Matter of Sergeants Benevolent Assn. of the City of N.Y., Inc. v City of New York
2013 NY Slip Op 33389(U)
December 5, 2013
Supreme Court, New York County
Docket Number: 104481/12
Judge: Paul Wooten
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SCANNED ON 1/2/2014
[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Paul Wooten
Justice

PART 7

Index Number : 104481/2012
SERGEANTS BENEVOLENT
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 002
DISMISS

INDEX NO. ____________
MOTION DATE ____________
MOTION SEQ. NO. ____________

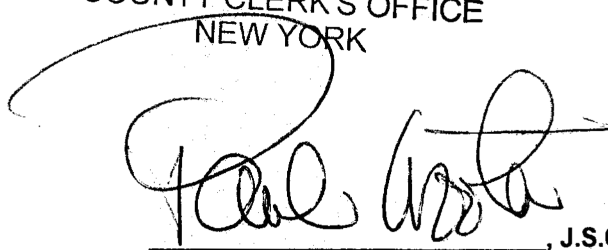
The following papers, numbered 1 to ____, were read on this motion to/for ____________

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 decided in accordance with the memorandum decision in motion sequence 001.

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

FILED
DEC 09 2013
COUNTY CLERK'S OFFICE
NEW YORK



Dated: 12/5/13

_______________, J.S.C.
Paul Wooten

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

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

In the Matter of the Application of
SERGEANTS BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC. and PATROLMEN'S BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC.

INDEX NO. 104481/12

MOTION SEQ. NO. 001

Petitioners,

-against-

For a Judgement Pursuant to the Provisions of Article 78 of the New York Civil Practice Law and Rules,

THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, THE CITY OF NEW YORK OFFICE OF LABOR RELATIONS, THE NEW YORK CITY BOARD OF COLLECTIVE BARGAINING, and MARLENE GOLD, as Chair of the New York City Board of Collective Bargaining,

Respondents.

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COUNTY CLERK'S OFFICE
NEW YORK

The following papers numbered 1 to 2 were read on this motion by petitioner for a judgment pursuant to Article 78.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits (Memo)	2
Replying Affidavits (Reply Memo)	

Cross-Motion: ☐ Yes ☒ No

Motion sequences 001 and 002 are hereby consolidated for purposes of disposition.

Petitioners Sergeants Benevolent Association of the City of New York , Inc. (SBA) and Patrolmen's Benevolent Association of the City of New York, Inc. (PBA) (collectively, the Unions) brought this proceeding on December 19, 2012, pursuant to Article 78 of the CPLR seeking to annul a Decision and Order of the New York City Board of Collective Bargaining,

(BCB) dated November 13, 2012 and postmarked November 19, 2012 (the Decision). The Decision dismissed petitioners' Verified Improper Practice Petition (IPP), brought on October 3, 2007, pursuant to New York City Collective Bargaining Law (NYCCBL) 12-306[1] which challenged the action by the City of New York and the New York City Police Department (NYPD) (collectively, the Municipal Respondents) to unilaterally impose a new policy requiring all police personnel to automatically undergo blood alcohol testing in all cases where police personnel discharge a weapon that results in a death or injury (Verified Petition, ¶ 2). Petitioners claim that BCB, after hearing their petition, incorrectly ruled that the NYPD policy is related to discipline and to the investigation of crimes, and as such held that the alcohol testing in this instance is not a mandatory subject of collective bargaining agreements in effect for SBA and PBA. Petitioners contend that the requirement and testing procedure are mandatory subjects of bargaining under the NYCCBL. Both collective bargaining agreements currently in effect between the parties, petitioners proffer, are silent on the subject of alcohol testing absent individualized reasonable suspicion related to weapons discharge or otherwise (*id.* at ¶ 14).

The Verified Petition seeks an order annulling the Decision, and remanding the case to the BCB to engage in the appropriate balancing test to determine the duty to bargain on the grounds that the Decision is arbitrary and capricious, inconsistent with prior BCB precedent, and on the basis that case law relied on by the BCB is inapplicable to the case (motion sequence 001). Municipal Respondents' cross-move to dismiss the petition pursuant to CPLR 7804(f) and 3211(a)(7) for failure to state a claim upon which relief can be granted. Respondents BCB and Marlene A. Gold (Gold) as chair thereof move separately to dismiss the petition pursuant to CPLR 7804(f) and for an order affirming the Decision (motion sequence 002).

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[1] Administrative Code of City of New York § 12-306.

Municipal Respondents proffer that the Decision denying the Union's IPP was reasonable, proper and consistent with the record and applicable local law, all of which was thoroughly explained therein. In support of their motion, BCB and Gold proffer that the Unions' claim that because the testing involved was for alcohol and not illegal drugs, and because it falls neither into the pre-existing classes of random or reasonable suspicion testing, it cannot be deemed to be related to discipline and thus is a prohibited subject of bargaining, is without merit. Further, these arguments were similarly rejected by the Court of Appeals in *Matter of City of New York v Patrolmen's Benevolent Assn. of the City of N.Y., Inc.* (14 NY3d 46 [2009]). As such, BCB and Gold proffer that this Court should uphold the Decision finding it to be rational, not arbitrary or capricious and consistent with applicable law.

STANDARD

In the context of an Article 78 proceeding, courts have held that "a reviewing court is not entitled to interfere in the exercise of discretion by an administrative agency unless there is no rational basis for the exercise, or the action complained of is arbitrary and capricious" (*Matter of Soho Alliance v New York State Liq. Auth.*, 32 AD3d 363, 363 [1st Dept 2006], citing *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]; *see also* CPLR 7803[3]). An agency's decision is considered arbitrary if it is "without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell,* 34 NY2d at 231). "It is well settled that a court may not substitute its judgment for that of the board or body it reviews *unless* the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion" (*Matter of Arrocha v Board of Educ. of City of N.Y.*, 93 NY2d 361, 363 [1999] [internal quotation marks and citations omitted]).

DISCUSSION

The question before this Court is the whether the Decision by the BCB to deny the

Unions' IPP, which challenged the action by the City and the NYPD to impose a new blood alcohol testing policy in all cases where police personnel discharge a weapon that results in a death or injury has a rational basis or is arbitrary and capricious. The Appellate Division, First Department, in an analogous case, recently affirmed the lower court and held that is reasonable, proper, and lawful for the New York Fire Department Commissioner to implement a new alcohol and drug testing policy for EMS workers without subjecting the rule to collective bargaining (*see Roberts v New York City Office of Collective Bargaining*, __AD3d__, 2013 NY Slip Op 07870 [1st Dept 2013]). The new policy imposed a "zero tolerance" policy for illegal drug use, and provided that EMS workers who test positive for illegal drugs, or who refuse to provide a specimen for a drug test, shall be terminated for a first offense (*id.* at *5). In upholding the Board's determination, the Court found that the City Charter provides that the discipline of the EMS workers is the sole province of the New York City Fire Commissioner (*id.* at * 2). In rendering its determination in *Roberts*, the First Department relied on the precedent set forth in *Matter of City of New York v Patrolmen's Benevolent Assn. of the City of N.Y., Inc.* (14 NY3d 46 [2009]).

Similarly, the New York City Police Commissioner has full authority to institute and impose a new policy requiring all police personnel to automatically undergo blood alcohol testing in all cases where police personnel discharge a weapon that results in injury or death, without engaging in collective bargaining, in order to maintain discipline, for the investigation of crimes, and to investigate accusations of malfeasance as a matter of public policy and safety (*see Matter of City of New York*, 14 NY3d at 60). The Court finds that the BCB is within its authority to determine that the Commissioner's disciplinary authority was proper, and was not required to engage in collective bargaining before instituting alcohol testing policy, as it was implemented in order to maintain the discipline and good order of the department (*see City of*

New York v Patrolmen's Benevolent Association of the City of New York, Inc., 14 NY3d 46 [2009]; *Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc. v New York State Public. Employees Relations Board*, 13 AD3d 879 [2006]; *Roberts v New York City Office of Collective Bargaining*, __AD3d__, 2013 NY Slip Op 07870 [1st Dept 2013]). The Court holds that the Decision was supported by the record and was not arbitrary and capricious. In rendering its determination, the BCB clearly stated the basis for the determination and it discussed the caselaw upon which it relied. As there was a rational and reasonable basis for the determination, it is entitled to deference by this Court and will not be overturned. As such, petitioners' application must be denied. In light of this Court's findings, the cross-motion of the Municipal Respondents' as well as the motion by BDB and Gold are each respectively denied as moot.

For these reasons and upon the foregoing papers, it is,

ORDERED that petitioners' Article 78 petition seeking to annul a Decision and Order of the New York City Board of Collective Bargaining, dated November 13, 2012 is denied, without costs or disbursements to petitioners' (motion sequence 001); it is further,

ORDERED that the cross-motion by respondents City of New York and the New York City Police Department to dismiss the petition pursuant to CPLR 7804(f) and 3211(a)(7), is denied as moot (motion sequence 001); it is further,

ORDERED that the motion by respondents New York City Board of Collective Bargaining and Marlene A. Gold to dismiss the petition pursuant to CPLR 7804(f) and for an order affirming the Decision is denied as moot (motion sequence 002); and it is further,

ORDERED that counsel for respondents City of New York and the New York City Police Department is directed to serve a copy of this Order, with Notice of Entry, upon all parties and

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upon the Clerk of the Court, who is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: 12/5/13 PW/JSC

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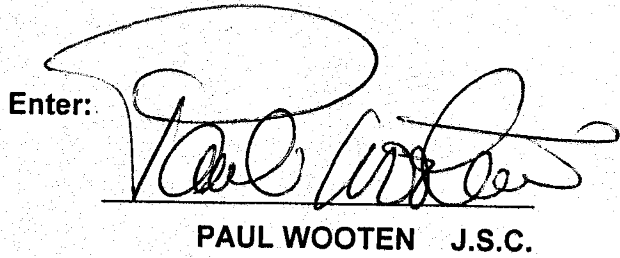

PAUL WOOTEN J.S.C.

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