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

PRESENT: ROBERT E. TORRES JUDGE Justice PART 29

Index Number 106268/2011

ROBERTS, LILLIAN

VS

NYC OFFICE OF COLLECTIVE

SEQUENCE NUMBER 001

ARTICLE 78

INDEX NO. 106268/2011

MOTION DATE 1/12

MOTION SEQ. NO. 1

MOTION CAL. NO.

this motion to/for

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1, 2, 3
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

In accordance with

FILED

APR 30 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/12/2012

ROBERT E. TORRES J.S.C.
JUDGE

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 BRONX, PART 29
PRESENT: HONORABLE ROBERT E. TORRES, J.S.C.

In the Matter of the Application of
LILLIAN ROBERTS, as Executive Director of District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO, and PATRICK BAHNKEN, as President of Local 2507 of District Council 37, AFSCME, AFL-CIO, VINCENT VARIALE, as President of Local 3612 of District Council 37, AFSCME, AFL-CIO,

Petitioners,

For a judgment Pursuant to Article 78 of the Civil Practice Law and Rules,

-against-

NEW YORK CITY OFFICE OF COLLECTIVE BARGAINING, BOARD OF COLLECTIVE, Marlene Gold, as Chairperson, and THE CITY OF NEW YORK, Michael R. Bloomberg, as Mayor, THE MAYOR'S OFFICE OF LABOR RELATIONS, James Hanley, as Commissioner, THE FIRE DEPARTMENT OF THE CITY OF NEW YORK, Salvatore J. Cassano, as Commissioner,

Respondents.

INDEX NUMBER:106268/2011

Petitioner brings the instant petition pursuant to Article 78 of the Civil Practice Law and Rules seeking to move this Court to issue an Order directing Respondent Board of Collective Bargaining to reverse its decision and declare that the Fire Department of the City of New York's unilateral implementation of a "zero tolerance" drug testing policy violated Section 12-306(a)(1) and (a)(4). Respondents New York City Office of Collective Bargaining, Board of Collective, Marlene Gold, as Chairperson (collectively "Board") move this Court to dismiss the instant petition pursuant to CPLR § 7804(f) and uphold its decision in DC 37, 4 OCB2d 19 (BCB 2011) dated April 28, 2011. The City of New York; Michael R. Bloomberg, as Mayor of the City of New York; the Mayor's Office of Labor Relations; the Fire Department of the City of New York; Salvatore J.

Cassano, as Commissioner of the Fire Department of the City of New York (collectively "City Respondents") cross moves for a judgment, pursuant to section 7803(3) and Rule 3211 (a)(7) of the Civil Procedure dismissing the petition on the grounds that the petition fails to state cause of action, entering judgment for City respondents, and granting City Respondents costs, fees, and disbursements. For the purposes of this decision, said applications are hereby consolidated.

Article 78 of the CPLR provides for limited judicial review of administrative actions. Administrative agencies enjoy broad discretionary power when making determinations on matters they are empowered to decide. Section 7803 provides in relevant part that "[t]he only questions that may be raised in a proceeding under this article are... 3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; or 4. whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence."

In deciding whether an agency's determination was supported by substantial evidence or was arbitrary, capricious or an abuse of discretion, the reviewing court is limited to assessing whether the agency had a rational basis for its determination and may overturn the agency's decision only if the record reveals that the agency acted without having a rational basis for its decision. See, Heintz v. Brown, 80 N.Y.2d 998, 1001 (1992) citing Pell v. Board of Education, 34 N.Y.2d 222, 230-31 (1974); Sullivan County Harness Racing Association v. Glasser, 30 N.Y.2d 269, 277 (1972). Substantial evidence is more than "bare surmise, conjecture, speculation or rumor" and "less than a preponderance of the evidence." 300 Gramatan Avenue Associates v. State Division of Human Rights, 45 N.Y.2d 176, 180 (1978). Substantial evidence consists of "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." Id. See, also Consolidated Edison v. New York State DHR, 77 N.Y.2d 411, 417 (1991). Where the Court finds the agency's determination is "supported by facts or reasonable inference that can be drawn from the record and has a rational basis in the law, it must be confirmed." American Telephone and Telegraph Co. v. State Tax Commissioner, 61 N.Y.2d 393, 400 (1984).

Petitioner's Article 78 Petition must be denied as the decision was consistent with applicable law and the evidence, rational and within the proper exercise of the New York City Board of

Collective Bargaining. The Respondent's decision was supported by substantial evidence, and was not arbitrary, capricious or an abuse of discretion. On Article 78 review, this Court is limited to assessing whether the agency had a rational basis for its determination. The relevant record is more than sufficient to make a showing of "substantial evidence" and for a finding that the Respondent's determination was not without foundation. Since Respondent's decision is "supported by facts or reasonable inferences that can be drawn from the record and have a rational basis in the law, it must be confirmed." American Telephone and Telegraph Co., 61 N.Y.2d 393, 400 (1984).

Accordingly, it is hereby

ORDERED that the Board's motion to dismiss and the City Respondents' cross- motion to dismiss are hereby granted and the petition is denied and dismissed, it is further

ORDERED that the Clerk shall enter judgment for the City Respondents.

This constitutes the decision and order of this Court.

Dated: April 12, 2012

Hon. Robert E. Torres

ROBERT E. TORRES
JUDGE

FILED

APR 30 2012

NEW YORK
COUNTY CLERK'S OFFICE