SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50E

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In the Matter of the Application of

CITY OF NEW YORK and the NEW YORK CITY OFFICE OF LABOR RELATIONS,

Petitioners,

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

-against

NEW YORK CITY OFFICE OF COLLECTIVE BARGAINING, MARLENE A. GOLD, Chair, Board of Certification of the New York City Office Of Collective Bargaining, and DISTRICT COUNCIL 37, AFSCME, AFI-CIO,

Respondents.

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DECISION AND JUDGMENT
Index No. 402745/04

WILLIAM A. WETZEL, J.:

Petitioners, 'NYC" bring this proceeding pursuant to Article 78 of the CPLR seeking to nullify a determination made by the New York City Office of Collective Bargaining "OCB." which concluded that *employees* holding positions in the title Job Training Participants, "JTP", are city employees eligible for *collective* bargaining. The agency further held that this title should be accreted to the Blue Collar bargaining unit.

On April 15, 2003, respondent, District Council 37, filed a petition for certification with the OCB. to accrete the JTP members to the Blue Collar bargaining unit, which includes the title of City Park Worker, as used exclusively within the New York City Department of Parks. Petitioners opposed this application on the grounds that the JTP employees were not "municipal employees" within the meaning of the New York City Collective Bargaining Law.

Three days of hearings were held before the board. On August 9, 2004, the Board of Certification issued a decision and ode granting the application. Petitioners contend that this decision was affected by an error of law was arbitrary and capricious, and an abuse of discretion, therefore not eligible

for collective bargaining. Additionally, they argue that even if they were eligible, that it was an error of law, arbitrary and capricious to accrete the title of JTP to the Blue Collar unit, particularly to the title of City Park Worker.

It is black letter law *that the Judicial* review of an administrative determination is limited to consideration as to whether that determination is consistent with lawful procedures, is not arbitrary and capricious or illegal, and is therefore a reasonable exercise of the agency's discretion. See Fell v. Board of Education. 34 NY2d 222 (1974). A court may not consider the matter de novo and substitute its judgment for that of an administrative agency. Another well established principle of particular relevance to this case, is the requirement that courts defer to agencies charges with applying and interpreting the provisions of a particular body of law. This principle has consistently been applied with regard to the OCB. See New York City Department of Sanitation v. McDonald 87 NY2d 650,11 (1996); Levitt v. Board of Collective Bargaining 79 NY2d 120 (1992). The Court of Appeals has held that OCB. being the agency charged with implementing particular Administrative Code provisions is "presumed to have developed an expertise in judgment that requires us to accept its construction if not unreasonable". Matter of Incorporated Village of Lynbrook v. New York State Public Employment Relations Board, 48 NY2d 398 (1979).

It therefore becomes the role of this court to review the determination of July 29, 2004, to determine if in fact it was an unreasonable interpretation or the law or otherwise arbitrary and capricious. This court cannot reach such a conclusion.

This court has carefully analyzed the sixteen page decision of respondent particularly in the context of the arguments raised in this Article 78 proceeding. The Board, in this decision, clearly enunciated the very position that the City of New York has taken here. The City argued that "external law" did not bind the respondent and therefore they were not obligated to "deem the JTP workers as employees" under Social Services Law §336-e. Respondent also acknowledged the City's position that the JTP workers do not share a community of interest with employees in the Blue Collar Unit, particularly those workers in the CPW title. As well, the respondent stated the Union's position as to these issues.

In a reasoned decision the respondent then reached its conclusion citing both its own previous decisions as well as judicial decisions. This court, whether it agrees or disagrees with the conclusion reached, cannot state that their determination is unreasonable and therefore this court must defer to the judgment of the agency. What petitioner seeks in this proceeding is nothing less than a de novo consideration of the

very issues presented and decided by the agency. This court is without authority to provide such a review.

For the reasons stated herein, the petition is dismissed.

This constitutes the Decision and **Judgment of** this court.

Dated: January 27, 2005
New York, New York