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

In the Matter of the Application of PHIL CARUSO, individually and as President of the PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, and on behalf of all Police officers in the NEW YORK CITY POLICE DEPT., Petitioner,	Index No. 29285/92
RAYMOND W. KELLY as Police Commissioner, HERMAN L. JENKINS as City Personnel Director, MALCOLM D. MACDONALD as Chair of Collective Bargaining, NEW YORK CITY POLICE DEPT., DEPT. OF PERSONNEL, OFFICE COLLECTIVE BARGAINING and THE CITY OF NEW YORK, Respondents.	

WALTER M. SCHACKMAN J.:

This is an article proceeding brought by the PBA individually and on behalf of all police officers in the New York City Police Department (NYPD) to prevent implementation of Police Department Bulletin No. 39 dated October 9, 1992. That Bulletin announced the NYPD's intent to hire civilians as "Evidence and Property Control Officers" replacing uniform police officers in those duties.

The PBA filed a "Stop of Bargaining" petition with the City Board of Collective Bargaining (BCB) contending that the implementation of Bulletin No. 39 would be in violation of its collective bargaining agreement. The PBA then moved in this court to enjoin the implementation of Bulletin No. 39 simultaneously with commencing this Article 78 proceeding. This motion seeks a preliminary injunction barring the replacement of police officers in the office of Police Property Clerk with civilians and barring the Police Commissioner from implementing and establishing the new titles for the employment of civilians.

The Police Commissioner has cross-moved to dismiss as has the Chair and Board of Collective Bargaining.

Clearly the motion for preliminary injunction must be denied. Petitioner has failed to show any irreparable harm nor has it demonstrated a likelihood of success on the merits, two of

the three prongs of the test for preliminary injunction. Petitioner alleges the loss of some vague property right of the police officers who will necessarily be transferred if the new civilian jobs are created. The police officers are not being fired. Petitioner has failed to convince the court that the Police Department does not have the right to transfer any officer. If the labor contract is violated a petition may be brought before the Board of Collective Bargaining, as was initially done here. As previously stated petitioner has not shown a likelihood of success on the merits.

As to the cross-motion to dismiss the petition by Malcolm D. MacDonald as chair and the Board of Collective Bargaining, that motion must be granted. Petitioner has failed to establish that they are a proper party to this Article 78 proceeding nor has any cause of action been established against them.

The remaining respondents have moved to dismiss the petition on the grounds that it fails to state a cause of action in that all administrative remedies have not been pursued. Petitioner has sought dual remedies, bringing a petition in the BCB as well as the petition herein. The recent case of Uniformed Firefighters Ass'n of Greater N.Y. v. City of New York, 79 N.Y. 2d 236 (1992) appears to be dispositive of that issue. The Court of Appeals held that the Supreme Court has no power to grant injunctive relief as a means of preserving the status quo during the pendency of an improper 1abor practice proceeding before the BCB. The PBA has sought the intervention of that agency and this court holds that this is properly a labor dispute and should properly be aired before the BCB.

The petition is therefore dismissed.

This constitutes the decision and order of this court.

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J. S. C.

Dated: 12/15/92

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