SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. FRANK NERVO** **PART** **04**

Justice

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CITY EMPLOYEES UNION LOCAL 237, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Plaintiff,

- v -

NEW YORK CITY BOARD OF COLLECTIVE BARGAINING, NEW YORK CITY OFFICE OF COLLECTIVE BARGAINING

Defendant.

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INDEX NO. 160061/2021

MOTION DATE 11/04/2021, 03/11/2022

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 14, 15 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 21, 22, 23 were read on this motion to/for DISMISSAL.

The Court was unable to hear oral argument as scheduled; however, the parties have agreed to waive argument and mark the matter submitted. Accordingly, upon consideration of the foregoing documents, the Court issues the below Decision and Order.

Plaintiff (hereinafter "Union") claims that Jumaane Williams, as Public Advocate, improperly criticized Union leadership and otherwise interfered with Union leadership's relationship with its members by making pronouncements/statements that while school security agents would be phased

out of schools these agents would retain their pay and benefits in new roles. Petitioner brought these claims before the NYC Bd. of Collective Bargaining (hereinafter "Board"), which found that the Public Advocate's pronouncements/statements were not direct dealings with the Union's members and did not improperly interfere with the Union's relationship with its members. Petitioner seeks to have that determination annulled under Art. 78 of the CPLR. Respondent opposes, contending the Board's determination was properly supported and seeks dismissal of the petition.

As an initial matter, the instant petition fails to join necessary parties, including Public Advocate Williams and the NYPD, the employer of the Union's members. CPLR § 1001 directs that necessary parties are those "who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action". Likewise, where a proceeding is brought pursuant to Article 78 of the CPLR, the government entity that performed the challenged action must be a named party (CPLR § 7801).

Here, the petition challenges, inter alia, the Public Advocate's actions. Any relief accorded in this matter will affect the rights of the NYPD, as

employer of the petitioner's members. Accordingly, the Public Advocate and NYPD are necessary parties (*see e.g. Mahinda v. Bd. of Collective Bargaining*, 91 AD3d 564 [1st Dept 2012]). Notwithstanding, petitioner has failed to name the Public Advocate or the NYPD. Consequently, the petition must be dismissed for failure to join necessary parties. Granting amendment to name these necessary parties would be improper, as the statute of limitations to bring claims against these parties has passed (*Watkins v. New York City Dep't of Educ.*, 48 AD3d 339 [1st Dept 2008]; *see also Matter of Brancato v. New York State Bd. of Real Prop. Services*, 7 AD3d 865 [3d Dept 2004]).

Alternatively, and assuming, *arguendo*, that the Court were to reach the merits of the petition, the standard of review by this Court is well established – the Court must determine whether there is a rational basis for the Board's determination or whether the determination is arbitrary and capricious, contrary to law, or otherwise an abuse of discretion (*Matter of Gilman v. New York State Div. of Housing and Community Renewal*, 99 NY2d 144 [2002]; *Uniformed Firefighters Assn. of Greater N.Y., Local 94 IAFF, ADL-CIO v. City of New York*, 106 AD3d 564 [1st Dept 2012]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*Peckham v. Calogero*, 12 NY3d 424 [2009]; *see also Matter of Pell v. Board of Educ. of Union*

Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222 [1974]). When the determination is supported by a rational basis, this Court must sustain the determination, notwithstanding that the Court would reach a different result (*Peckham v. Calogero*, 12 NY2d at 431). Stated differently, the Court does not perform a *de novo* review of the facts or merits (*Matter of City of Watertown v. State of N. Y. Pub. Empl. Relations Bd.*, 95 NY2d 73 [2000]).

Here, the Board found that the Public Advocate was acting within his legislative duties when he issued the pronouncements at issue and was not, therefore, improperly interfering with the Union or the Union leadership's relationship with its members. It is beyond cavil that the Public Advocate is an elected official and a non-voting member of the City Council, with the right to introduce and co-sponsor legislation. Notably, the Public Advocate, inter alia, testified before the Council in support of legislation implementing those ideas contained in the Public Advocate's pronouncements/statements. Accordingly, the Board's determination that the pronouncements at issue were related to the Public Advocate's legislative duties, and were not improper, is soundly based within reason and the facts.

Likewise, the Board's findings that the Public Advocate's pronouncements/statements did not attempt to negotiate the Union member's terms and conditions of employment and the statements did not interfere with or coerce the Union's members, is supported by a rational basis. The Public Advocate has no negotiating relationship with the Union's membership and is not involved in the Union's collective bargaining negotiations. Furthermore, the Public Advocate's statements cannot reasonably be interpreted as an attempt to discourage employees from engaging with the Union. Consequently, vacating or annulling the Board's determination, as sought by petitioner, is inappropriate.

Accordingly, it is

ORDERED that the petition is denied for failure to join necessary parties; and it is further

ORDERED that, as an alternative holding, the petition is denied on the merits as the Board's determination is supported by a rational basis, not contrary to law, and not an abuse of discretion; and it is further

ORDERED that the petition is dismissed in its entirety and the matter shall be marked disposed.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

09/28/2022
DATE

HON. FRANK P. NERVO
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