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

PRESENT: KIBBIE F. PAYNE PART 4

Justice

THE PORT AUTHORITY OF NEW YORK and NEW JERSEY,

Petitioner,

- against-

THE PORT AUTHORITY EMPLOYMENT RELATIONS PANEL,

Respondents.

INDEX NO. 400018/07

MOTION DATE 4/16/07

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, non-party the Union of Automotive Technicians, Local 563's motion for leave to intervene is granted as indicated in the attached memorandum.

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

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: June 14, 2007

J.S.C.

Check one: ☑ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 4

In the Matter of an Order of the Port Authority Employment Relations Panel Concerning IP 05-22

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,

Petitioner,

-against-

THE PORT AUTHORITY EMPLOYMENT RELATIONS PANEL,

Respondent.

Index No. 400018/07

Motion Seq. 001 & 002

JUDGMENT & ORDER

KIBBIE F. PAYNE, J.:

In motion sequence number one of this CPLR article 78 proceeding, petitioner the Port Authority of New York and New Jersey moves for a judgment annulling the decision and order of respondent the Port Authority Employment Relations Panel, which sustained an improper practice charge against it (see Unconsolidated Laws § 7141). Respondent opposes this application and requests a judgment enforcing the order (id.). In motion sequence number two, non-party the Union of Automotive Technicians, Local 563 (Union), which filed the improper practice charge against petitioner, seeks leave to intervene. In the event leave is granted, the Union moves for an order dismissing the petition for mootness and confirming respondent's decision and order. Petitioner opposes the motion to dismiss.

Petitioner and the Union executed a memorandum of agreement

(memorandum). Section XXIII of the memorandum provides that a covered member, who has a minimum of one year continuous service as a Port Authority employee and who is permanently disabled due to non-job related illness or injury is eligible for Long-Term Disability (LTD) benefits. LTD benefits consist of up to 60% of the employee's annual base pay to age 65 calculated "from a combination of sources, including any New York State Employees' Retirement System Ordinary Disability and Social Security Act benefits . . . ." The LTD program provides that "[t]he effective date for the beginning of [an employee's] LTD allowance will coincide with the effective date of [his or her] ordinary disability for service retirement with the New York State Employees' Retirement System or the Social Security Administration as applicable."

Non-party John Rohrseen, a Union member and Port Authority employee, applied for LTD benefits. He also applied for disability benefits from the New York State Employees' Retirement System (NYSERS) and the Social Security Administration (SSA). Rohrseen's application for ordinary disability benefits was approved effective February 4, 2005. However, the SSA denied Rohrseen's application and he appealed the denial. Thereafter, petitioner informed Rohrseen that it would not issue him LTD benefits until he received a final determination in his SSA appeal. The Union filed an improper practice charge against

petitioner, contending that petitioner violated section XI (A) (d) of the Port Authority Labor Relations Instruction (instruction).[1] The Union maintained that, by waiting to calculate Rohrseen's LTD allowance, petitioner was breaching the memorandum of agreement and unilaterally altering a term and condition of Rohrseen's employment. Petitioner countered that it could not calculate LTD benefits without knowing all sources of Rohrseen's income. Petitioner argued that its common practice was to wait until an applicant's NYSERS and SSA benefits were determined before making any LTD payment.

Following a hearing before respondent, the hearing officer issued a report and recommendation providing that petitioner's failure to issue Rohrseen LTD allowance violated the memorandum and instruction and that petitioner be directed to make monthly LTD payments to Rohrseen and to make an immediate lump sum retroactive payment to Rohrseen of all the benefits he was entitled to receive between February 4, 2004 and the date monthly payments commence. The Hearing officer reasoned, in part, that the LTD program does not require that both New York State Employees' Retirement System and the Social Security Administration benefits be finally determined before LTD benefits are calculated and paid.

Upon review of the record, respondent adopted the hearing

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[1] Section XI (A) (d) of the instruction requires petitioner to negotiate wages and other terms of employment in good faith.

officer's recommendation. Interpreting the memorandum of agreement, respondent provided that its "clear and unambiguous provisions . . . require only an application for SSA disability benefits; they do not require either an appeal of a denial of these benefits, nor permit a delay in processing or paying LTD allowance pending an appeal of a denial of benefits." Respondent further reasoned that the memorandum contemplates that LTD payments may be offset in the future, either from new income, or from a reevaluation of the recipient's disability status.

Respondent's decision provided that the memorandum unambiguously sets the effective date for the beginning of the LTD to coincide with either the effective date of the applicant's ordinary disability benefits or SSA benefits. Respondent concluded that, in establishing the resolution of the SSA appeal as a precondition to the calculation of Rohrseen's LTD allowance, petitioner violated the instruction, prohibiting unilateral modification of employment terms.

In January 2007, petitioner commenced this CPLR article 78 proceeding seeking to annul the determination, arguing that it did not violate the instruction and that the decision and order effectively rewrites the provisions of the LTD program. Respondent opposes the application, and cross-moves for an order enforcing its determination. The Union moves for leave to intervene and for an order dismissing the petition for mootness as petitioner issued Rohrseen LTD benefits based on both the

ordinary disability and SSA benefits he receives. The Union further asks for an order confirming the decision and order.

The court will grant the Union a right to intervene in this proceeding (see CPLR 1012 [a] [2]). However, the court will deny its motion to dismiss the petition as moot. "'It is a fundamental principle of our jurisprudence that the power of a court to declare law only arises out of, and is limited to, determining the rights of persons which are actually controverted in a particular case pending before the tribunal'" (see Matter Ruskin v Safir, 257 AD2d 268, 271 [1st Dept. 1999] [citations omitted]; see also Matter of Hearst Corp. v Clyne, 50 NY2d 707, 713, 714 [1980]). "This principle . . . forbids courts to pass on academic, hypothetical, moot or otherwise abstract question . . ." (Matter of Hearst, 50 NY2d at 713). Petitioner's issuance of LTD benefits to Rohrseen, however, does not render this proceeding moot. A controversy continues to exist between the parties as respondent sustained a charge against petitioner that it violated section XI (A) (d) of the instruction. Thus, the court will consider the application to the extent that it challenges the improper practice charge.

"Orders of the [Port Authority] employment relations panel . . . shall be . . . reviewable . . . under article seventy-eight of civil practice law and rules . . . ." (Unconsolidated Laws § 7141). CPLR 7803 (3) authorizes a challenge of an agency determination only where it was "made in violation of lawful

procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion . . . ." It is well-settled that judicial review in an article 78 proceeding is thus limited to whether the determination was rationally based (see generally Matter of Hughes v Doherty, 5 NY3d 100, 105 [2005]; see also Matter Pell v Bd. of Educ., 34 NY2d 222, 231 [1974]). "An administrative agency's determination need not be the only rational conclusion to be drawn from the record" (Matter of Jennings v New York State Office of Mental Health, 90 NY2d 227, 239 [1997]). "[T]he existence of other, alternative rational conclusions" does not warrant annulment of administrative determinations (id.).

Applying this standard here, respondent's decision and order must stand. Contrary to petitioner's argument, respondent did not rewrite the LTD program or add a new provision to either the memorandum or instruction. Pursuant to the grievance procedure annexed to the memorandum, respondent confined its decision to the interpretation of the relevant provisions. Respondent reached a rationally based conclusion, setting forth a thorough review of both the instruction and memorandum. Petitioner's alternative rational deduction does not warrant a contrary result.

Respondent's cross-motion for an order enforcing its decision and order will be denied as moot (see generally Unconsolidated Laws § 7141; see also Matter of Ruskin, 257 AD2d

at 271). It is undisputed that respondent has complied with the directives therein. Accordingly, it is

ORDERED that the petition is denied; it is further

ORDERED that the cross-motion is denied; it is further

ORDERED that the Union's motion is granted to the extent that the Union is allowed to intervene in this proceeding and the decision and order is confirmed; and it is further

ORDERED that the Union's motion is otherwise denied.

The foregoing constitutes the judgment and order of the court.

Date: June 14, 2007

Kibbie F. Payne, J.S.C.