

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : AS PART 34

JAMES SAVAGE, as FIRST VICE PRESIDENT
OF THE PATROLMEN'S BENEVOLENT ASSOC.

Plaintiff/Petitioner,

-against-

Index No. 120860/98

STEVEN C. DECOSTA, as Chairman of the Office
of Collective Bargaining of the City of New York,
HOWARD SAFIR, as Police Commissioner of the
City of New York, THE POLICE DEPARTMENT OF
THE CITY OF NEW YORK, and THE CITY OF
NEW YORK,

Defendants/Respondents.

PHYLLIS GANGEL-JACOB, J.:

On November 11, 1998 the NYC Police Department issued a Departmental Order to "All Recruit Officers, Companies 98-25 - 98-72" which, distilled to its essence, requires partially trained, unarmed Police Department recruits to perform traffic enforcement duty from November 21, 1998 until December 31, 1998 without assigned supervision or close proximity back-up. The recruits were issued bullet resistant vests and directed to carry handcuffs during such tour. Plaintiff/petitioner ("Petitioner") Patrolmen's Benevolent Association ("PBA") protested the action without success and on November 20, 1998 filed a Verified Improper Practice Petition with defendant-respondent ("respondent") Office of Collective Bargaining of the City of New York ("OCB") which seeks a determination that the November 11, 1998 order is an improper practice as defined in section 12-306 of the New York City Collective Bargaining Law. Petitioner also sought from OCB injunctive relief barring implementation of the

November 11, 1998 order pending the determination of the petition. On December 1, 1998 the OCB denied petitioner's request for injunctive relief and scheduled a conference on the underlying improper Practice Petition for December 14, 1998.

Before me is petitioner's application to annul OCB's December 1, 1998 denial of petitioner's request for injunctive relief and request for a preliminary injunction staying implementation of the November 11, 1998 order until OCB rules on the merits of petitioner's Improper Practice Petition before it. The City respondents have moved to dismiss the application before me. In response to the court's request that the parties expedite the matter before the OCB so as not to render any relief obtained by petitioners therein ineffectual and illusory, OCB informed this court on December 4, 1998 that while it might be possible to schedule an earlier time for the case conference, it is unlikely that any determination would be issued in this serious matter before the end of the month. To the court's knowledge, the date of the case conference has not been advanced, and it is still scheduled to occur on December 14, 1998.

Upon all of the papers and proceedings, and as a matter of law, I believe it would be inappropriate and premature for me at this time to grant the preliminary injunction sought by petitioners in this court. However, also upon all of the proceedings before me, I find OCB's and/or respondents' reasons for not expeditiously proceeding upon and determining the petition currently pending before OCB to be disingenuous and

designed to leave petitioners with an illusory remedy. This is a serious matter. Under the time frame proposed by OCB no matter what the outcome, the matter will be moot in terms of petitioners' safety and proper practice concerns - the November 11, 1998 order will have been fully implemented. Surely the administrative procedures in place do not contemplate such an unfair and intolerable result.

Accordingly, petitioner's application is denied only to the extent that this court will not issue a preliminary injunction against implementation of the November 11, 1998 order pending determination of petitioner's OCB petition, and is granted to the extent that respondent OCB is directed to conduct the case conference scheduled for December 14, 1998 without any adjournment thereof, and to render a determination by no later than the close of business on December 15th 1998, failing which this court shall revisit the petitioner's application on its calendar of December 16th, 1998.

This is my decision and order.

Dated: 12-10-98

PHYLLIS GANGEL-JACOB

All parties are directed to appear in Part 34, Room 325, 60 Centre Street NYC on Wed.

December 16 at 9:30 AM.