

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

596

CA 09-02604

PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, GREEN, AND GORSKI, JJ.

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IN THE MATTER OF THE ARBITRATION BETWEEN  
LIVERPOOL PUBLIC LIBRARY, PETITIONER-APPELLANT,

AND

MEMORANDUM AND ORDER

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL  
1000, AFSCME, A.F.L.-C.I.O., LIVERPOOL PUBLIC  
LIBRARY UNIT OF ONONDAGA LOCAL 834,  
RESPONDENT-RESPONDENT.

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COSTELLO, COONEY & FEARON, PLLC, SYRACUSE (NADINE C. BELL OF COUNSEL),  
FOR PETITIONER-APPELLANT.

D. JEFFREY GOSCH, SYRACUSE, FOR RESPONDENT-RESPONDENT.

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Appeal from an order of the Supreme Court, Onondaga County (John C. Cherundolo, A.J.), entered October 6, 2009 in a proceeding pursuant to CPLR article 75. The order denied the petition for a stay of arbitration.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner commenced this proceeding pursuant to CPLR article 75 seeking a permanent stay of arbitration of a disciplinary grievance by respondent on behalf of one of its members, an employee of petitioner, on the ground that the grievance was not arbitrable. Contrary to petitioner's contention, Supreme Court properly denied the petition. Although the question of arbitrability is generally one for judicial determination, here the parties have "evinced a 'clear and unmistakable' agreement to arbitrate arbitrability as part of their alternative dispute resolution choice" in their collective bargaining agreement (CBA) (*Matter of Smith Barney Shearson v Sacharow*, 91 NY2d 39, 46; see generally *AT&T Tech., Inc. v Communications Workers of Am.*, 475 US 643, 649). Article 8 of the CBA, which governs disciplinary grievance procedures, incorporates by reference the general arbitration procedures set forth in Article 7, which governs grievances related to the CBA itself. Pursuant to those procedures, where either party to the CBA alleges that a grievance is not subject, in whole or in part, to arbitration, "the Arbitrator shall be required . . . to rule upon the question of . . . arbitrability in advance of receiving evidence upon any other issue." Inasmuch as that provision is not modified or curtailed by Article 8,

the court properly denied the petition.

Entered: April 30, 2010

Patricia L. Morgan  
Clerk of the Court