

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS - PART 35

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In the Matter of the Application

of

UNIFORMED FIREFIGHTERS ASSOCIATION
of GREATER NEW YORK,

Petitioner,

For An Order and Judgment Pursuant
to Article 78 of the Civil Practice
Law and Rules

Index Number 12338/89

-against-

The NEW YORK CITY OFFICE OF COLLECTIVE
BARGAINING, BOARD of COLLECTIVE
BARGAINING,

Respondent.

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IRMA VIDAL SANTAELLA - Justice:

This is a proceeding brought pursuant to Article 78 of the CPLR wherein petitioner seeks to vacate the final administrative determination of the respondent.

Petitioner Uniformed Firefighters Association of Greater New York (hereinafter "UFA") is the collective bargaining representative of firefighters and fire marshalls employed by the City of New York.

Respondent Board of Collective Bargaining (hereinafter "BCB") is the administrative agency created under legislative authority of the Taylor Law (Civil Service Law, §212[1], which has the responsibility pursuant to the New York City

Administrative Code, §12-309 of determining which matter is subject to collective bargaining as defined at New York City Administrative Code, §12-307.

In November 1988 the City of New York in the context of ongoing contract negotiations advised the petitioner that it would not include in any forthcoming collective bargaining agreement certain provisions which had been in effect during the prior expired collective bargaining agreement, same having been in effect from 1984 through 1987.

In December 1988 and in March 1989 UFA petitioned the BCB for a ruling upon the assorted contract provisions in order to determine whether same were the mandatory subjects of collective bargaining.

In February and March 1989 BCB issued a final determination wherein it set forth which provisions of the past collective bargaining agreement were subject to mandatory collective bargaining and which were not.

In April 1989 UFA pursuant to Civil Service Law, §205-5[d] sought further administrative review of BCB's final determination from the Public Employees Relations Board ("PERB"). In May 1989 PERB in its discretion declined to review the final determination of BCB.

Petitioner herein moves for vacature of those portions of BCB's determination that set forth that certain matter in the present agreement between UFA and the City of New York need not be negotiated in the context of presently pending labor management contract negotiations.

Respondent BCB cross-moves herein for dismissal of the instant proceeding by reason that same was not timely brought pursuant to Civil Service Law, §213[a].

It is well settled that a court may not substitute its judgment for that of an administrative body, unless the determination to be reviewed is arbitrary, capricious and constitutes an abuse of discretion. In making such a determination the Court must determine whether there was a rational basis for the decision rendered (Pell v. Board of Education, 34 NY2d. 222 [1974]).

In considering the instant petition the Court finds that there was a rational basis behind the act of respondent BCB inasmuch as the administrative agency in an exhaustive review acted appropriately based upon the information presented to it, and upon past collective bargaining precedents. Moreover, there is no proof submitted herewith to establish that BCB's action was either arbitrary or capricious. As such there is no basis in law or fact for the Court to substitute its judgment for that of the BCB.

Accordingly the Court denies in all respects the relief sought in the instant petition.

Cross-motion by the respondent BCB seeking to dismiss as untimely the instant proceeding is denied as moot by reason of

the foregoing determination of this court.

Settle judgment.

Dated: October , 1989

J. S. C.