

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D21138
C/prt

_____AD3d_____

Argued - October 23, 2008

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
MARK C. DILLON
RUTH C. BALKIN, JJ.

2007-08670

DECISION & ORDER

In the Matter of Vito Faga, appellant, v Board of
Education of Harrison Central School District,
et al., respondents.

(Index No. 12519/06)

Lovett & Gould, LLP, White Plains, N.Y. (Drita Nicaj of counsel), for appellant.

Ingerman Smith, LLP, Hauppauge, N.Y. (Susan E. Fine and Christopher Clayton of
counsel), for respondents.

In a proceeding pursuant to CPLR article 78, inter alia, to review a determination of the Board of Education of the Harrison Central School District dated May 17, 2006, which terminated the petitioner's employment as a head custodian at a school, the petitioner appeals from a judgment of the Supreme Court, Westchester County (Nicolai, J.), entered August 21, 2007, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

This appeal arises from a disciplinary proceeding which resulted in the termination of the petitioner's employment as the head custodian at a school in the Harrison Central School District (hereinafter the District). The petitioner alleged that members of the respondent Board of Education of the Harrison Central School District (hereinafter the Board) received ex parte information about the charges from the District's attorneys and the Superintendent of Schools. He also claimed that he was denied due process by the Superintendent's statement to members of the Board before the charges were brought that he believed that charges could be sustained.

November 18, 2008

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CENTRAL SCHOOL DISTRICT

Contrary to the petitioner's contention, the District established that the Board did not prejudge the matter or rely on any improperly-obtained information in making its determination (*see* State Administrative Procedure Act § 307[2]; *Matter of 1616 Second Ave. Rest. v New York State Liq. Auth.*, 75 NY2d 158, 161-162; *Matter of Joseph v Stolzenberg*, 198 AD2d 506).

MASTRO, J.P., FISHER, DILLON and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court