SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR ENGORON** **PART** **37**

Justice

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NYC HEALTH AND HOSPITALS,

Petitioner,

- v -

COMMUNICATION WORKERS OF AMERICA, LOCAL 1180, ORGANIZATION OF STAFF ANALYSTS, THE NEW YORK CITY OFFICE OF COLLECTIVE BARGAINING, SUSAN PANEPENTO,

Respondents.

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INDEX NO. 451864/2020

MOTION DATE 09/10/2020, 08/22/2021

MOTION SEQ. NO. 001, 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 11, 12, 13, 16, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

were read on this motion for CPLR ARTICLE 78 RELIEF.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 47, 48, 49, 50, 51, 52

were read on this motion for DISMISSAL.

Upon the foregoing documents, it is hereby ordered that the petition is denied, and respondents' motions to dismiss are granted.

Background

Petitioner, New York City Health and Hospitals Corporation ("HHC"), commenced this CPLR Article 78 special proceeding seeking to overturn a Decision and Order of respondent New York City Office of Collective Bargaining ("OCB"), dated July 16, 2020, which found that (with the exception of certain employees who were found to be managerial or confidential) Assistant and Associate Directors were eligible for collective bargaining, that the eligible Assistant Directors were appropriately added to a bargaining unit represented by respondent Communication Workers of America ("CWA"), and that the eligible Associate Directors were appropriately added to a bargaining unit represented by respondent Organization of Staff Analysts ("OSA").

HHC was established pursuant to the New York City Health and Hospitals Corporation Act, New York Unconsolidated Laws §§ 7381-7406 ("the Enabling Act"). The Enabling Act authorizes HHC to manage and operate the City's municipal hospital system. Section 7385 of the Enabling Act sets forth the "general powers" of HHC; Section 7385(11) lists the following as one such power:

> To employ officers, executives, management personnel, and such other employees who formulate or participate in the formulation of the plans, policies, aims, standards, or who administer, manage or operate the corporation and its hospitals or health facilities, or who assist and act in a confidential capacity to persons who are responsible for the formulation, determination and effectuation of management policies concerning personnel or labor relations, or who determine the number of, and appointment and removal of, employees of the corporation, fix their qualifications and prescribe their duties and other terms of employment.

The New York City Collective Bargaining Law, codified in New York Administrative Code, Title 12, Chapter 3, ("NYCCBL"), presumes that public employees are eligible for collective bargaining but provides a limited exception for employees whom the Board finds are managerial and/or confidential. The NYCCBL further provides that the Board has the power and duty to determine whether specified public employees are managerial or confidential within the meaning of the Taylor Law § 201.7(a), which provides, in relevant part:

> Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).

In this special proceeding, OCB applied the criteria set forth in § 201.7 of the Taylor Law to determine whether certain HHC employees were exempt from collective bargaining based on their status as "managerial" or "confidential."

The crux of HHC's argument lies in its belief that there is a conflict between the Enabling Act and the Taylor Law, and that in the event of such conflict, the Enabling Act should control. HHC raised this issue before OCB, which considered, and ultimately rejected said argument, stating in its July 16, 2020 Decision and Order that: "We consider the application of the Taylor Law standard for managerial and/or confidential employees to HHC to be a well-settled issue of law that requires no further analysis." NYSCEF Doc. No. 2.

Discussion

As an initial matter, this Court does not find the July 16, 2020 Decision and Order to be unsupported by substantial evidence. OCB reviewed an extensive record, including, inter alia, having heard testimony from more than 265 witnesses over 85 days of hearings. Based on an extensive and comprehensive record, OCB rationally determined that Assistant Directors share a community of interest with employees in CWA's bargaining unit and that Associate Directors,

who are generally at a higher level in HHC's organization, have a community of interest with employees in OSA's bargaining unit. However, in any event, because OCB's hearing "was discretionary, not mandatory," the standard of review to be utilized is "whether the determination is arbitrary or capricious," not whether it was supported by substantial evidence. Correction Officers' Benevolent Ass'n v New York City Bd. of Collective Bargaining, 182 AD3d 522 (1st Dep't 2020).

"It is well settled that the standard for judicial review of an administrative determination pursuant to CPLR article 78 is limited to inquiry into whether the agency acted arbitrarily or capriciously. Once it has been determined that an agency's conclusion has a sound basis in reason, the judicial function is at an end." Arbuiso v New York City Dep't of Bldgs., 64 AD3d 520, 522 (1st Dep't 2009).

"Where the judgment of an agency involves factual evaluations in the area of that agency's expertise and is supported by the record, such judgment must be accorded great weight and judicial deference. In such circumstances, a 'reviewing court may not reevaluate the weight accorded the evidence adduced... since the duty of weighing the evidence, interpreting relevant statutes and making the determination rests solely in the expertise of the agency.'" Awl Indus. v Triborough Bridge & Tunnel Auth., 41 AD3d 141, 142 (1st Dep't 2007) (internal citations omitted).

This Court cannot say that OCB's July 16, 2020 Decision and Order lacked a sound basis in reason such that the Court can substitute its judgment for that of OCB.

In their motions to dismiss, respondents assert that the issue of any statutory conflict between the Enabling Act and the Taylor Law has been settled by the Appellate Division, First Department. Accordingly, respondents assert that the petition should be dismissed under the doctrine of Stare Decisis. This Court agrees.

In NYC Health + Hosps. v Org. of Staff Analysts (I), the First Department held as follows:

> The court properly deferred to the Board's rational interpretation of the applicable statutes, including the Board's finding that the exemption to public employees' eligibility for collective bargaining under the Taylor Law is controlling. Since the Taylor Law is incorporated into the New York City Health and Hospitals Corporation Act and the exemptions are substantially consistent, the override provision of McKinney's Unconsolidated Laws of NY § 7405 (5) (New York City Health and Hospitals Corporation Act § 24, as added by L 1969, ch 1016, § 1) "does not apply" (*Viruet v City of New York*, 97 NY2d 171, 177 [2001]).

171 AD3d 529 (1st Dep't 2019), lv to appeal denied, 34 NY3d 909 (2020). Similarly, in NYC Health + Hosps. v Org. of Staff Analysts (II), the First Department reaffirmed this holding:

> We accord deference to the Board's rational interpretation of the governing statutes (*see* Civil Service Law § 201 [7] [a]; McKinney's Unconsol Laws of NY §§ 7385 [11]; 7390 [5]; Administrative Code of City of NY §§ 12-303 [g] [2]; 12-305, 12-309 [b] [4]), including its determination that the Health & Hospitals Corporation Act incorporates the Taylor Law's definition of "managerial or confidential" status for purposes of assessing HHC employees' eligibility for collective bargaining (*Matter of NYC Health + Hosps. v Organization of Staff Analysts*, 171 AD3d 529, 530 [1st Dept 2019] [*HHC 1*]).

179 A.D.3d 573, lv to appeal denied, 35 NY3d 906 (2020).

HHC's assertion that stare decisis does not apply because the facts are different, in that this proceeding involves different groups of HHC employees, is unpersuasive. "In adhering to the doctrine of stare decisis, courts are bound only by statements of law which address issues which were presented to the court for determination in the prior case." Vill. Of Kiryas Joel v City of Orange, 144 AD3d 895, 900 (2d Dep't 2016). Regardless of which groups of HHC employees are the subject of the proceeding, the First Department has already held, as a matter of law (on more than one occasion), that the Taylor Law is not preempted by the Enabling Act. These determinations, which the Court of Appeals has twice declined to review, were based on statutory interpretation, and not disputed facts. Accordingly, HHC's assertion that a determined question of law cannot be applied to different facts is without merit.

The Court has considered HHC's other arguments, including those alleging it was denied due process, and finds them to be unavailing and/or non-dispositive.

Conclusion

Thus, for the reasons stated herein, respondents' motions to dismiss are granted, and the Clerk is hereby directed to enter judgment denying and dismissing the petition in its entirety.

11/17/2021
DATE

ARTHUR ENGORON, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE