

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

PRESENT: HON. NICHOLAS FIGUEROA, J.S.C.

PART 46

Index Number : 116942/2008

PATROLMEN'S BENEVOLENT

VS.

NYC OFFICE OF COLLECTIVE

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

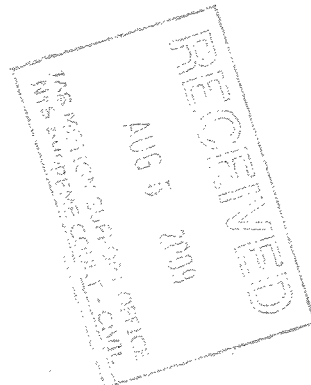
Replying Affidavits _____

1
1
1

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

Petition dismissed by accompanying decision and judgment, with seq. 002



US/112

[Signature]

Dated: Aug. 5, 2009

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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

PRESENT: HON. NICHOLAS FIGUEROA, J.S.C.

PART 46

Index Number : 116942/2008

PATROLMEN'S BENEVOLENT

vs

NYC OFFICE OF COLLECTIVE

Sequence Number : 002

DISMISS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

1

1

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is granted.

See accompanying decision and judgment.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: Aug 5, 2009

[Signature]

J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

OFF. OF
COLLECTIVE BARGAINING
RECEIVED

2009 AUG -7 P 12:43

-----X
In the Matter of the Application of

PATROLMEN'S BENEVOLENT ASSOCIATION OF
THE CITY OF NEW YORK, INC.,

Petitioner,

Index No. 116942/08
DECISION AND
JUDGMENT

- against -

THE NEW YORK CITY OFFICE OF COLLECTIVE
BARGAINING, AMRYL JAMES-REID, AND THE
CITY OF NEW YORK,

Respondents,

for a Judgment pursuant to Article 78 of the CPLR.

-----X
Nicholas Figueroa, J.S.C.:

The Police Benevolent Association (the PBA), as Article 78 petitioner, seeks to nullify portions of interim and final decisions issued by the New York City Board of Collective Bargaining in an improper-practice proceeding commenced by Amryl James-Reid, a former police officer, against the PBA and the City. In the instant proceeding, the Office of Collective Bargaining (OCB), the City, and Ms. James-Reid were served as respondents, but only the former two have appeared. OCB has filed a motion to dismiss, raising a statute of limitations defense as well as substantive grounds. In opposing, the PBA proposes a novel reading of the applicable statute.

The underlying proceeding before the Board of Collective Bargaining concerned Ms. James-Reid's claims against the City and the PBA in relation to her defense against several misconduct charges by the City Police Department, charges that ultimately ended in the termination of her sixteen-year career on the police force. The nub of Ms. James-Reid's

improper-practice petition was that, over the course of the several years during which she had undergone a series of investigatory and disciplinary hearings, she had been misadvised by a member of a law firm that was on retainer to (and had been referred to her by) the PBA, and that, by leaving her to such lawyer's devices, the PBA had breached a duty of fair representation. In an interim decision on a motion to dismiss, the Board of Collective Bargaining observed that, assuming the truth of Ms. James-Reid's allegations for purposes of the motion, (1) the private lawyer could be deemed the PBA's agent in relation to her defense and (2) on the basis of such agency, any failings by the lawyer in such relation would be attributable to the PBA as a breach of a duty of fair representation. Following an evidentiary hearing, the Board's final decision, dated July 30, 2008, in effect adhered to both such views of the law, but nevertheless dismissed Ms. James-Reid's petition as unsupported by her proofs concerning alleged legal malpractice. In response, the PBA commenced this Article 78 proceeding on December 18, 2008, challenging the jurisdictional basis and merits of the Board's legal rulings on the fair representation issues.

OCB's limitations defense must of course be evaluated as a threshold matter.

As a general rule, timeliness of an Article 78 petition is governed by section 217 of the CPRL, which in relevant part provides that "[u]nless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner" As it happens, the law authorizing the instant proceeding, section 12-308(a) of the City's Administrative Code, does provide for "a shorter time." Thus, under section 12-308, "Any order of the board of collective bargaining ... shall be ... reviewable under [Article 78] upon petition filed by an aggrieved party within thirty days after service by registered or certified mail of a

notice and opportunity to raise those claims), this is not an instance in which the literal application of a statute would be irrational and thus prohibitive.

Second, the PBA argues that OCB should not be allowed to benefit from its own error, which is to say the lag between service on the City and the PBA, on the one hand, and service on Ms. James-Reid, on the other hand. The statute's terms, however, do not suggest that the agency must serve its decision on all parties concurrently and that, if it does not do so, the limitations-period is tolled until all parties have been served. Nor does the PBA cite any other authority as the source of such requirement and such result. This is not to ignore a November 13, 2008, letter in which an OCB lawyer confessed "office error" in having not already served Ms. James-Reid. But this evidence of his office's lack of punctiliousness cannot substitute for the citation of legal authority that might support the PBA's position in this connection.

The PBA further argues that the substance of the OCB lawyer's letter, which was addressed to counsel for all of the parties in the improper practice proceeding, in any event is sufficient ground to defeat OCB's limitations defense. The body of the letter read as follows:

I write this letter to inform the parties that, due to office error on the part of this Office, the decision in [this]... matter was not properly mailed to counsel for the petitioner, and to enclose the decision to counsel. Counsel should be aware that the time in which to appeal a decision of the Board does not begin to run until service has been effectuated, and in this case, the present mailing constitutes service on the petitioner.

Please feel free to contact me with any questions or concerns you may have; I apologize on behalf of the OCB for the inconvenience caused by the error in service.

It is not clear whether the PBA is proposing that this letter is a basis for an estoppel, a term that it perhaps declines to invoke expressly in view of the precedents to the effect that an

On the basis of the foregoing, it is concluded that the PBA's petition was not timely filed. Accordingly, respondent's motion is granted, and the petition is dismissed.

This constitutes the decision and judgment of the court

Dated: August 5, 2009

ENTER:

A handwritten signature in black ink, appearing to be 'M.F.', is written above a horizontal line.

J.S.C.