SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JANE S. SOLOMON Justice PART 55

Index Number : 402016/2010
SMITH, GWENDOLYN
vs.
NYC BOARD OF COLLECTIVE
SEQUENCE NUMBER : 002
DISMISS

INDEX NO. _____
MOTION DATE 10/27/10
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1-3
Answering Affidavits — Exhibits	4
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion is decided by the memorandum annexed to Motion Seq. 001 of this Index No.

FILED
DEC 02 2010
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/30/10

JANE S. SOLOMON J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55
----------X

GWENDOLYN SMITH,

Petitioner,

-against-

NEW YORK CITY BOARD OF COLLECTIVE BARGAINING, NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION, and DISTRICT COUNCIL 37, LOCAL 983,

Respondents.
----------X

Index No. 402016/2010
DECISION and ORDER

SOLOMON, J.:

Pro se petitioner, Gwendolyn Smith (Smith) challenges the determination of respondent New York City Board of Collective Bargaining (Board) denying her reinstatement to her prior employment status with the City of New York as a City Seasonal Aide (CSA) with respondent New York City Department of Parks and Recreation (DPR). DPR, Board and District Council 37, Local 983 (DC 37) independently move to dismiss the petition. DPR moves on the ground that Smith failed to serve it with process. The Board and DC 37 move on the procedural ground that the petition is time barred, and the substantive ground that the decision was not arbitrary or capricious. CSA employees are represented by DC 37. Smith was employed as a CSA by DPR from 2000 through July 2009. She patrolled a portion of Far Rockaway Beach to ensure that the beaches were not used after designated swimming hours. On July 1, 2009, Smith was terminated for leaving her post. She appealed

her termination, and was granted a "Step II" hearing to review the circumstances of her termination, as allowed under the relevant collective bargaining agreement (Agreement). Notably, the Agreement does not allow CSAs to arbitrate employment disputes. A hearing was granted, and on July 16, 2009, the hearing officer upheld Smith's termination. On October 16, 2009, Smith filed an improper practice petition against DC 37 and DCR. The Board heard the petition, and on April 6, 2010, upheld the termination, stating "the Union exercised every right Petitioner had under the Agreement," "her allegations of better treatment for 'similarly situated' employees are entirely conclusory," and determined that the respondents' actions did not constitute an improper practice (Hearing Decision, attached to Petition, Ex. A, p. 9-10). Smith filed this petition on July 29, 2010.

Though article 78 challenges generally must be brought within four months, that limitations period may be shortened by law under CPLR 217 (*Matter of Red Hook/Gowanus Chamber of Commerce v. NY City Board of Standards and Appeals*, 5 NY3d 452, 460 [2005]). Section 12-308(a) of the New York City Collective Bargaining Law (NYCCBL) does this. It provides that "[a]ny order of the Board of Collective Bargaining . . . shall be (1) reviewable under article seventy-eight of the civil practice law and rules upon petition filed by an aggrieved party within thirty days after service by registered or certified mail of a copy of such order upon such party." The underlying decision, issued on

April 6, 2010, was received by Smith prior to April 23, 2010.[1] Smith filed this petition over three months later. Accordingly, it is time barred. In light of this, DPR's motion to dismiss for insufficient service of process is moot.

Even were the petition timely, it is insufficient to overturn the Board's determination. Smith argues only that "employer offered me my job back, however, based on Boards decision I was not rehired . . . Court should reverse decision because contract is double standard" (Petition, p. 1). Her claim that she was not given "the proper hearings" is belied by the documents she relies upon and her claims that her employers failed to properly investigate her incident were raised and rejected in the underlying decision.

In accordance with the foregoing, it hereby is

ORDERED that the motions to dismiss the petition are granted, and the petition is dismissed.

Dated: 11/30, 2010

Enter

J.S.C.

JANE S. SOLOMON

FILED

DEC 02 2010

NEW YORK
COUNTY CLERK'S OFFICE

[1] Respondents do not supply evidence of service of the Board's decision, however, they provide a letter from Smith to the Office of Collective Bargaining, dated April 23, 2010, relating in part that she received the decision (Letter, attached to Wirenius Affirmation, Ex. A).