

38 A.D.3d 482

Supreme Court, Appellate Division, First
Department, New York.

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

v.

The NEW YORK CITY BOARD OF COLLECTIVE
BARGAINING, et al., Respondents–Respondents.
Patrick Lynch, as President of the Patrolmen's
Benevolent Association of the City of New York,
Inc., et al., Plaintiffs–Appellants,

v.

Raymond W. Kelly, in his official capacity as Police
Commissioner of the Police Department of the
City of New York, et al., Defendants–Respondents.

March 29, 2007.

Synopsis

Background: Patrolmen's association and certain members appealed from orders of the Supreme Court, New York County, [Marcy S. Friedman, J.](#), which denied association's article 78 petition and dismissed association member's complaint premised on the same allegation.

Holdings: The Supreme Court, Appellate Division held that:

[1] patrolmen's association had a full and fair opportunity to be heard in the administrative and ensuing article 78 proceedings, and

[2] outcome of the administrative proceeding was binding on the association's individual members in a subsequent action.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (2)

[1] Labor and Employment Hearing

Patrolmen's association had a full and fair opportunity to be heard in the administrative and ensuing article 78 proceedings, even though the New York City Board of Collective Bargaining did not hold an evidentiary hearing and decided the matter based upon the submissions. [U.S.C.A. Const.Amend. 14](#); [McKinney's CPLR 7801 et seq.](#)

1 Case that cites this headnote

[2] Labor and Employment Hearing

Even though the New York City Board of Collective Bargaining did not hold an evidentiary hearing and decided patrolmen's association's claim based upon the submissions, the outcome of the administrative proceeding was binding on the association's individual members in a subsequent action.

Attorneys and Law Firms

****96** Gleason, Dunn, Walsh & O'Shea, Albany ([Ronald G. Dunn](#) of counsel), for appellants.

[Steven C. Decosta](#), New York ([John F. Wirenus](#) of counsel), for The New York City Board of Collective Bargaining and [Marlene A. Gold](#), respondents.

[Michael A. Cardozo](#), Corporation Counsel, New York ([Drake A. Colley](#) of counsel), for municipal respondents.

[MAZZARELLI, J.P.](#), [WILLIAMS](#), [GONZALEZ](#), [CATTERSON](#), [KAVANAGH, JJ.](#)

Opinion

***482** Order, Supreme Court, New York County ([Marcy S. Friedman, *483 J.](#)), entered August 17, 2005, which denied the petition pursuant to CPLR article 78, alleging, inter alia, that the New York City Police Department's Performance Monitoring Program (PMP) constituted a form of discipline, and order, same court and Justice, entered January 4, 2006, which, in a subsequent action,

granted defendants' motion to dismiss the complaint premised on the same allegation, unanimously affirmed, without costs.

[1] [2] In the above-captioned article 78 proceeding commenced by the Patrolmen's Benevolent Association (PBA) against the New York City Board of Collective Bargaining (BCB) as well as the underlying administrative proceeding, the PBA argued that PMP constituted discipline. The issue was litigated and squarely decided administratively, and the administrative determination rejecting the PBA's contention was properly upheld in the appealed August 17, 2005 order as neither arbitrary nor capricious. Contrary to plaintiffs' arguments, the PBA had a full and fair opportunity to be heard in the administrative and ensuing article 78 proceedings, even though the BCB did not hold an evidentiary hearing and decided the matter based upon the submissions (see *Matter of Goldman v. New York State Div. of Hous. & Community Renewal*, 228 A.D.2d 192, 643 N.Y.S.2d 99 [1996], *lv. denied* 89 N.Y.2d 805, 653

N.Y.S.2d 917, 676 N.E.2d 499 [1996]). The outcome of those proceedings is binding on the individual plaintiffs in the subsequent action (see *Castellano v. City of New York*, 251 A.D.2d 194, 674 N.Y.S.2d 364 [1998], *lv. denied* 92 N.Y.2d 817, 684 N.Y.S.2d 489, 707 N.E.2d 444 [1998], *cert. denied* **97 526 U.S. 1131, 119 S.Ct. 1804, 143 L.Ed.2d 1008 [1999]). Inasmuch as both the proceeding pursuant to article 78 and the subsequent action turn upon the identical issue, our affirmance of the petition's denial dictates an affirmance of the action's dismissal.

We have reviewed appellants' remaining arguments and find them unavailing.

All Citations

38 A.D.3d 482, 834 N.Y.S.2d 95, 2007 N.Y. Slip Op. 02674