualifications,

1 mental qualifications and job training and skills.

2 Four, in the terms of past collective bargaining
3 agreements.

4 The Appellate Division, Fourth Department held in
5 2008 that the language of this statute does not require
6 discussion of each of the statutory factors or those
7 factors put in issue by the parties. The statute
8 simply requires, as it expressly states, that the panel
9 consider the statutory factors and specify the basis
10 for its findings. Court cites again, Matter of the
11 Arbitration Between Buffalo Professional Firefighters
12 Association, Inc., Local 282, IAFF, AFL-CIO, Masiello,
13 50 AD3d 106.

14 The Rinaldo II panel failed to comply with this
15 standard. Rather, as noted by the City, with respect
16 to the award as it relates to the issue of health
17 insurance, the Rinaldo panel paid lip service to its
18 obligation under Civil Service Law 209(4)(c)(v) to
19 provide the basis for the award by merely stating as
20 follows; in quotes, taking into account all statutory
21 criteria set forth in Civil Service Law 209.4, the
22 panel finds that there is insufficient justification to
23 award the City its proposal.

24 This Court finds that such a bare bones statement
25 does not satisfy Section 209 of the Civil Service Law,

1 even in light of the Fourth Department's recently
2 articulated holding as to the level of specificity
3 required.

4 Furthermore, in an effort to provide an additional
5 basis for its award as to health insurance, the Rinaldo
6 II panel references a separate contract arbitration
7 award issued by another arbitrator, namely, Dennis
8 Campagna, the remedial portion of which award was
9 issued in November 2010 after the hearing before the
10 Rinaldo II panel had been closed. Thus, the Rinaldo II
11 panel acted outside its authority by impermissibly
12 basing its award on matters outside the record and
13 deciding issues outside the terms of the submission to
14 it of present disputes. Court cites Mount St. Mary's
15 Hospital vs. Catherwood, 26 NY2d 493, 1970. Also, Caso
16 vs. Coffey, 53 AD2d 373, Second Department, 1976,
17 affirmed 41 NY2d 153, 1976.

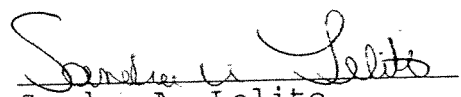
18 For all the reasons cited herein, this Court
19 denies the petition and grants the cross motion to
20 vacate the interest arbitration award and to dismiss
21 the petition.

22 Finally, this Court finds no merit to respondents'
23 argument that this Court lacks jurisdiction over this
24 matter.

25 (Proceeding concluded.)

* * *

1
2 I hereby certify that the foregoing is a true and
3 accurate transcript of the official court reporter's
4 minutes of the proceedings and testimony in the matter
5 of Buffalo Professional Firefighters versus Masiello,
6 et al.

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8 
9 Sandra A. Lelito,
Supreme Court Reporter.

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