

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

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In the Matter of the Application of
JOEL L. AMAKER, SR.,

Petitioner,

-against-

OFFICE OF COLLECTIVE BARGAINING,
BOARD OF COLLECTIVE BARGAINING, and
OFFICE OF COLLECTIVE BARGAINING,

Index No. 400217/99
Motion Date: 4/6/99
Motion Seq. No. 001
Motion Calendar No: 2

Respondents.

for a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules.

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PRESENT: EILEEN BRANSTEN, J.

In this Article 78 proceeding, petitioner Joel L. Amaker, Sr. seeks to vacate a decision of Respondent Board of Collective Bargaining. Respondents Office of Collective Bargaining and Board of Collective Bargaining cross-move to dismiss the Article 78 petition as untimely.

The New York City Office of Collective Bargaining (the "OCB") is a labor relations agency established under the New York City Charter. The Board of Collective Bargaining ("BCB") is one of two adjudicative bodies of the OCB. The BCB carries out the duties delegated to it under the New York City Collective Bargaining Law ("NYCCBL"), including "prevent[ing] and remedy[ing] improper public employer and public employee organization practices." See NYCCBL § 12-309a(4).

Petitioner commenced a proceeding in front of the BCB, alleging that his union, the Communications Workers of America, Local 1182 (the "Union") breached its duty of fair representation by failing to represent petitioner in connection with his termination as a probationary employee of the Department of Transportation. After two days of hearings, during which petitioner was represented by counsel, the BCB denied and dismissed petitioner's breach of fair representation charge. In its order, dated September 25, 1998, the BCB held that because petitioner was a probationary employee at the time of his termination, he had no due process rights and the Union therefore had no obligation to represent him. See *Patitucci Aff.*, Exh. 6. Petitioner alleges that the BCB's September 25, 1998 order was arbitrary, capricious, and/or not supported by substantial evidence.

Respondent's cross-motion to dismiss is based upon the fact that under both Section 213(a) of the New York State Civil Service Law and NYCCBL § 12-308, an aggrieved party must commence an Article 78 proceeding challenging an order of the BCB within thirty (30) days after service upon the aggrieved party of a copy of the order. Here, the BCB served a copy of the September 25, 1998 order by certified mail, on petitioner's attorney, and petitioner's attorney received the order on September 30, 1998. See *Patitucci Aff.*, Exh. 7. Petitioner's time to file an Article 78 petition with respect to the September 25, 1998 order therefore expired, at the latest, on October 30, 1998.

Petitioner, acting pro se, did not commence this Article 78 petition until January 21, 1999. Because more than thirty days elapsed between the time petitioner received the BCB's September 25, 1998 order, and petitioner's filing and service of the Article 78 petition, this Article 78 proceeding is time barred.

Accordingly, the petition is denied, respondents' cross-motion to dismiss is granted, and the proceeding is dismissed.

This constitutes the decision and judgment of the Court.

Dated: New York, New York
May 6, 1999

ENTER:

Hon. Eileen Bransten