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United States District Court, S.D. New York.

LATINO OFFICERS ASSOCIATION CITY OF
NEW YORK, et al., Plaintiffs,
v.
THE CITY OF NEW YORK, et al., Defendants.

No. 99 CIV.9568(LAK). | April 4, 2002.

Opinion

ORDER

KAPLAN, District J.

*1 In considering defendants' motion for summary judgment dismissing the complaints of plaintiffs Castro, Malave and Sanchez, it has become apparent that there is a substantial question as to the scope of the issues that may be raised in an Article 78 proceeding which may have a significant bearing on the resolution of the motion and which the parties have not fully briefed: Would proof that an employee discipline otherwise supported by

substantial evidence and not otherwise imposed in violation of law was imposed in whole or in part on the basis of racial discrimination or in retaliation for engaging in activities protected by the civil rights laws or the Constitution afford a legally sufficient ground for relief in an Article 78 proceeding? In other words, and by way of example only, were plaintiff Castro's contentions that he was (a) terminated in retaliation for speaking out against supervisors and espousing the cause of the LOA, and (b) treated more severely than similarly situated white officers properly raised in his Article 78 proceeding and therefore necessarily decided against him? *See Michaelis v. State of New York*, 135 A.D.2d 1005, 1006 n., 522 N.Y.S.2d 960, 961 n. (3d Dept.1987) (noting but not deciding question whether an employee's claim that he was demoted on the basis of his race could be raised in an Article 78 proceeding). This appears to raise questions as to the scope of matters that properly may be raised under CPLR § 7803.

The parties are directed to brief this issue, and any others that are fairly related to it, and to file such briefs no later than April 20, 2002.

SO ORDERED.