

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

PRESENT: HON. ERIKA M. EDWARDS PART 14
Justice
 _____X
 ADLER, BRIAN, INDEX NO. 101553/2019
Petitioner, MOTION DATE 10/18/2019
 - v - MOTION SEQ. NO. 001
 NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM and OFFICE OF COLLECTIVE BARGAINING, DECISION + ORDER ON MOTION
Respondent.
 _____X

The following papers, numbered 1 _____, were read on this application to/for Art. 78/cross-mtn
 Notice of Motion/ Petition/ OSC - Affidavits - Exhibits **FILED** No(s) 1, 2
 Answering Affidavits - Exhibits _____ No(s) _____
 Replying _____ No(s) _____
 APR 14 2021
 NEW YORK COUNTY CLERK

Upon the foregoing documents, the court grants Respondent New York City Office of Collective Bargaining's ("OCB") cross-motion to dismiss Petitioner Brian Adler's ("Petitioner") Article 78 Petition as against it. Additionally, the court finds that Petitioner failed to demonstrate his entitlement to the relief requested in the Petition, so the court dismisses the Petition in its entirety as against all parties without costs or disbursements to any party.

Petitioner Brian Adler, who appears pro se, brought this CPLR Article 78 proceeding against Respondents New York City Employees' Retirement System ("NYCERS") and OCB (collectively "Respondents") seeking to annul the denial of his appeal before the New York City Board of Collective Bargaining ("OCB Board") in a Decision and Order, dated June 3, 2019, which upheld the Executive Secretary's dismissal of Petitioner's improper practice petition regarding his challenge to the alleged reclassification and demotion of his civil service title with

was arbitrary or capricious, or whether it was affected by an error of law (*see* CPLR § 7803[3]; *Matter of Pell v Board of Educ.*, 34 NY2d 222, 230 [1974]; and *Scherbyn v BOCES*, 77 N.Y.2d 753, 757-758 [1991]). In reviewing an administrative agency's determination, courts must ascertain whether there is a rational basis for the agency's action or whether it is arbitrary and capricious in that it was without sound basis in reason or regard to the facts (*Matter of Stahl York Ave. Co., LLC v City of New York*, 162 AD3d 103, 109 [1st Dept 2018]; *Matter of Pell*, 34 NY2d at 231). Where the agency's determination involves factual evaluation within an area of the agency's expertise and is amply supported by the record, the determination must be accorded great weight and judicial deference (*Testwell, Inc. v New York City Dept. of Bldgs.*, 80 AD3d 266, 276 [1st Dept 2010]). When a court reviews an agency's determination it may not substitute its judgment for that of the agency and the court must confine itself to deciding whether the agency's determination was rationally based (*Matter of Medical Malpractice Ins. Assn. v Superintendent of Ins. of State of N.Y.*, 72 NY2d 753, 763 [1st Dept 1988]).

Here, the court finds that Petitioner failed to meet his burden of demonstrating that the OCB Board's determination upholding the Executive Secretary's dismissal of Petitioner's improper practice petition was in violation of lawful procedure, arbitrary and capricious, affected by error of law or without a rational basis. Upon review of the arguments submitted by the parties, the court agrees with OCB and finds that the determination was rationally based, not arbitrary or capricious, consistent with due process and lawful procedure, and within the OCB Board's discretion. The allegations raised in this proceeding fail to allege that the OCB Board violated the New York City Collective Bargaining Law in any way and Petitioner's relief requested does not fall within the OCB Board's jurisdiction. As OCB correctly noted, Petitioner challenges the fairness of the Board of Certification's 2015 proceeding regarding the change in

his civil service title to non-managerial, which is beyond the scope of the OCB Board's jurisdiction and this Article 78 proceeding is well outside of the applicable statute of limitation.

Furthermore, the court considered Petitioner's remaining arguments and found them to be without merit. As such, the court grants OCB's cross-motion to dismiss the Petition against it. Additionally, the court finds that Petitioner failed to demonstrate his entitlement to the relief requested so the court dismisses the Petition in its entirety as against all parties without costs or disbursements to any party.

As such, it is hereby

ORDERED that the court grants Respondent New York City Office of Collective Bargaining's cross-motion to dismiss Petitioner Brian Adler's Article 78 Petition as against it; and it is further

ORDERED that the court dismisses the Petition in its entirety as against all parties without costs or disbursements to any party; and it is further


ORDERED that Respondent New York City Office of Collective Bargaining is directed to serve a copy of this Decision and Order upon all parties with notice of entry within thirty (30) days of the date of this Decision and Order; and it is further

ORDERED that this constitutes the decision and order of the court.

FILED

4/12/2021
DATE

APR 14 2021


ERIKA M. EDWARDS, J.S.C.

NEW YORK COUNTY
COUNTY CLERK

HON. ERIKA M. EDWARDS
J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

101603/2018 ADLER, BRIAN vs. NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

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