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

PRESENT: CAROL E. HUFF PART 32

Index Number : 101817/2011
UNIFORMED FIREFIGHTERS
VS.
CITY OF NEW YORK
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

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

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

motion is decided in accordance with accompanying memorandum decision

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: OCT 04 2011

CAROL E. HUFF 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: PART 32

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UNIFORMED FIREFIGHTERS ASSOCIATION OF GREATER NEW YORK, LOCAL 94, IAFF, AFL-CIO, : Index No. 101817/11

Petitioner, :

For a Judgment Pursuant to Article 78 of the CPLR, :

- against - :

THE CITY OF NEW YORK and THE FIRE DEPARTMENT OF THE CITY OF NEW YORK, :

Respondents. :

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CAROL E. HUFF, J.:

Motions with sequence numbers 001 and 003 are consolidated for disposition.

In this Article 78 proceeding, petitioner Uniformed Firefighters Association of Greater New York, Local 94, AFF, AFL-CIO ("UFA") seeks to annul a determination by respondent New York City Board of Collective Bargaining ("BCB") dated January 5, 2011 (4 OCB2d 3), which dismissed UFA's improper practice petition and found that a change in the selection criteria used for the Fire Department's "chauffeur" position is not subject to collective bargaining. BCB cross moves to dismiss the petition.

Within respondent Fire Department of the City of New York ("FDNY"), a company chauffeur is a firefighter selected by the company commander. The chauffeur is charged with driving the firefighting vehicle and setting its position and connections at the scene of an emergency. A chauffeur receives a pay differential for the job. In its October 16, 2009, All

Units Circular ("AUC"), the FDNY changed the selection criteria for the chauffeur position. Previously, the selection was "by seniority except when members have received less than satisfactory annual evaluations in any area that reflects on the duties and responsibilities of a chauffeur." AUC 254, August 27, 1992, ¶ 13. In the new AUC: "The ultimate decision to award the position . . . shall be based primarily on the following: annual performance evaluations, aptitude, demeanor, judgment and seniority." AUC 254 Addendum 1, October 15, 2009, ¶ 9.

In the BCB proceeding, UFA argued that under the New York City Collective Bargaining Law ("NYCCBL") the FDNY cannot unilaterally make this change, which makes seniority one of several criteria rather than the primary one. UFA contended that such a change is substantial and is subject to collective bargaining. The BCB found otherwise, holding that UFA's "demand to bargain over the newly added non-seniority related criteria . . . impermissibly infringes management's ability to make that judgment, and therefore is not a mandatory subject of bargaining." BCB determination at 8. The BCB found that the City's power to make the change was reserved under NYCCBL § 12-307(b), which provides that the City has the right to "determine the standards of selection for employment, . . . [and] determine the methods, means and personnel by which government operations are to be conducted. . . ." It further found that its decision was in accordance with relevant decisions by the Public Employment Relations Board ("PER"), which administers the New York State Civil Service Law (the "Taylor Law"). The Taylor Law is mirrored in the NYCCBL, and only PERB would have standing to bring a declaratory judgment action asserting that an equivalency does not exist. Mayor of the City of New York v Council of the City of New York, 9 NY3d 23 (2007).

In Caruso v Anderson, 138 Misc2d 719, 720 (Sup Ct, NY County 1987, Saxe, J.), the

court noted:

> [The BCB] is charged with enforcing and implementing a sophisticated labor relations statute, the provisions of which encompass complex and difficult issues of labor law. The courts have recognized the experience developed by these administrative agencies in the areas of their statutory jurisdiction. In this regard, the Court of Appeals has held: "As the agency charged with implementing the fundamental policies of the Taylor Law, the Board is presumed to have developed an expertise and judgment that requires us to accept its construction [of the Taylor Law] if not unreasonable" (Incorporated Vil. of Lynbrook v New York State Pub. Employment Relations Bd., 48 NY2d 398, 404 [1979]).

Unless the Board's finding is affected by an error of law or is arbitrary and capricious or an abuse of discretion, the Court will uphold its findings. CPLR 7803(3).

UFA has failed to establish a factual or legal basis for finding that the BCB determination was arbitrary and capricious or affected by error of law. The BCB's interpretation of NYCCBL § 12-307(b), as allowing the City unilaterally to establish these qualifications for FDNY chauffeurs, is a reasonable reading of the statute.

Accordingly, it is

ADJUDGED that the petition (sequence 001) is denied; and it is further

ADJUDGED that the cross motion (sequence 003) is granted; and it is further

ADJUDGED that the proceeding is dismissed.

Dated: OCT 04 2011

CAROL E. HUFF
J.S.C.

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