SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **37**
Justice

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INDEX NO. 154237/2023

MOTION DATE 12/12/2023

MOTION SEQ. NO. 002

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,

Respondent.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to REARGUE.

Upon the foregoing documents, and for the reasons stated herein below, petitioner's motion, pursuant to CPLR 2221(d), to reargue is denied.

Background

On May 10, 2023, petitioner, Arnaldo Rodriguez ("Rodriguez"), commenced this Article 78 special proceeding seeking to overturn the final determination of respondent, the Board of Collective Bargaining (the "Board"), arguing that the Board acted in an arbitrary, discriminatory, and/or bad faith manner when it found that petitioner failed to state facts sufficient to substantiate his claim that respondent District Council 37 ("DC 37") breached its duty of fair representation. NYSCEF Doc. No. 37.

On August 25, 2023, respondents cross-moved to dismiss, arguing, inter alia: 1) petitioner failed to state a cause of action; 2) the state of limitations time-barred the petition; and 3) petitioner lacked standing for relief against DC 37. NYSCEF Doc. No. 21.

In a Decision and Order dated November 9, 2023, this Court denied the petition and granted the cross-motion to dismiss because the petition was untimely, and petitioner failed to show DC37's activity was deliberately invidious, arbitrary and/or done in bad faith. NYSCEF Doc. No. 37.

On December 12, 2023, Rodriguez moved, pursuant to CPLR 2221(d), to reargue, claiming: 1) the petition was timely filed because the statute of limitations had not started running; 2) the Court failed to consider a Federal remedial order defining petitioner as a member of a protected

class; and 3) the underlying arbitrator award ruled that petitioner should be made whole. NYSCEF Doc. No. 44.

In opposition, respondents argue: 1) petitioner improperly seeks to reargue previously decided arguments; 2) petitioner has ignored the statute of limitations that applies to Article 78 proceedings; and 3) this Court has already considered and addressed the allegations of discriminatory discipline and the alleged improper enforcement of the arbitration award. NYSCEF Doc. No. 46.

Discussion

CPLR 2221(d) provides, in relevant part, 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." A motion for leave to reargue 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 A.D.2d 22, 27 (1st Dep't 1992).

Here, petitioner merely relitigates arguments that this Court previously considered and rejected.

First, the petition was untimely because it was filed more than 30 days after service of the Board's final decision on April 5, 2023. The petition is dated May 4, 2023, notarized on May 8, 2023, and was filed on NYSCEF on May 10, 2023. NYSCEF Doc. No. 1. The Court has considered petitioner's tortured argument that that the statute of limitations has not yet started and finds it unavailing as the clock started when the Board notified Rodriguez of its decision on April 5, 2023. NYSCEF Doc. No. 26.

Second, as previously explained, even if the petition were not untimely, it still lacks merit.

"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, County. & 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 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.

Here, the Court does not find that the Board's determination was unreasonable, nor does it find the Board acted erroneously, thus the Court will adhere to its original decision.

Conclusion

Thus, petitioner Arnaldo Rodriguez's motion to reargue, pursuant to CPLR 2221(d), is hereby denied.

MAR 05 2024

HON. ARTHUR F. ENGORON, J.S.C.

3/5/2024
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	[X] CASE DISPOSED		[ ] NON-FINAL DISPOSITION			
	[ ] GRANTED	[X] DENIED	[ ] GRANTED IN PART		[ ] OTHER	
APPLICATION:	[ ] SETTLE ORDER		[ ] SUBMIT ORDER			
CHECK IF APPROPRIATE:	[ ] INCLUDES TRANSFER/REASSIGN		[ ] FIDUCIARY APPOINTMENT		[ ] REFERENCE	