

51 A.D.2d 528

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

In re Leon DAVIS, etc., Petitioner-Appellant,

v.

Arvid ANDERSON et al., Respondents-Respondents.

Jan. 27, 1976.

Synopsis

Article 78 proceeding was instituted to review and annul determination of office of collective bargaining. The Supreme Court, New York County, George Postel, J., dismissed petition, and petitioner appealed. The Supreme Court, Appellate Division, held that proceeding which was brought more than 30 days after determination sought to be reviewed was time barred.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (2)


[1] **Labor and Employment**  Time for Proceedings

Article 78 proceeding, which was instituted to review and annul determination of office of collective bargaining but which was brought more than 30 days after determination sought to be reviewed, was time barred. [Civil Service Law §§ 212, !\[\]\(b4eeff342f60cc7bcd67d869b4fedca2_img.jpg\) 213; CPLR 7801 et seq.](#)

[2 Cases that cite this headnote](#)

[2] **Labor and Employment**  Time for Proceedings

Determination of office of collective bargaining became final and binding for limitations purposes on July 24, 1974, the date petitioner was served with decision despite petitioner's subsequent request for rehearing, and thus proceeding to review and annul such determination, based on petition which was served on January 10, 1975, was time

barred even pursuant to four-month statute of limitations.  [CPLR 217.](#)

[2 Cases that cite this headnote](#)

Attorneys and Law Firms

****86** R. Dorn, New York City, for petitioner-appellant.


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Before LUPIANO, J.P., and BIRNS, CAPOZZOLI, LANE and NUNEZ, JJ.



MEMORANDUM DECISION.

***528** Judgment, Supreme Court, New York County, entered August 5, 1975, dismissing the petition, unanimously affirmed without costs or disbursements.


This Article 78 proceeding was instituted to review and annul a determination of the Office of Collective Bargaining, which was dated July 22, 1974 and served on petitioner on July 24, 1974. Petitioner sought reconsideration on August 5, 1974, which was denied September 16, 1974 and was served on petitioner on September 23, 1974. The petition in the instant proceeding was served on January 10, 1975.

Review of a determination such as in the case at bar must be sought within 30 days ( [Civil Service Law, s 213](#)), which time limitation is applicable to proceedings before the Office of Collective Bargaining ([Civil Service Law, s 212](#)).

[1] This proceeding, having been brought more than 30 ***529** days after the determination sought to be reviewed, is therefore time-barred.

[2] We note parenthetically that even absent the bar of  [Civil Service Law, s 213](#), we would dismiss this proceeding as untimely. The determination of this matter became final and binding within the definition of  [CPLR 217](#) on July 24, 1974, the date petitioner was served with the decision of the Office of Collective Bargaining. The statute of limitations was not extended by petitioner's request for rehearing ([Matter of Davis v. Kingsbury, 30 A.D.2d 944, 945, 293 N.Y.S.2d 997, 998, Aff'd 27 N.Y.2d 567, 313 N.Y.S.2d 390, 261 N.E.2d 393; Matter of Williamson v. Fermoile, 31](#)

A.D.2d 438, 441, 298 N.Y.S.2d 557, 560, Aff'd 26 N.Y.2d 731, 309 N.Y.S.2d 35, 257 N.E.2d 285; Matter of Fiore v. Board of Education Retirement System, 48 A.D.2d 850, 369 N.Y.S.2d 179), and therefore, since the petition was served on January 10, 1975, the proceeding is time-barred even pursuant

to the four-month statute of limitations found in  CPLR 217.

All Citations

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