

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

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

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ARNALDO RODRIGUEZ,

Petitioner,

- v -

THE CITY OF NEW YORK, NEW YORK CITY OFFICE OF COLLECTIVE BARGAINING, BOARD OF COLLECTIVE BARGAINING, DISTRICT COUNCIL 37, AFSCME, AFL-CIO, LOCAL 2507, NEW YORK CITY FIRE DEPARTMENT, NEW YORK FIRE COMMISSIONER LAURA KAVANAGH IN BOTH HER INDIVIDUAL AND OFFICIAL CAPACITY,

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion for CPLR ARTICLE 78 RELIEF

Upon the foregoing documents, it is hereby ordered that the petition is denied and the cross-motion to dismiss is granted.

In this CPLR Article 78 special proceeding, petitioner seeks to overturn the final determination of respondent, the Board of Collective Bargaining (“the Board”), which found that petitioner failed to state facts sufficient to substantiate his claim that District Council 37 (“DC 37”) breached its duty of fair representation by acting in an arbitrary, discriminatory, or bad faith manner. Respondents cross-move to dismiss.

As an initial matter, respondents are entitled to dismissal as the petition was untimely filed, more than 30 days after service of the Board’s decision.

However, even if the petition were not untimely, it still fails on the merits.

“When an administrative agency is charged with implementing and enforcing the provisions of a particular statute, the courts will generally defer to the agency’s expertise and judgment regarding that statute.” Dist. Council 37, Am. Fed’n of State, Cnty. & Mun. Emps., AFL-CIO v City of New York, 22 AD3d 279-283-284 (1st Dept 2005) (further holding “[a] court cannot simply substitute its judgment for that of an administrative agency when the agency’s determination is reasonable”).


Further, “a union member [] has no right to sue respondent to enforce a provision of the collective bargaining agreement absent a showing that the union breached its duty of fair

DECISION + ORDER ON MOTION

representation.” Sapadin v Bd. of Educ. of City of New York, 246 AD2d 359, 359 (1st Dept 1998). In order to demonstrate this, “there must be a showing that the activity, or lack thereof, which formed the basis of the chargers against the union was deliberately invidious, arbitrary or founded in bad faith.” Id. at 360.

This Court cannot say that the Board’s determination was unreasonable, nor does it find that the Board acted erroneously in not considering arguments raised for the first time on appeal, or in determining that Judge Moyne’s prior decision did not impact the Board’s decision that petitioner had not established a violation of DC 37’s duty of fair representation.

Accordingly, the petition is denied, the cross-motion to dismiss is granted, and the Clerk is directed to enter judgment accordingly.

NOV 13 2023
HON. ARTHUR F. ENGORON J.S.C.


11/9/2023			ARTHUR F. ENGORON, J.S.C.
DATE			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE