

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

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In the Matter of the Application of  
JAMES SAVAGE 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,

-against-

Index No. 109867/99

STEVEN C. DeCOSTA, as Chairman of the  
New York City Board of Collective  
Bargaining, THE BOARD OF COLLECTIVE  
BARGAINING OF THE NEW YORK CITY OFFICE  
OF COLLECTIVE BARGAINING, HOWARD SAFIR,  
as Police Commissioner of the City o New York,  
THE NEW YORK CITY OFFICE OF LABOR RELATIONS and  
THE CITY OF NEW YORK,

Respondents

-----X  
SOLOMON, J.:

Petitioners commenced this proceeding, pursuant to  
Article 78 of the CPLR, to annul the decision and order of  
respondent the Board of Collective Bargaining of the New  
York City Office of Collective Bargaining ("BCB"), which  
denied petitioners' improper practice petition.

This proceeding arises out a decision of the New York  
City Police Department ("NYPD")use recruits, who were  
undergoing training at the Police Academy, for traffic  
control during the holiday season in November and December  
1998.

Petitioner James Savage ("Savage"), then First Vice President of the petitioner Patrolmen's Benevolent Association of the City of New York, Inc. ("PBA"), protested this course of action on the grounds that it could have an adverse effect on the safety of the recruits. Savage and the PBA filed a Verified Improper Practice Petition with the BCB, alleging that having recruits perform traffic duty without providing the recruits with firearms, and without engaging in collective bargaining with the PBA, constitutes an improper practice under section 12-306(a)(4) of the Administrative Code of the City of New York. A hearing was conducted pursuant to section 12-309(a)(6) of the Administrative Code of the City of New York. Both sides produced and examined witnesses, and documents were submitted into evidence. The BCB issued a Decision and Order, dated April 5, 1999, which denied the PBA's petition.

In this proceeding, petitioners contend that the decision and order of the BCB was arbitrary and capricious or an abuse of discretion, and/or not supported by substantial evidence. Petitioners maintain that the BCB should have determined that the departmental order had a practical impact upon the health and safety of those recruits, and therefore, the directive should have been subject to collective bargaining. Petitioners argue that

the BCB failed to take into account the evidence presented at the hearing regarding the dangers faced by the recruits. The two major dangers expressed were the likelihood of the recruits being mistaken for armed police officers, and their lack of proper training and supervision for controlling traffic intersections.

Where a review of a determination presents a substantial evidence question, the proceeding must be transferred to the Appellate Division, pursuant to CPLR 7804(g). *Feierstein v Klasfeld*, 255 AD2d 161 (1<sup>ST</sup> Dept 1998). The determination at issue was made after a quasi-judicial hearing, held pursuant to Administrative Code of the City of New York § 12-309(a)(6). The question presented is whether the determination was supported by the evidence presented at the hearing. Consequently, despite the fact that neither petitioners nor BCB raise this issue, and that Corporation Counsel believes that the petition does not raise a substantial evidence question, the proceeding must be transferred to the Appellate Division.

Accordingly, it is hereby

ORDERED that the application by petitioners seeking to vacate and annul a determination by respondent The Board of Collective Bargaining of the New York City Office of Collective Bargaining, is respectfully transferred to the

Appellate Division, First Department, for disposition, pursuant to CPLR 7804(g) . This proceeding involves an issue as to whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction of law, is, on the entire record, supported by substantial evidence (CPLR 7803(4)).

The Clerk of the Court is directed to transfer the file to the Appellate Division, First Department, upon service of a copy of this order with notice of entry.

The foregoing shall constitute the decision and order of this court.

Dated:10/21/99

JANE S. SOLOMON