SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMEAD J.S.C. PART _____
Justice

Index Number : 156046/2018
LAW ENFORCEMENT EMPLOYEES
vs
OFFICE OF COLLECTIVE
Sequence Number : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE 10-15-18
MOTION SEQ. NO. _____

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 sequences 001 and 002 are decided in accordance with the annexed Memorandum Decision. It is hereby

ADJUDGED that the petition of the Law Enforcement Employees Benevolent Association for relief pursuant to CPLR Article 78 (motion sequence number 001) is denied, and the petition is dismissed; and it is further

ORDERED that the motion, pursuant to CPLR 3211, of the respondent City of New York Office of Collective Bargaining - Board of Certification (motion sequence number 002) is granted, and the petition is dismissed in its entirety, with costs and disbursements to said respondent as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said respondent; 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: 11.19.2018

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

1. CHECK ONE: ..... ☑ 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, JSC:

In this Article 78 proceeding, the petitioner Law Enforcement Employees Benevolent Association (LEEBA) seeks a judgment to overturn an order of the respondent City of New York Office of Collective Bargaining - Board of Certification (OCB) as arbitrary and capricious (motion sequence number 001), and OCB moves separately to dismiss LEEBA's petition (motion sequence number 002). Thes motions are disposed of in accordance with the following decision.

FACTS

Petitioner LEEBA is a labor organization which represents public employees of various governmental agencies of New York City (the City) in their contract negotiations. *See* verified petition, ¶ 1. Respondent OCB is itself a City agency, one of whose functions is to resolve questions concerning the union representation of City employees that may arise during the collective bargaining process. *Id.*, ¶ 2.

On October 25, 2017, LEEBA submitted a petition to OCB for authorization to conduct collective bargaining representation of City employees who hold the job titles "Special Officer" (SO) and "Supervising Special Officer" (SSO) in a number of City agencies; including: 1) the New York City Health and Hospitals Corporation (HHC); 2) the New York City Housing Authority (NYCHA); 3) the New York City Department of Citywide Administrative Services (DCAS); 4) the District Attorney's Offices of the Counties of Kings and the Bronx (the DA's Offices); 5) the New York City Police Department (NYPD); 6) the Department of Environmental Protection (DEP); 7) the Department of Finance (DOF); and 8) the Department of Transportation (DOT). *See* verified petition, ¶ 6. The SOs and SSOs in these various agencies are currently classified as "peace officers" in the Criminal Procedure Law. As such, they are also currently represented in their employment negotiations by the City Employees Union, Local 237, International Brotherhood of Teamsters (Local 237), which includes these employees in a bargaining unit called "Certification No. 67-78." *Id.*; exhibit D, at 2-3. LEEBA's October 25, 2017 petition sought authorization to remove the SOs and SSOs of these agencies from that bargaining unit, however, and to place them in a different unit which represents "law enforcement officers" as distinct from "peace officers." *Id.*; verified petition, ¶ 7. LEEBA states that OCB requested it to provide an "offer of proof" to substantiate LEEBA's position that the employment duties of the SOs and SSOs had changed sufficiently to warrant them being officially reclassified as "law enforcement officers" and granted different union representation. *Id.*, ¶ 8. LEEBA asserts that it gathered materials from the affected agencies to make this "offer of proof" and submitted it to OCB, which did not hold a hearing on the matter. *Id.*, ¶¶ 9-10. LEEBA also asserts that, on May 30, 2018, OCB issued a decision which simply dismissed their

petition (the OCB order). *Id.*, ¶ 10; exhibit D.

For its part, OCB asserts that - despite the allegations in the petition - the only factual allegations that LEEBA submitted to it concerned HHC and NYCHA employees (as opposed to employees of eight City agencies), and also asserts that its May 30, 2018 order was correctly made, and not an arbitrary and capricious act. *See* respondent's mem of law at 12-16

LEEBA commenced this Article 78 proceeding to overturn the OCB order on June 28, 2018 by filing a petition which includes causes of action for: 1) a declaratory judgment; 2) a permanent injunction; and 3) the appointment of a Special Referee. *See* verified petition (motion sequence number 001). OCB did not file an answer, but instead submitted a motion to dismiss the petition on August 24, 2018. *See* notice of motion (motion sequence number 002). Both of these matters are now before the court

DISCUSSION

The court's role in an Article 78 proceeding is to determine, upon the facts before the administrative agency, whether the determination had a rational basis in the record or was arbitrary and capricious. *See 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); *Matter of E.G.A. Assoc. v New York State Div. of Hous. and Community Renewal*, 232 AD2d 302 (1st Dept 1996). A determination is arbitrary and capricious if it is "without sound basis in reason, and in disregard of the facts." *See Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 (1983); *citing Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231. Thus, if there is a rational basis for the administrative determination, there can be no judicial interference. *Matter of Pell v*

Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d at 231-232. Further, it is well settled that "[t]he interpretations of a respondent agency of statutes which it administers are entitled to deference if not unreasonable or irrational." *Matter of Metropolitan Assoc. Ltd. Partnership v New York State Div. of Hous. & Community Renewal*, 206 AD2d 251, 252 (1st Dept 1994), citing *Matter of Salvati v Eimicke*, 72 NY2d 784, 791 (1988).

Here, however, before it reaches the merits of LEEBA's petition, the court must address OCB's first opposition argument, which contends that LEEBA's "failure to name necessary parties cannot be cured and requires dismissal of the Article 78 petition," as a matter of law. *See* respondent's mem of law, at 17-19. OCB particularly notes that LEEBA's petition failed to name the City, the DA's offices, HHC, NYCHA or Local 237 as respondents. *Id.* OCB then cites the holding of the Appellate Division, First Department, in *Mahinda v Board of Collective Bargaining* (91 AD3d 564 [1st Dept 2012]), that affirmed a trial court's dismissal of an Article 78 petition which only named OCB as a respondent, but failed to name either the City (the petitioner was employed by DOT, a City agency) or the petitioner's union. The First Department specifically found that OCB was "a neutral administrative agency, [which] merely acted as an adjudicatory body," while "[t]here is no possibility of an effective judgment without [the union] and the City, since they are the only real parties in interest." 91 AD3d at 565. The First Department based these findings on CPLR 1001 (a), which mandates compulsory joinder "if complete relief is to be accorded between the persons who are parties thereto or where the person to be joined might be inequitably affected by a judgment" therein." *Id.* (internal citation and quotation marks omitted). The First Department concluded that dismissal of the petition was

proper, even though it had been timely served on OCB, since the other necessary parties had not been named. *Id.* This same factual scenario appears to repeat itself in this case. OCB issued its order on May 30, 2018, and LEEBA commenced this Article 78 proceeding against OCB (only) on June 28, 2018. *See* notice of petition; verified petition, exhibit D. This was a timely filing, since New York City Collective Bargaining Law (NYCCBL) § 12-308 (a) provides that OCB's "[f]inal orders shall be . . . reviewable under article seventy-eight of the civil practice law and rules upon petition filed by an aggrieved party within thirty days after service by registered or certified mail of a copy of such order upon such party." Civil Service Law § 213 (a). LEEBA filed its petition against OCB with two days to spare.

Nevertheless, LEEBA's petition did not name as respondents either the City, the DA's Offices, the seven City agencies whose SOs and SSOs are the subject of the OCB order (i.e., HHC, NYCHA, DCAS, NYPD, DEP, DOF or DOT), or Local 237, the union that currently represents those employees. As a result, even though it is timely, LEEBA's petition must be dismissed under the rule of *Mahinda* for failure to name necessary parties. In its reply papers, LEEBA nonetheless contends that the foregoing entities are not "necessary parties," because "there is no relief being sought from them." *See* petitioner's reply mem of law at 15. LEEBA attempts to distinguish the *Mahinda* holding on the ground that it involved a union-arbitrated employment termination claim, and "was not a fragmentation case." *Id.* However, LEEBA cites no authority to support its assertion that this is a meaningful factual distinction. The court's own research has disclosed two "fragmentation cases" in which the Third Department permitted unions to intervene in disputes between complaining employees associations and/or local governments, as petitioners, and the New York State Public Relations Board (PERB), as the

respondent. *See Matter of Civil Serv. Empls. Assn., Local 1000, AFSCME, AFL-CIO, Ichabod Crane Cent. School Dist. CSEA Unit v New York State Pub. Empl. Relations Bd.*, 300 AD2d 929 (3d Dept 2002); *Matter of County of Erie v New York State Pub. Empl. Relations Bd.*, 247 AD2d 671 (3d Dept 1998). Further, mere months ago, this court (St. George, J.) issued a decision dismissing an Article 78 petition that specifically found that a union *is* a CPLR 1001 (a) "necessary party" with a "right to intervene" into a labor arbitration dispute between a City employee and the City, in part, because the petitioner's arbitration award could be "enforced in disregard of the Union's pre-arbitration agreement with the City . . . [which would] directly impact[] the Union's interest." *Matter of Donas v New York City Dept. of Envtl. Protection*, 60 Misc 3d 1221(A), 2018 NY Slip Op 51192(U), *5-6 (Sup Ct, NY County 2018). Finally, OCB's reply papers note that CPLR 1001 (a) provides that "'parties against whom relief is sought' constitute one type of necessary parties," and that "another type [of party are] . . . those that 'might be inequitably affected by a judgment in the action.'" *See* respondent's reply mem of law at 3. Pursuant to the foregoing analysis, the court concludes that the City (and its agencies which employ the potentially affected SOs and SSOs herein) and Local 237 (the union that currently represents those employees) are both "necessary parties" to this proceeding because they "might be inequitably affected by a judgment" issued in this action. As respondent notes, the City would "have to bargain and deal with a new bargaining unit and agent," while Local 237 would have to ask its members "to vote for which union they wished to be represented by," and these would be expensive, disruptive, time-consuming acts which might be subject to due process challenge. *See* respondent's mem of law at 17-19. LEEBA's reply papers fail to address these valid contentions, but simply insist that "the interests of [OCB] in this case align directly with the interests of" the

City and Local 237, without explaining how this could be so. *See* petitioner's reply mem of law, at 15. Accordingly, the court rejects petitioner's opposition, and finds that their petition should be dismissed for failure to name necessary parties.

DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition of the Law Enforcement Employees Benevolent Association for relief pursuant to CPLR Article 78 (motion sequence number 001) is denied, and the petition is dismissed; and it is further

ORDERED that the motion, pursuant to CPLR 3211, of the respondent City of New York Office of Collective Bargaining - Board of Certification (motion sequence number 002) is granted, and the petition is dismissed in its entirety, with costs and disbursements to said respondent as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said respondent; 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
November 19, 2018

ENTER:

Hon. Carol Robinson Edmead, JSC

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