

PRESENT: LELAND D_OGRASSE
Justice

PART 25

Roberto L

INDEX NO. 110680/07

MOTION DATE _____

- v -

MOTION SEQ. NO. 01

City

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

FEB 05 2008

NEW YORK
COUNTY CLERK'S OFFICE

MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

FEB 01 2008

Dated: _____

LD

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

In the Matter of the Application of

LILLIAN ROBERTS as Executive Director of District
Council 37, AFSCME, AFL-CIO and EDDIE
RODRIGUEZ, AS President of Local 1549,

Petitioners,

-against-

Index No. 110680/07

CITY OF NEW YORK (Michael Bloomberg, Mayor),
NEW YORK CITY POLICE DEPARTMENT
(Raymond W. Kelly, Commissioner)

Respondents,

-and-

NEW YORK CITY OFFICE OF COLLECTIVE
BARGAINING (Marlene Gold, Chairperson),

Necessary Party / Respondent

For a Judgment and Order pursuant to Article 78 of
the Civil Practice Law and Rules.

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DeGrasse, J.:

Respondents the City of New York and the New York City Police Department (collectively “the City”) cross-move for an order dismissing the petition on the ground that the statute of limitations has expired. The Family Medical Leave Act of 1993 (29 USC 2801 *et seq.*) (FMLA) entitles eligible employees, including employees of public agencies, to take up to 12 weeks of unpaid leave each year for reasons which include the onset of a “serious health condition” in a spouse, child or parent. The FMLA permits employers to require certification of the condition occasioning the request for leave. On or about December 6, 2006, The Bureau of Collective

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Bargaining of the City of New York (BCB) issued Decision No. B-34-2006 by which it determined that the New York City Police Department (NYPD) had violated the New York City Collective Bargaining Law (NYCCBL) (Administrative Code of the City of New York) § 12-306 (a)(1) and (4) by making unilateral changes in documentation procedures attendant to the use of leave under the FMLA. The changes were set forth in Memo Nos. 1/17.7 and 1/18.3. BCB ordered NYPD to rescind the said changes, to restore the documentation procedures in effect prior to the issuance of Memos 1/17.7 and 1/18.3 and to cease and desist from implementing changes in FMLA documentation procedures until such time as the same are negotiated through collective bargaining.

Nevertheless, on or about April 6, 2007, NYPD issued Communications Section Memo No. 1/19.8 which allegedly contravenes BCB's order. Memo No. 1/19.8 was addressed at BCB compliance conferences. On or about June 25, 2007, BCB issued a Supplemental Decision and Clarifying Order modifying Decision No. B-34-2006 with respect to the expungement of the disciplinary records of employees affected by the Memo Nos. 1/17.7 and 1/18.3. It is alleged in the petition that NYPD continues to violate Decision No. B-34-2006. By this proceeding, which was commenced on August 3, 2007, petitioners seek a judgment restraining the alleged continuing violation and directing the restoration of FMLA leave to affected employees and the expungement of their disciplinary records. NYCCBL § 12-308 provides:

“a. Any order of the board of collective bargaining or the board of certification shall be (1) reviewable under article seventy-eight of the civil practice law and rules upon petition filed by an aggrieved party within thirty days after service by registered or certified mail of a copy of such order upon such party, and (2) enforceable by the supreme court in a special proceeding, upon petition of the board of collective bargaining, board of certification or any aggrieved party.”

Citing the above, the City argues that the instant proceeding is time-barred because it was not commenced within 30 days after the issuance of Decision No. B-34-2006. The argument is erroneous because petitioners are not "aggrieved" by the decision; their grievance is based upon NYPD's alleged failure to comply with its provisions. Also, the City assumes but does not allege that the required service of a copy of the order by registered or certified mail was effected. There is no merit to the City's alternate argument that the four month statute of limitations prescribed by CPLR 217 has expired. In the first instance, Memo No. 1/19.8, the source of the instant dispute was not issued until April 6, 2007. Moreover, Decision No. B-34-2006 was not a final determination until it was modified on June 25, 2007.

The cross motion is denied. The City's answer shall be served and filed within 20 days after service of a copy of this order with notice of entry. The parties shall appear at IAS Part 25 on March 24, 2008 at 9:30 a. m.

Dated: February 1, 2008



J. S. C.

HON. LELAND DeGRASSE

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