UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALLIED INTERNATIONAL UNION,

Petitioner,

-against-

TRISTAR PATROL SERVICES, INC.,

Respondent.

06 Civ. 15515 (LAP)

MEMORANDUM AND ORDER

LORETTA A. PRESKA, U.S.D.J.

This case arises out of a labor dispute subject to a collective bargaining agreement. Allied International Union ("Petitioner") brings this petition to confirm an arbitration award (the "Award") issued against Tristar Patrol Services, Inc. ("Respondent").[1] Respondent cross-petitions to vacate the Award. For the following reasons, the Award is confirmed in its entirety.

BACKGROUND[2]

Petitioner and Respondent are parties to a Collective Bargaining Agreement ("CBA") for the period beginning

[1] Petitioner commenced this proceeding against Respondent and Gary Zimmer, Respondent's President. On January 23, 2007, Petitioner voluntarily dismissed Gary Zimmer pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure.

[2] This section includes only those facts that are (i) undisputed or otherwise conceded by the parties, or (ii) are not contradicted by other evidence in the record on these petitions.

September 1, 2005, through August 31, 2008, which governs Respondent's employment of Petitioner's members. See CBA Art. XXIX.[1] Petitioner is the "sole and exclusive bargaining representative" of Respondent's "full and part-time security guards . . . with respect to wages, hours, and conditions of employment." Id. Art. I.

The CBA sets forth, inter alia, the methods by which accrued vacation time, holiday pay, and sick leave may be requested and accounted for, as well as a system for the redress of grievances through arbitration. See CBA passim. The CBA contains an arbitration provision that sets forth the manner in which an arbitrator is to be selected and makes the arbitrator's decision final and binding on all the parties. See id. Art. IX(D). This provision also states in part that "the arbitrator shall have no authority to modify, change, add to, or subtract from any of the terms or conditions of this Agreement or to base a decision on any past practice which is inconsistent" with said terms or conditions. Id. Art. IX(D)(5). The CBA is silent on the subject of the remedies available to an arbitrator called upon to resolve a dispute arising under its provisions. Id.

[1] The CBA is attached as Exhibit A to the "Petition to Confirm Arbitration Award," filed by Petitioner in this Court on December 28, 2006.

Petitioner alleged that Respondent breached the CBA by repeatedly failing to pay wages due its employees timely beginning in January 2005. Award at 5.[4] Petitioner filed a grievance with Respondent detailing these allegations in March 2006. See Pet. ¶ 4.[5]

The parties were unable to resolve the grievance by negotiation and, thus, mutually selected an arbitrator pursuant to the CBA to decide the dispute. See Award at 1. On July 7, 2006, counsel for Petitioner sent Arbitrator Carol Wittenberg a letter informing her of her selection. See Compagnon Ltr. at 1 (the "Selection Letter").[6] This letter was also sent to Mr. Zimmer. See id. The subject of the Selection Letter stated as follows: "Allied International Union and Tristar Patrol Services Inc. Violation of Articles XII [Wages], XVII [Holidays], XVIII [Vacations] and XIX [Sick/Personal Leave]." id.

Arbitrator Wittenberg spoke directly with counsel for Petitioner and Mr. Zimmer and scheduled a hearing for October 13, 2006. See Award at 1. Arbitrator Wittenberg

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[4] "Award" refers to the Opinion and Award entered by Arbitrator Carol Wittenberg on November 21, 2006. The Award is attached as Exhibit B to the "Petition to Confirm Arbitration Award."

[5] "Pet." refers to the "Petition to Confirm Arbitration Award."

[6] "Compagnon Ltr." refers to the letter from Alan M. Compagnon, counsel for Petitioner, to Arbitrator Wittenberg, dated July 7, 2006. The Selection Letter is attached as Exhibit A to the Affidavit of Arbitrator Wittenberg, dated February 12, 2007 ("Wittenberg Aff").

also sent letters on July 18 and October 6, 2006 notifying the parties of the date and location of the hearing. Id.[7]

Nevertheless, neither Mr. Zimmer nor a representative of Respondent attended the hearing. Id. In addition, Respondent did not request an adjournment of the hearing or notify Arbitrator Wittenberg that neither Mr. Zimmer nor a representative of Respondent would be unable to appear at

[7] Mr. Zimmer states that "[he] was never advised of the exact date or time of the arbitration," either in writing or orally. Affidavit of Gary Zimmer, dated January 24, 2007 ("Zimmer Aff."), at ¶ 2. In support of this claim, Mr. Zimmer asserts that "[he] never received any letter from the arbitrator including the letter [counsel for Petitioner] states was dated July 18, 2006" and that he "[has] no knowledge of any Tristar agent or representative['s] receiving these notices." Id. Mr. Zimmer further states that "[t]here is nothing in the arbitration award that the arbitrator or the [Petitioner] attempted to contact Tristar or me to advise me that an arbitration hearing was occurring" and that he "[is] aware of no Tristar representative['s] receiving any such call." Id.

Notwithstanding Mr. Zimmer's testimony, there is no dispute that Respondent was notified of the October 13, 2006 hearing date. With respect to oral notice, Mr. Zimmer does not respond to the statement in the Award by Arbitrator Wittenberg that "[she] scheduled the hearing after speaking directly with . . . [him]." Award at 1. In connection with this case, Arbitrator Wittenberg submitted an affidavit on behalf of Petitioner and stated that she "spoke to Mr. Zimmer by telephone about the hearing date." Wittenberg Aff. at ¶ 3. In addition, Respondent failed to submit any evidence to controvert the statement in the Award by Arbitrator Wittenberg that "at the arbitration hearing Joe Glennan, [Petitioner's] Secretary-Treasurer, testified that he reminded Earl Thomas, whom he described as [Respondent's] Manager, that the arbitration hearing was going forward on October 13, 2006." Award at 2.

With respect to written notice, there is no dispute that Arbitrator Wittenberg sent letters on July 18 and October 6, 2006 to the parties apprising them of the hearing date. Mr. Zimmer does not dispute that the letters were sent or that the address used for him was correct. Mr. Zimmer does state that "Tristar ha[d] no full-time staff as of November 31, 2006 because of the loss of a major security guard contract with the City where [it] lost approximately 99% of [its] workforce." Zimmer Aff. ¶ 4. Mr. Zimmer failed to address, inter alia, the procedures for the receipt of mail at Respondent during the relevant time period, the employees involved in that process, and when prior to November 31, 2006 these employees were no longer employed by Respondent. Thus, there is no contrary evidence to establishing that the July 18 and October 6, 2006 letters were sent by Arbitrator Wittenberg and received by Respondent.

the hearing. Id. at 2. "In light of Mr. Zimmer agreeing to the arbitration date of October 13, 2006 and the Arbitrator's written confirmation to [Respondent] of the hearing, including a follow-up letter, the Arbitrator decided to proceed ex parte." Id. Petitioner produced its evidence, and Arbitrator Wittenberg ruled that the proceedings would not be closed until Petitioner submitted a post-hearing brief. Id.

The next week, Mr. Zimmer requested that Arbitrator Wittenberg reopen the hearing to allow it to present its position. Id. Petitioner and Arbitrator Wittenberg agreed to do so, subject to the condition that Respondent pay $2,250.00, its share of the cost of the arbitration to that point, by October 27, 2006. Id. Despite agreeing to do so, Respondent failed to timely remit this payment, but Arbitrator Wittenberg waited until November 2, 2006 to notify Petitioner of this fact. Id. at 3. On November 6, 2006, Petitioner withdrew its consent to reopen the hearing and filed its post-hearing brief on November 18, 2006, at which time Arbitrator Wittenberg declared the proceedings closed. Id.

Arbitrator Wittenberg issued her decision on November 21, 2006. She stated that "[t]he issue before [her]" was the following:

> Did [Respondent] violate the [CBA] by its longstanding and continuous failure to make timely wage payments to employees? If so, what shall the remedy be?

Id. Arbitrator Wittenberg concluded that Respondent owed Petitioner's employees $35,610.96 in outstanding wages for sick/personal leave, bereavement leave, jury duty, standby pay, hours worked, and holidays, and $87,936.00 in outstanding wages for vacation pay. Id. at 10, 13-14. Because Arbitrator Wittenberg found that Respondent had "violated the [CBA] in a willful manner over an extended period of time" she ordered it to pay all outstanding wages within fifteen days, including pre-award interest of 9% per annum on all claimed unpaid vacation money, with post-award interest of 9% to be awarded on all monies ordered to be paid in the event Respondent failed to comply. Id. at 10-11. Arbitrator Wittenberg further found that Petitioner had been damaged in that it had been compelled to "expend enormous amounts of time and money to police the agreement" and awarded $25,000.00 in compensatory damages. Id. at 13. Arbitrator Wittenberg reasoned that "in the absence of a monetary penalty, the [Respondent] is left free to ignore the provisions of the contract that protect employees' rights." Id. at 12. Finally, Arbitrator Wittenberg awarded attorney's fees to Petitioner in the amount of $7,850.00,

citing the "serious and willful nature" of Respondent's "bad faith" in repeatedly failing to pay its employees. Id. at 11-12.

DISCUSSION

This Court has jurisdiction pursuant to Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), which provides subject-matter jurisdiction over actions to confirm or vacate an arbitration award. See Local 802, Associated Musicians of Greater New York v. Parker Meridien Hotel, 145 F.3d 85, 88 (2d Cir. 1998); Burns Int'l Sec. Serv., Inc. v. United Plant Guard Workers of Am., Local 537, 47 F.3d 14, 16 (2d Cir. 1995).[8]

[8] Respondent appears to contend that either the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq., or New York's analogous arbitration statute, N.Y. CPLR 7501 et seq., govern the Court's review of the Award. Compare Letter from Christopher A. Smith, counsel for Respondent, to Mr. Compagnon, dated March 12, 2007 ("Smith Ltr."), at 1 ("CPLR 7511(b) authorizes a Court to vacate the award if the Court finds the arbitrator acted ultra vires."), with id. (stating that the arbitrator "manifestly disregarded the law," which is a judicially created basis for vacatur under the FAA, see Wallace v. Buttar, 378 F.3d 182, 189-90 (2d Cir. 2004)), and (Answer and Counterclaim to the Petition, filed on January 24, 2007 ("Answer"), at ¶ 10) (reciting the statutory language set forth in 9 U.S.C. § 10(a)(4) in support of its claim that Arbitrator Wittenberg "exceed[ed] her authority" by "ruling on matters not properly submitted" and "so imperfectly exercised [her] power"). The Court of Appeals has held that "the substantive law fashioned under § 301 is 'analytically distinct' from the provisions of the FAA and that it would be error to collapse the analysis under the two statutes" and, thus, that "the FAA is no longer applicable to actions to enforce arbitration awards brought pursuant to § 301 of the LMRA." Westerbeke Corp. v. Daihatsu Motor Co., 304 F.3d 200, 222 (2d Cir. 2002) (citing Coca-Cola Bottling Co. v. Soft Drink & Brewery Workers Union Local 812, 242 F.3d 52, 53-54 (2d Cir. 2001)). Courts in this Circuit only look to New York's arbitration statute when the LMRA

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A. Legal Standard For Judicial Review Of An Arbitral Award Issued Pursuant to A Collective Bargaining Agreement

"Judicial review of a labor-arbitration decision pursuant to [a collective bargaining agreement] agreement is very limited." Major League Baseball Players Ass'n. v. Garvey, 532 U.S. 504, 509 (2001). "[A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of [her] authority, that a court is convinced [she] committed serious error does not suffice to overturn [her] decision." United Paperworkers Int'l Union v. Misco, 484 U.S. 29, 38 (1987). The rationale for this deference is in part due to "the need . . . for flexibility in meeting a wide variety of situations. The draftsmen [of a collective bargaining agreement] may never have thought of what specific remedy should be awarded to meet a particular contingency." United Steelworkers of Am. v. Enterprise Wheel and Car Corp., 363 U.S. 593, 597 (1960).

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is silent on an issue, such as the applicable statute of limitations for commencing an action to challenge an arbitrator's ruling. See, e.g., New York City Dist. Council of Carpenters Pension Fund v. Dafna Constr. Co. Inc., 438 F. Supp. 2d 238, 240 (S.D.N.Y. 2006) (citing Burns Int'l Sec. Servs. Inc. v. Int'l Union United Plant Guard Workers of Am. (UPGWA) and Its Local 537, 47 F.3d 14, 16 (2d Cir. 1995)). Because the case law interpreting the LMRA provides the substantive standard of review for an arbitrator's award, the Court declines to apply any other substantive law to its review of the Award.

Nevertheless, when reviewing an award under Section 301, "[t]he principal question for the reviewing court is whether the arbitrator's award 'draws its essence from the collective bargaining agreement, since the arbitrator is not free merely to dispense [her] own brand of industrial justice.'" Saint Mary Home, Inc. v. Serv. Employees Int'l Union, Dist. 1199, 116 F.3d 41, 44 (2d Cir. 1997) (quoting In re Marine Pollution Serv., Inc. v. Local 282, Int'l Bhd. Of Teamsters, 857 F.2d 91, 94 (2d Cir. 1988) (quoting Enterprise Wheel, 363 U.S. at 597)). The Court of Appeals has interpreted this highly deferential standard to mean "that an arbitration award must be upheld when the arbitrator 'offer[s] even a barely colorable justification for the outcome reached.'" Wackenhut Corp. v. Amalgamated Local 515, 126 F.3d 29, 31 (2d Cir. 1997) (quoting Andros Compania Maritima, S.A. v. Marc Rich & Co., 579 F.2d 691, 704 (2d Cir. 1978)).[9]

On the issue of remedies, the Supreme Court has stated that "where it is contemplated that the arbitrator will determine remedies for contract violations that [she]

[9] The Court of Appeals has also refused to enforce an arbitral award issued pursuant to a collective bargaining agreement that is contrary to public policy. See Local 97 Int'l Brotherhood of Electrical Workers, A.F.L.-C.I.O. v. Niagara Mohawk Power Corp., 196 F.3d 117, 125 (2d Cir. 1999). Because Respondent does not make this argument with respect to the CBA, the Court declines to address it.

finds, courts have no authority to disagree with [her] honest judgment in that respect. If the courts were free to intervene on these grounds, the speedy resolution of grievances by private mechanisms would be greatly undermined." Misco, 484 U.S. at 38. The Court of Appeals has also held that "[m]erely because an arbitral decision is not based on the express terms of a collective bargaining agreement does not mean that it is not properly derived from the agreement." Harry Hoffman Printing v. Graphic Comm. Int'l Union, Local 261, 950 F.2d 95, 98 (2d Cir. 1991). In addition, "[i]t is also clear that an arbitrator may look for guidance from many sources to interpret a silent or ambiguous collective bargaining agreement. New York Hotel & Motel Trades Council, AFL-CIO v. Hotel Ass'n of New York City, No. 93 Civ. 2708, 1993 WL 485560, at *7 (S.D.N.Y. Nov. 24, 1993) (citing Enterprise Wheel, 363 U.S. at 597)).

With respect to attorney's fees, the general rule that each litigant must bear its own costs unless the contract provides otherwise applies in arbitration. See Interchem Asia 2000 Pte. Ltd. v. Oceana Petrochemicals AG, 373 F. Supp. 2d 340, 355 (S.D.N.Y. 2005) (citing Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 U.S. 598, 602 (2001)). However, under some circumstances

an award of attorney's fees will be confirmed. For example, attorney's fees may be awarded where the arbitrator finds that a party has acted in bad faith and caused its opponent to incur legal costs. See Synergy Gas Co. v. Sasso, 853 F.2d 59, 65 (2d Cir. 1988) (citing Fortex Mfg. Co. v. Local 1065, Amalgamated Clothing Workers of Am., 99 L.R.R.M. (BNA) 2303, 2304-05 (M.D. Ala. 1978)).

B. Application To The Award

The gravamen of Respondent's position is that Arbitrator Wittenberg granted Petitioner certain relief that was not permitted under the CBA. See Smith Ltr. passim. Respondent contends that the remedies of pre-Award interest on any back pay amounts, back pay amounts post-Selection Letter, compensatory damages, and attorney's fees are not provided for in the CBA. Id. In addition, Respondent contends that this error was compounded because the Selection Letter failed to apprise it that Petitioner was seeking these remedies from Arbitrator Wittenberg. Id.

Respondent's argument fails for at least three reasons. First, with regard to the permissible menu of remedies available to Arbitrator Wittenberg under the CBA, Respondent's argument proves too much. As noted earlier, the CBA does not set forth any specific remedy for a breach

of the Agreement. See supra at 2. Respondent interprets said silence narrowly to the effect that an arbitrator has no authority to grant the aforementioned remedies.[10] However, that argument is belied by the fact that the CBA does not itemize a single remedy available to an arbitrator resolving a dispute under the Agreement. Thus, if Respondent's interpretation were correct, the CBA's arbitration provision would be rendered entirely superfluous because the arbitrator would have no explicit authority to award any remedy. This would include, for example, those outstanding wages awarded by Arbitrator Wittenberg prior to the Selection Letter which Respondent does not contest. See Zimmer Aff. ¶ 4 ("I concede that some of the amounts in the arbitration award are owed by the corporation . . . .").

[10] Respondent's reliance on Hygrade Operators v. Local 333, 945 F.2d 18, 23-24 (2d Cir. 1991) and Synergy Gas, 853 F.2d at 63-64, for the proposition that Arbitrator Wittenberg did not have authority for her Award is misplaced. See Smith Ltr. at 2. In those cases, the Court of Appeals confirmed awards where the collective bargaining agreement or the issues submitted for arbitration by the parties expressly permitted certain remedies. In neither decision did the Court of Appeals hold or state in dicta that had the affirmative language authorizing such relief been absent, there could have been no such awards. Accordingly, these decisions do not address the precise issue before the Court where, inter alia, the CBA is silent on the issue of remedies generally. Moreover the Court notes that this is not a case where the remedies contained in the Award directly contravened express provisions of the CBA, such as bargained-for wage rates. See, e.g., Leed Architectural Prods., Inc. v. United Steelworkers of Am., Local 6674, 916 F.2d 63, 66 (2d Cir. 1990) (reversing confirmation of an arbitration award where the arbitrator awarded a different wage increase to grievants in direct contravention of the wage rates set forth in the collective bargaining agreement).

deference described by the Supreme Court in Enterprise Wheel, 363 U.S. at 597, to permit the arbitrator to fashion the most appropriate remedy under the circumstances, is warranted. Here, Arbitrator Wittenberg made no reference to any submission or consideration outside the CBA in rendering the Award. As described earlier, Arbitrator Wittenberg grounded each aspect of relief awarded to specific findings based on the record before her. (See supra at 6-7.) Under these circumstances, the Court cannot conclude that Arbitrator Wittenberg's decision, including the relief awarded, was not "drawn from the essence of the agreement."

Second, with regard to the purported lack of notice, without citing to any provision of the CBA or case law for this point, Respondent attempts to limit the scope of the arbitration to the Selection Letter. The heading of the Selection Letter merely stated that the arbitration was in reference to violations of four Articles of the CBA; it did not speak to the issue of appropriate remedies, if any. Accordingly, Arbitrator Wittenberg stated that the issue to be resolved by the arbitration is whether "[Respondent] violate[d] the [CBA] by its longstanding and continuous failure to make timely wage payments to its employees? If so, what shall the remedy be?" Award at 3 (emphasis added).

In construing the scope of a similar issue submitted to arbitration pursuant to a collective bargaining agreement, Senior District Judge Charles S. Haight, Jr. recently stated that it "places no limitations on the type of remedy that could be fashioned." Local 2179, United Automobile Workers of Am. v. The Design Tex Group, No. 07 Civ. 080, 2007 WL 2687628, at *5 (S.D.N.Y. Sept. 13, 2007).

Third, assuming arguendo that Respondent's substantive challenges to the Award have some merit, they were waived by its failure to appear at the hearing. Courts in this District have reached the same conclusion under circumstances similar to those here. See Local Union No. 38 v. Hollywood Heating & Cooling, Inc., 88 F. Supp. 2d 246, 255 (S.D.N.Y. 2000) (holding that "Hollywood's failure to attend the August hearing preceding that award constitutes a waiver of any merit-based defenses it may have had"); New York Hotel & Motel Trades Council v. Hotel St. George, 988 F. Supp. 770, 777 (S.D.N.Y. 1997) (holding that "when St. George failed to appear at the arbitration, it did waive the right to assert in this proceeding any merit-based defenses it may have had to the 1997 Award, including its claim that the 1997 Award is barred by the res judicata

effect of the 1993 Award").[11] Former Chief Judge Michael B. Mukasey explained that "permitting a party to oppose confirmation of an award based on a claim that it did not raise before the arbitrator would also offend the general principle that a party 'cannot remain silent, raising no objection during the course of the arbitration proceedings, and when an award adverse to him has been handed down complain of a situation of which he had knowledge from the first.'" Hotel St. George, 988 F. Supp. at 778 (quoting York Research Corp. v. Landgarten, 927 F.2d 119, 122 (2d Cir. 1991)).

[11] Cf. Fishman v. Farfield Towers, No. 01 Civ. 7014, 2001 WL 1338897, at *3-*4 (S.D.N.Y. Oct. 31, 2001) (confirming an arbitration award and concluding that Fairfield waived the only potentially cognizable challenge to the arbitrator's decision: "Fairfield might have made these arguments-known as an 'impasse and posting' defense-at either the May 21, 2001 arbitration hearing or in the June 2001 post-hearing briefs, but apparently did not do so. For that reason, to the extent that it is trying to do so here, Fairfield is barred from interposing such a defense."); American Nursing Home v. Local 44 Hotel, No. 89 Civ. 1704, 1992 WL 47553, at *4 (S.D.N.Y. Mar. 4, 1992) ("The Employers are precluded from asserting their impasse and posting defense before this Court because without excuse or justification, they failed to present such a defense to the Arbitrator. Failure to raise an issue in an arbitration proceeding waives the issue in a confirmation or enforcement proceeding.").

Accordingly, the Award is confirmed in its entirety.[12] Respondent shall pay the amounts in items two through six in the remedies section of the Award. See Award at 13-14.[13]

[12] In reaching this determination, the Court also rejects two additional arguments that appear in the record based on Respondent's submissions. First, to the extent Respondent asserts that the Award should be vacated on the ground that Arbitrator Wittenberg improperly refused to grant an adjournment that materially prejudiced its case, that argument is meritless. See Answer ¶ 9. "[T]he granting or denying of an adjournment falls within the broad discretion of appointed arbitrators." Prozina Shipping Co. Ltd. v. Elizabeth-Newark Shipping, Inc., No. 98 Civ. 5834, 1999 WL 705545, at *3 (S.D.N.Y. Sept. 10, 1999) (quoting Tempo Shain Corp. v. Bertek, Inc., 120 F.3d 16, 19 (2d Cir. 1997)). "So long as there is a reasonable basis for the arbitrator's refusal, the award will stand." Prozina Shipping, 1999 WL 705545, at *3. Here, where Respondent offered no excuse for failing to appear at the arbitration hearing (see supra at 4-5), Arbitrator Wittenberg's decision not to adjourn the hearing was eminently reasonable. Moreover, the reasonableness of Arbitrator Wittenberg and Petitioner was demonstrated when, "on October 19, 2006, [Petitioner] consented to Tristar's request to reopen the hearing on the condition set forth by [Arbitrator Wittenberg]; namely that Tristar timely submit payment of its share of the arbitration costs." Pet. ¶ 12; see also Answer ¶ 1. Nevertheless, it was Respondent that improperly refused to pay its share of the arbitration costs despite this agreement and the express provision in the CBA mandating that such costs be shared equally. See CBA Art. IX(D)(6). Second, Respondent asserts that it would be unable to pay the compensatory damages award because to do so would violate 29 U.S.C. § 186, which makes it unlawful for "any employer . . . to pay . . . any money or other thing of value . . . to any representative of any of his employees . . . ." Zimmer Aff. ¶ 6. This contention is without merit because the statute specifically excepts "payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator . . . ." 29 U.S.C. § 186(c). See also New York Telephone Co. v. Communications Workers of America Local 1100, 256 F.3d 89, 90 (2d Cir. 2001) (stating that "29 U.S.C. § 186, which proscribes payments by an employer to a union, [is] subject however to certain exceptions-including an exception (§ 186(c)(2)) allowing payments in settlement of disputes and payments in satisfaction of court or arbitral awards").

[13] The Court declines to make Respondent comply with the injunctive relief ordered by Arbitrator Wittenberg because, as conceded by Petitioner, that relief is "moot." Letter from Mr. Compagnon to Mr. Smith, dated March 12, 2007, at 2.

CONCLUSION

For the reasons set forth above, the petition to confirm the Award [dkt. no. 1] is granted, and the cross-petition to vacate the Award [dkt. no. 10] is denied. Judgment shall be entered in accordance with the Award.

The Clerk of the Court shall mark this action closed and all pending motions are denied as moot.

SO ORDERED:

Dated: September 26, 2007
New York, New York

Loretta A. Preska

LORETTA A. PRESKA, U.S.D.J.