Matter of City Empls. Union Local 237 v City of New York
2014 NY Slip Op 30916(U)
April 8, 2014
Supreme Court, New York County
Docket Number: 101056/13
Judge: Carol E. Huff

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

CAROL E. HUFF

Index Number : 101056/2013

CITY EMPLOYEES UNION LOCAL 237

vs

CITY OF NEW YORK

Sequence Number : 001

ARTICLE 78

PART 32

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 [redacted]

motion is decided in accordance with accompanying memorandum decision

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).

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

Dated: APR 08 2014

_____, J.S.C.
CAROL E. HUFF

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

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

----------x

In the Matter of the Application of : Index No. 101056/13

CITY EMPLOYEES UNION LOCAL 237, :
International Brotherhood of Teamsters,

Petitioner, :

- against - :

THE CITY OF NEW YORK, MICHAEL BLOOMBERG, :
as Mayor of the City of New York, JAMES HANLEY,
as Commissioner of Labor Relations, NEW YORK CITY :
POLICE DEPARTMENT, NEW YORK CITY
DEPARTMENT OF CITYWIDE ADMINISTRATIVE :
SERVICES, and EDNA WELLS-HANDY, as Director
of New York City Department of Citywide Administrative :
Services,

Respondents. :

----------x

CAROL E. HUFF, J.:

In this Article 78 proceeding in the nature of mandamus, petitioner, a union representing New York City workers, seeks to compel respondents to perform a cost-benefit analysis in connection with a Contract awarded by respondent New York City Department of Citywide Administrative Services ("DCAS") on or about March 28, 2013. Respondents cross move to dismiss the petition on grounds including expiration of the statute of limitations and failure to state a cause of action.

The Contract was awarded pursuant to a Request for Proposals, issued April 11, 2011 (the "RFP"), which sought a private vendor to provide "automotive parts room operation and supply

automotive parts and inventory management services, including warehouse storage and distribution for . . . nine New York City agencies. . . ." The contractor "would be responsible for purchasing, stocking and managing vehicle replacement parts storerooms" at 160 auto parts facilities.

The law pertaining to the extent of analysis required to be performed by DCAS (NYC Charter § 312[a][1]) changed between the time the RFP was issued and the time the Contract was awarded. At the time the RFP was issued, the Local Law 35 amendment required

> agencies to evaluate the costs and benefits of proposed service contracts valued at more than one hundred thousand dollars that result in displacement of a City employee. Sound procurement practice requires an assessment by the agency of the costs and benefits of providing a service in-house prior to any determination to solicit bids or proposals, a determination of the costs and benefits of providing the same service by contracting-out, and a comparison of the two.

At the time the Contract was awarded, the Local Law 63 amendment required:

> Prior to issuing an invitation for bids, request for proposals, or other solicitation, or renewing or extending an existing contract, the agency shall determine whether such contract is the result of or would result in the displacement of any city employee within the agency. For the purpose of this section, "displacement" shall mean a reduction in the number of funded positions, including but not limited to, that resulting from the attrition; layoff; demotion; bumping; involuntary transfer to a new class, title, or location; time-based reductions, or reductions in customary hours of work, wages, or benefits of any city employee.

Thus Local Law 63 expanded the definition of "displacement" to encompass more City employees than Local Law 35.

Respondents argue that the analysis that was required "prior to" the time the RFP was issued was the one in effect then, Local Law 35, and that the petition was not timely commenced, since more than four months (CPLR 217[1]) had passed since that requirement was or was not met. Petitioner argues that the four-month statute of limitations did not begin to run until March

28, 2013, when DCAS awarded the contract, because the determination it challenges was not "final" until then. Petitioner further contends that Local Law 63 is the provision by which DCAS's analysis prior to the issuance of the RFP must be evaluated.

Petitioner may be correct that it is not precluded by the statute of limitations if it were simply seeking to annul a final determination, as it states in the petition. See Essex County v Zagata, 91 NY2d 447, 453 (1998) ("a determination will not be deemed final because it stands as the agency's last word on a discrete legal issue that arises during an administrative proceeding. There must additionally be a finding that the injury purportedly inflicted by the agency may not be 'prevented or significantly ameliorated by further administrative action or by steps available to the complaining party.'" [citation omitted]). Petitioner, however, is not seeking to annul a determination but to compel DCAS to take an action purportedly required of it by law (CPLR 7803[1]), Local Law 63. (See Petitioner's Memorandum of Law in Support of Verified Petition, at 1: "Petitioner brings this petition in the nature of mandamus . . . to compel the Respondents to comply with certain provisions of the Charter of the City of New York. . . .")

"Two staunch and relevant principles of statutory construction" are that "a court cannot amend a statute by inserting words that are not there, nor will a court read into a statute a provision which the Legislature did not see fit to enact." Bank of New York Mellon v Izmirligil, 980 NYS2d 733, 742 (2014). The plain reading of both Local Law 35 and 63 indicates that the subject analysis is to be performed "prior" to the issuance of a request for proposals. It is undisputed that Local Law 35 applied at the time prior to the issuance of the RFP. Nothing in Local Law 63 indicates that its enhanced protections for city workers is to be applied retroactively. To compel DCAS to apply Local Law 63 now would violate the staunch principles

articulated by the Bank of New York Mellon Court by adding a provision for retroactive application. Whether the petition is read to seek annulment of the March 28 Contract or to seek to compel that respondents comply with Local Law 63, it fails to state a claim.

Accordingly, it is

ADJUDGED that the cross motion is granted, the petition is denied, and the proceeding is dismissed.

Dated: APR 08 2014

CAROL E. HUFF
J.S.C.

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).