SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, IAS PART 1

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In the Matter of the Application of

KENNETH LEVITT, PAUL DAHLMAN, GRAY SPERLING, MARK DIAMOND, and MARY NOE,

Petitioner,

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

Index # 104693/98

- against -

BOARD OF CERTIFICATION OF THE OFFICE OF COLLECTIVE BARGAINING, CITY OF NEW YORK AND NEW YORK CITY DEPARTMENT OF FINANCE; CIVIL SERVICE BAR ASSOCIATION, and LOCAL 237 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Respondents.

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BEVERLY COHEN, J.:

This Article 78 proceeding is brought by five Administrative Law Judges in the parking Violations Bureau ("PVB"), to annul a determination of the respondent Board of Certification of the New York City Office of Collective Bargaining ("Board of Certification") which denied a petition by the respondent Local 237 of International Brotherhood of Teamsters (the "Union") to certify Administrative Law Judges employed by the PVB as a bargaining unit under the New York City Collective Bargaining Law ("NYCCBL"). The respondents City of New York and the

Department of Finance of the City of New York (collectively "City Respondents") cross move pursuant to CPLR 3211 (a)(7) to dismiss the petition.

In 1995, the Union and its affiliate, the Civil Service Bar Association, filed a petition with the Board of Certification, seeking certification of a bargaining unit composed of 330 PVB Administrative Law Judges. Administrative Law Judges, ("ALJ's") who are also called hearing officers, adjudicate parking tickets under the supervision of the PVB, which is a division of the Department of Finance. Under the NYCCBL and Article 14 of the New York State Civil Service Law (the "Taylor Law") if the ALJs are determined by the Board of Certification to be public employees, they are entitled to engage in collective bargaining with the City of New York.

On February 12, 1998, the Board of Certification dismissed the Union's certification petition. The Board found after a hearing, that the hearing officers do in fact meet the Board's criteria for public employment. They are on a regular City payroll and are paid by regular City check. The City withholds taxes from their paychecks and controls the terms and conditions of their employment. The agency also controls their hiring and discharge as well as job specifications, training and performance review. Notwithstanding these factors, the Board found that it was constrained from finding that the PVB hearing officers were City employees because of the language of Vehicle and Traffic Law, section 236 and because of the First Department's decision in Scheurer v New York City Employees' Retirement System, (223 AD2d 379 [1st Dept. 1996]).

Vehicle and Traffic Law, section 236 (2)(d), which concerns the internal organization of the PVB, provides in relevant part that "[s]uch hearing examiners shall not be considered employees of the city in which the administrative tribunal has been established." In Scheurer v

New York City Employees' Retirement System, supra, the First Department found that pursuant to the Vehicle and Traffic Law, section 236, PVB hearing examiners were not employees of the City and therefore not entitled to retirement system membership.

In this proceeding, petitioners urge this Court to adopt a liberal reading of Vehicle and Traffic Law, section 236 and find that ALJs may be considered City employees for some purposes but not for others. Petitioners assert that the purpose of section 236 was to ensure the independent judgment of hearing officer's and to preserve due process for motorists. Petitioners further assert that a finding that the hearing officers are employees for purposes of collective bargaining will not effect the statutes purpose and wi1l recognize what is in fact a reality -- that the hearing officers are in fact employees of the City. Petitioners point to all IRS ruling which held that the nature of the relationship between the PVB and the Administrative Law Judges satisfied all the indica of "employment" as codified in the Internal Revenue Code.

It is well established that judicial review of an administrative determination is limited to consideration of whether the determination is consistent with lawful procedures, is not arbitrary and capricious, and is a reasonable exercise of the agency's discretion (CPLR §7803; see New York City Department of Sanitation v Macdonald, 215 AD 2d 324 [1st Dept 1995], aff'd., 87 NY 2d 650 [1996]). The court may not substitute its judgment for that of an administrative agency when the agency's determination has a rational basis (Medical Malpractice Insurance Association v Superintendent of Insurance of the State of New York, 72 NY 2d [1988] cert denied, 490 US 1080 [1989]). Here, the Board of Certification based its determination on a clear statutory provision and prevailing case law. Its determination is therefore not arbitrary and capricious.

Accordingly, for the foregoing reasons, it is

ORDERED, that the cross motion is granted and the petition is dismissed.

The clerk shall enter judgment accordingly.

Dated: April 7, 1999

J.S.C.