

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

D34270
Y/kmb

_____AD3d_____

Argued - February 23, 2012

THOMAS A. DICKERSON, J.P.
CHERYL E. CHAMBERS
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2011-01053

DECISION & ORDER

In the Matter of Ryan Malone, appellant, v Board
of Education of East Meadow Union Free School
District, respondent.

(Index No. 7469/10)

Richard E. Casagrande, New York, N.Y. (Melinda G. Gordon of counsel), for
appellant.

Little Mendelson, P.C., New York, N.Y. (Craig R. Benson, George B. Pauta, and
Ethan D. Balsam of counsel), for respondent.

In a proceeding pursuant to CPLR article 75 to vacate a determination of a hearing
officer made pursuant to Education Law § 3020-a, dated March 24, 2010, which, after a hearing,
sustained charges of misconduct against the petitioner, the petitioner appeals from an order of the
Supreme Court, Nassau County (McCarty III, J.), entered December 6, 2010, which denied the
petition and dismissed the proceeding.

ORDERED that the order is affirmed, with costs.

On the morning of October 19, 2006, the petitioner, a tenured teacher, was stopping
cars exiting the driveway of East Meadow High School in order to distribute leaflets relating to
ongoing contract negotiations between the teachers' union and the East Meadow Union Free School
District. He continued to distribute the leaflets after the school principal directed him to cease that
activity. The petitioner was charged with misconduct for causing a hazardous condition, and
insubordination for failing to obey the principal's directive. The charges proceeded to arbitration,
resulting in a determination, after a hearing, finding him culpable of both charges.

March 27, 2012

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EAST MEADOW UNION FREE SCHOOL DISTRICT

Where the requirement to arbitrate arises through statute (*see* Education Law § 3020-a[5]), the arbitrator's determination is subject to "closer judicial scrutiny" under CPLR 7511(b) than it would receive had the arbitration been conducted voluntarily (*Matter of Progressive Cas. Ins. Co. v New York State Ins. Fund*, 47 AD3d 633, 634). In a proceeding pursuant to CPLR article 75 to review an award in a compulsory arbitration proceeding, a court determines only whether the award had evidentiary support and whether the award was arbitrary and capricious (*see Matter of Petrofsky [Allstate Ins. Co.]*, 54 NY2d 207, 211; *Matter of Saunders v Rockland Bd. of Coop. Educ. Servs.*, 62 AD3d 1012, 1013).

Here, the determination of the hearing officer was based on the evidence proffered at the hearing, including the petitioner's testimony that he approached vehicles as they exited the driveway of the high school, which required him to cross in front of moving vehicles, which established the charge of misconduct by adequate evidence. The testimony of both the petitioner and the school principal that the petitioner continued to distribute leaflets after being directed to cease this activity established the charge of insubordination by adequate evidence, and the findings with respect to both charges were not arbitrary and capricious (*see Matter of Trupiano v Board of Educ. of E. Meadow Union Free School Dist.*, 89 AD3d 1030; *Matter of Saunders v Rockland Bd. of Coop. Educ. Servs.*, 62 AD3d at 1013; *Matter of Hegarty v Board of Educ. of the City of New York*, 5 AD3d 771, 772).

The petitioner's remaining contentions are without merit.

DICKERSON, J.P., CHAMBERS, LOTT and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court