SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 11

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In the Matter of the Application of

Joseph M. McManus

Petitioner,

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

Index No.
111730/93

-against-

The New York City Department of Parks and Recreation, Peter Stein, Tony Pucciarelli, and Chris French as agents of the NYCDPR; and Peter Stein, as President of Local 508, District Council 37-AFSCME; and The City of New York Mayor's Office of Labor Relations; and The Office of Collective Bargaining-Board of Collective Bargaining,

Respondents.

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LEWIS R. FRIEDMAN, Justice

Petitioner, Joseph M. McManus, seeks relief of court pursuant to Article 78 including a stay of the decision and order of the Board of Collective Bargaining of April 28, 1993, an immediate trial in this court of petitioner's unfair labor practice claims which are before the Board, an adjudication that the prior administrative proceedings were violative of petitioner's rights, a declaration that disciplinary charges brought against petitioner on December 9, 1991 are retaliatory, and should be dismissed, and an award of disbursements and union payment of an attorney of petitioner's choice to represent him in administrative proceedings. Defendants move to dismiss the petition.

Petitioner filed "improper practice petitions" with the New York City Office of Collective Bargaining in August 1991.

That office held the hearings on those petitions in abeyance pending adjudication of disciplinary charges against petitioner. However, the apposite union contract provides that resolution of disciplinary matters shall be by arbitration. But, the petitioner refuses to sign a waiver of the right to submit the dispute to any other forum (NYCCBL § 12-312d) to allow the arbitration to proceed. After repeated adjournments, petitioner has dismissed his attorney and elected to proceed, *pro se.* the Board of Collective Bargaining issued a Decision and Order on April 28, 1993 which, *inter alia*, extended the time for the waiver to be filed until May 10, 1993, and held that if the waiver was not signed and filed the request for arbitration was dismissed.

Petitioner contends that the disciplinary charges brought against him are, in essence, further improper practices against him, that both the City and the Union will benefit from his termination and that the Union attorney allegedly representing him has a conflict of interest. He complains about various prior proceedings, and argues that it was improper to hold in abeyance the hearing of his complaints of improper practices. And, he asserts no waiver is required for the proceeding at issue.

The Union contends that the improper practice proceeding should be held in abeyance and it is ready and willing to provide counsel to Petitioner for arbitration, upon Petitioner's filing of a waiver.

The City argues that Board's determination to hold the improper practice proceeding in abeyance pending the arbitration is legitimate and that there is no basis for the Board to stay the arbitration.

Petitioner in the instant Article 78 proceeding, in essence, seeks to invoke the power of this court to invalidate the actions of the Board of Collective Bargaining ("BCB"). Petitioner raised improper practice claims. Plainly BCB has exclusive jurisdiction of improper practice claims. BCB determined that its own proceedings should be stayed pending the completion of arbitration. As the exclusive arbiter of improper practices (***Uniform Firefighters Assn v City of New York***, 79 NY2d 236, 237), it is a self evident proposition that BCB has jurisdiction to control its own proceedings and stay this matter. In the case at bar BCB has made a decision not to proceed until the disciplinary charges against petitioner are

resolved, matters plainly subject to arbitration, and relevant to the improper practice claims. The contract between the union and the employer requires arbitration of disciplinary charges and other such employment disputes. (See, Admin Code of City of NY §12-302) While petitioner may not wish to go to arbitration, that forum has been construed to be the preferable forum for settling grievances-particularly where "satisfactory performance of one party ... is left solely to the good faith judgment of the other party. (cites omitted)" ***Matter of Teachers of Huntington v Bd of Education of Huntington***, 33 NY2d 229. In sum, petitioner is bound by the collective bargaining agreement to go to arbitration. Petitioner has not exhausted his contractual remedy and therefore cannot seek the intervention of the court. (*Carter v Dept of Correction of the City of New York*, 92 AD2d 465, *aff'd on opinion below*, 62 NY2d 670. Arbitration may have sustained the termination of petitioner but that, of course, was a matter properly before the arbitrator. This court will not interject itself into proceedings which are properly within another forum. Nothing alleged in the papers before this court properly invoke the jurisdiction of this court.

The motion and cross motion are granted.

The petition is dismissed.

This shall constitute the decision and order of the court.

Dated: June 16, 1993

J.S.C.