

**New York City Clerical Admin. Empls., Local 1549,  
AFSCME v City of New York**

2022 NY Slip Op 32551(U)

July 28, 2022

Supreme Court, New York County

Docket Number: Index No. 153819/2021

Judge: Frank P. Nervo

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANK NERVO PART 04

Justice

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NEW YORK CITY CLERICAL ADMINISTRATIVE EMPLOYEES, LOCAL 1549, AFSCME, EDDIE RODRIGUEZ, AS PRESIDENT OF NEW YORK CITY CLERICAL ADMINISTRATIVE EMPLOYEES, LOCAL 1549, AFSCME,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES, THE NEW YORK CITY POLICE DEPARTMENT, THE NEW YORK CITY DEPARTMENT OF TRANSPORTATION, THE NEW YORK CITY DEPARTMENT OF SANITATION, THE NEW YORK CITY DEPARTMENT OF CORRECTION, THE NEW YORK CITY LAW DEPARTMENT, THE NEW YORK CITY HEALTH AND HOSPITALS, THE NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE NEW YORK CITY DEPARTMENT OF CONSUMER AND WORKER PROTECTION, THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, THE NEW YORK CITY DEPARTMENT OF BUILDINGS, THE NEW YORK CITY TAXI AND LIMOUSINE COMMISSION, THE NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD, THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, THE NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION, THE NEW YORK CITY DEPARTMENT OF INVESTIGATIONS, THE NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS, NEW YORK CITY GOVERNMENTAL AGENCIES 1-42

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, and on-the-record oral argument held on July 27, 2022, the Court issues the instant decision and order on mot. seq. 001.

DECISION + ORDER ON MOTION

Actions brought pursuant to Article 78 of the CPLR must be filed within four months of exhaustion of administrative remedies (*see e.g. Walton v. New York State Dept. of Correctional Servs.*, 8 NY3d 186 [2007]; *see also* CPLR § 217). However, where an administrative practice violates the State Constitution and such violative practices continue, the action is properly maintained while such practices continue (*Cash v. Bates*, 301 NY 258 [1950]).

Here, the petitioners allege respondents, by hiring non-clerical staff without a civil service exam to perform jobs historically performed by petitioner-union's members following a competitive exam, have violated Article V § 6 of the New York Constitution, which provides in relevant part:

Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive...

Consequently, petitioners allege that the instant Article 78 action is not barred by the four-month statute of limitations. However, on the current record, the Court cannot determine whether Article V § 6 of the Constitution has been violated by respondents, absent discovery.

Accordingly, it is

ORDERED that counsel shall confer regarding discovery necessary to determine whether a violation of Article V § 6 of the New York Constitution has occurred; and it is further

ORDERED that counsel shall submit, via NYSCEF, with a courtesy copy to the Part Clerk by hand delivery or email ([SFC-Part4-Clerk@nycourts.gov](mailto:SFC-Part4-Clerk@nycourts.gov)), a single joint proposed discovery order addressing the disclosure of the above necessary discovery no later than October 28, 2022; and it is further

ORDERED that to the extent that agreement cannot be reached regarding the above discovery order, counsel shall, contemporaneously with the proposed discovery order, submit a single joint letter setting forth the parties' respective positions as to disputed discovery; and it is further

[continued on following page]

ORDERED that the failure to timely file a proposed joint discovery order and joint letter, if required, as above, shall result in sanctions, including but not limited to the striking of pleadings, in the Court’s discretion; and it is further

ORDERED that the motion is otherwise denied without prejudice to renew upon the completion of discovery.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

7/28/2022  
DATE

  
HON. FRANK P. NERVO  
J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE