

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMEAD
J.S. Justice

PART 35

Law Enforcement Employees

-v-

Office of Collective

INDEX NO. 156046/2018
MOTION DATE 3/27/19
MOTION SEQ. NO. 003

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause -- Affidavits -- Exhibits No(s).
Answering Affidavits -- Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is

Motion sequence 003 is decided in accordance with the annexed Memorandum Decision. It is hereby

ORDERED that the motion, Pursuant to CPLR 2221, of the petitioner Law Enforcement Employees Benevolent Association (motion sequence number 003) is, in all respects, denied. And it is further

ORDERED that counsel for Petitioner shall serve a copy of this Order with notice of entry within twenty (20) days of entry on counsel for respondent.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 3/27/19

[Signature] J.S.C.

HON. CAROL R. EDMEAD J.S.C.

- 1. CHECK ONE: [X] CASE DISPOSED [] NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: [] GRANTED [] DENIED [] GRANTED IN PART [] OTHER
3. CHECK IF APPROPRIATE: [] SETTLE ORDER [] SUBMIT ORDER
[] DO NOT POST [] FIDUCIARY APPOINTMENT [] REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 35

-----X
In the Matter of the Application of

LAW ENFORCEMENT EMPLOYEES BENEVOLENT
ASSOCIATION,

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

Index No.: 156046/18
DECISION/ORDER

-against-

THE CITY OF NEW YORK OFFICE OF COLLECTIVE
BARGAINING - BOARD OF CERTIFICATION,

Respondent.

-----X

HON. CAROL R EDMEAD, J.S.C.:

In this Article 78 proceeding, the petitioner Law Enforcement Employees Benevolent Association (LEEBA) moves for leave to reargue its opposition to the earlier dismissal motion of the respondent City of New York Office of Collective Bargaining - Board of Certification (OCB; motion sequence number 002), which the court granted in a decision dated November 19, 2018 (motion sequence number 003). For the following reasons, this current motion is denied.

BACKGROUND

The court discussed the facts of this case in its November 19, 2018 decision, and need not repeat them here. It is sufficient to note that LEEBA’s motion raises two objections to the court’s previous decision: 1) that the court “erred in ruling that Local 237 [i.e., Local 237, International Brotherhood of Teamsters] and the City of New York [the City] are necessary parties”; and 2) that

“the court erred in awarding costs and disbursements to [OCB].”

DISCUSSION

Before reaching LEEBA’s arguments, however, the court notes that CPLR 2221 (d) (2) requires that “[a] motion for leave to reargue . . . shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.” Such a motion may be granted only upon a showing “that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision.” *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dept 1992), quoting *Schneider v Solowey*, 141 AD2d 813 (2d Dept 1988). As the Appellate Division, First Department, has observed, “a motion for leave to reargue ‘is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented.’” *Matter of Anthony J. Carter, DDS, P.C. v Carter*, 81 AD3d 819, 820 (1st Dept 2011), quoting *McGill v Goldman*, 261 AD2d 593, 594 (2d Dept 1999).

Here, LEEBA first asserts that the court’s November 19, 2018 decision misapplied the Appellate Division, First Department, holding in *Mahinda v Board of Collective Bargaining* (91 AD3d 564 [1st Dept 2012]). See petitioner’s memorandum of law, at 9-12. LEEBA specifically contends that the court erred: 1) in failing to distinguish *Mahinda* on the facts because it “was not a fragmentation case”; and 2) in finding that the now-dismissed respondents, Local 237 and the City, were “necessary parties” to this proceeding, because OCB’s interests “align directly” with theirs. *Id.* OCB’s response notes that LEEBA “merely copied its arguments regarding *Mahinda*’s applicability

verbatim from its opp. memo” to the original motion. After reviewing the case file, the court notes that OCB’s contention is correct. *See* petitioner’s memorandum of law (motion sequence number 003), at 9-12; petitioner’s memorandum of law in opposition (motion sequence number 002), at 14-16. Thus, LEEBA’s arguments in LEEBA’s current motion represent an improper attempt to take “successive opportunities to reargue issues previously decided,” in violation of CPLR 2221. Therefore, the court rejects LEEBA’s first argument in its current motion (and reiterates its findings with respect to motion sequence number 002).

LEEBA next asserts that the court violated CPLR 7806 by awarding OCB costs and disbursements as part of its decision on motion sequence number 002. *See* petitioner’s memorandum of law, at 12. OCB responds that this argument is “not properly before the court on a motion to . . . reargue as these issues were never previously addressed.” *See* Baker affirmation in opposition, ¶ 29. OCB also contends that LEEBA’s current motion is “frivolous” and, thus, sanctionable. *Id.* LEEBA’s reply papers vehemently deny this contention. *See* petitioner’s reply memorandum, at 5. The court finds that all of these argument miss the mark. LEEBA is incorrect to invoke CPLR 7806 because the court awarded OCB costs pursuant to CPLR 8101 as the “prevailing party” on motion sequence number 002. That statute entitles a prevailing party to an award of costs “unless otherwise provided by statute or unless the court determines that to so allow costs would not be equitable, under all of the circumstances.” LEEBA has not identified any such limiting statute, nor has it argued that the costs award was inequitable. OCB is also incorrect to argue that LEEBA failed to address the costs issue in its last motion. It plainly could not have, since the court did not award costs until after it had decided the motion. OCB filed to support its contention regarding “sanctionable frivolity” with anything but

conclusory, self-serving statements. Therefore, the court rejects LEEBA's second argument in this motion, and OCB's opposition. Accordingly, the court finds that LEEBA's motion to reargue should be denied.

DECISION

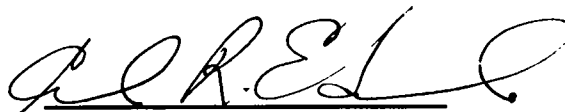
ACCORDINGLY, for the foregoing reasons, it is hereby

ORDERED that the motion, pursuant to CPLR 2221, of the petitioner Law Enforcement Employees Benevolent Association (motion sequence number 003) is, in all respects, denied. And it is further

ORDERED that counsel for Petitioner shall serve a copy of this Order with notice of entry within twenty (20) days of entry on counsel for respondent

Dated: New York, New York
March 27, 2019

ENTER:



Hon. Carol R. Edmead, J.S.C

HON. CAROL R. EDMEAD
J.S.C.