

SUPREME COURT : NEW YORK COUNTY
IAS PART 21

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In the Matter of the Application of
PHIL CARUSO, as President of the
Patrolmen's Benevolent Association
of the City of New York, Inc., and
THE PATROLMEN'S BENEVOLENT ASSOCIATION
OF THE CITY OF NEW YORK, INC.,

Petitioners,

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

Index No. 17123/87

-against-

ARVID ANDERSON, Chairman of the Board
of Collective Bargaining of the City of
New York Office of Collective Bargaining;
THE BOARD OF COLLECTIVE BARGAINING OF
THE CITY OF NEW YORK OFFICE OF COLLEC-
TIVE BARGAINING; ROBERT W. LINN, as Direc-
tor of the office of Municipal Labor Rela-
tions of the City of New York; THE OFFICE OF
MUNICIPAL LABOR RELATIONS OF THE CITY OF
NEW YORK; BENJAMIN WARD, as Police Commis-
sioner of the City of New York; THE POLICE
DEPARTMENT OF THE CITY OF NEW YORK and
THE CITY OF NEW YORK,

Respondents.

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DAVID B. SAXE, J.:

This is a proceeding commenced by the petitioners, Phil Caruso, as president of the Patrolmen's Benevolent Association of the City of New York ("PBA") and the PBA, pursuant to Article 78 of the Civil Practice Law and Rules, seeking a judgment annulling a decision of the respondent Board of Collective Bargaining ("Board") in Decision No. B-24-87, wherein the Board dismissed petitioners' improper practice petition. The Board held that the New York City Police Department had not violated section 12-306a of the New York City Collective Bargaining Law ("NYCCBL") by promulgating Interim Order No. 60 establishing the Career Program

for Police Officers. The Order implements a system which permits the Police Department to promote and assign experienced and qualified officers.

In rejecting petitioners' allegations that the order violated the NYCCBL, the Board determined that the issue was whether the setting of qualifications for special assignments and promotion was within the scope of collective bargaining. In deciding that it was not, the Board relied on the power reserved to the City under §12-307b of the NYCCBL and decisional law.

The respondent, Board of Collective Bargaining is charged with enforcing and implementing a sophisticated labor relations statute, the provisions of which encompass complex and difficult issues of labor law. The courts have recognized the experience developed by these administrative agencies in the areas of their statutory jurisdiction. In this regard, the Court of Appeals has held:

As the agency charged with implementing the fundamental policies of the Taylor Law, the Board is presumed to have developed an expertise and judgment that requires us to accept its construction (of the Taylor Law) if not unreasonable ... Matter of Incorporated Village of Lynbrook v N.Y. Public Employment Relations Board, 48 NY2d 398, 423 N.Y.S. 2d 466, 468 (1979). In the same case, the Court defined the standard of review to be applied by a court in renewing a decision of the Board:

unless the board's determination was 'affected by an error of law' or 'was arbitrary and capricious or an abuse of discretion', we will not interfere (CPLR 7803, subd. 3.) For '[s]o long as PERB's

long as there is no breach of constitutional rights and protection, the courts have no power to substitute another interpretation' (Matter of West Irondequoit Teachers Assn, v Helsby, 35 NY2d 46, 50). As the agency charged with implementing the fundamental policies of the Taylor Law, the board is presumed to have developed an expertise and judgment that requires us to accept its construction if not unreasonable (citations omitted).

In this matter, no demonstration has been made to the effect that the Board's decision was arbitrary or capricious. In fact, the Board reasonably construed the language of §12-307b of the NYCCBL as a grant of exclusive power to the City to establish qualifications for advancement and promotion. To require the Police Department to collectively bargain over the value to be afforded certain types of experience would, it appears, impede the discretion granted under §12-307b. In short, the petitioners have failed to articulate any legal or factual basis on which the Police Department should have been required to collectively bargain over the order in question. Consequently, dismissal of the petition is appropriate. It is So Ordered.

DATED: October 29, 1987.

J. S.C.