

SUPREME COURT : NEW YORK COUNTY
SPECIAL TERM : PART I

In the Matter of the Petition of
EUGENE V. HIGGINS, as PRESIDENT
OF THE DISTRICT ATTORNEY IS OFFICES,
CITY OF NEW YORK, INC.,

Petitioner
for an Order pursuant to Article 78 of
the Civil Practice Law and Rules and
for other relief

Index No.
12280/77

-against-

ARVID ANDERSON, WALTER L. EISENBERG,
ERIC J. SCHMERTZ, HARRY VAN ARSDALE, JR.,
VIRGIL B. DAY, THOMAS J. HERLIHY and
DANIEL L. PERSONS constituting the
OFFICE OF COLLECTIVE BARGAINING, BOARD
OF COLLECTIVE BARGAINING,

Respondents.

GOMEZ, J. :

This proceeding brought pursuant to CPLR Article 78 seeks review of in order by the respondent members of the Board of Collective Bargaining of Collective Bargaining (Board) of the New York City Office (OCB). The petitioner, Eugene V. Higgins, is President of tile Police Benevolent Association of the District Attorney's offices (Association). The City of New York is an intervenor-respondent.

In 1976, the OCB determined that contract negotiations between the Association and tile City had reached an impasse. OCB appointed a one-man impasse panel to make recommendations

for settlement. The panelist's recommendations were accepted by the Association but were rejected by the City. The final decision fell to the Board, which rejected most of the panelist's recommendations as contrary to law. It is alleged that the Board's decision must be set aside on the grounds that it was arbitrary and capricious, affected by errors of law and constituted an abuse of discretion.

As a threshold question, it must be determined whether CPLR Article 78 is the proper procedural vehicle for seeking review of the Board's order. New York City Collective Bargaining Law, Section 1173-7.0 (c) (4) M (contained in Chapter 54 of the Administrative Code) provides that a final Board order shall constitute an order within the meaning of Article 75 of the CPLR. Therefore, pursuant to CPLR 103(c) the Court deems this proceeding to have been brought under CPLR 7511 (b)

Ordinarily, save for "complete irrationality" an arbitrator's decision is not subject to judicial review (*Lentine v. Fundaro*, 29 N Y 2d 382). Here, the Association's primary objection to the Board's order centers on the Board's ruling that the provisions of the Financial Emergency Act (FEA) apply to impasse panel findings. As discussed more fully below, the Board's application of FEA guidelines was proper, rational and within the authority of the Board.

The FEA (Laws of 1975, Chapter 868) provides in section 10 that wage controls are applicable to "Collective bargaining agreements or other analogous contracts" In *Patrolmen's*

Benevolent Association v. City of New York, 41 N Y 2d 205, it was determined that FEA Section 10 does not apply to wage increases embodied in a judgment. The Court reasoned that the omission of any reference to judgments in FEA Section 10 precluded, its application to judgements. Here, by analogy, the Association contends that lack of any specific reference to impasse panels in FEA Section 10 also precludes its application to impasse panel findings.

In Caso v. Coffey, 41. N Y 2d 153, decided the same day as the PBA case (supra), the Court noted that the essential function of compulsory arbitration panels is to write collective bargaining agreements for the. parties. Although Caso (supra) did not specifically mention impasse panels, an impasse panel, like a compulsory arbitration panel, is utilized when collective bargaining breaks down (see Collective Bargaining Law 1173-7.0 [c][2]). In New York City, the OCB acts as an arbitrator at the request of the parties deciding whether impasse panel finding's are acceptable (Collective Bargaining Law 1173-7. 0 [c][4]). Impasse panels are thus part of the collective bargaining process and impasse panel findings are Subject to FEA section 10.

Although the Board did not specify which subdivision of CPLR 7511(b)(1) is applicable to the impasse panel recommendation its failure to so specify does not provide a ground for overturning the Board's order. Clearly, CPLR 7511(b)(1)(iii) is applicable in view of the impasse panel's recommendation of wage increases in amounts greater than permitted by law.

The petition is dismissed. Settle judgment.

Dated: September 16, 1977.

J.S.C.