

**Matter of Lawrence v Board of Educ. of City
School Dist. of City of N. Y.**

2008 NY Slip Op 30775(U)

March 10, 2008

Supreme Court, New York County

Docket Number: 0101648/2006

Judge: Herman Cahn

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Justice Cahn

PART 49

Index Number : 101648/2006

LAWRENCE, MAUREEN

vs

BOARD OF EDUCATION

Sequence Number : 003

RENEWAL

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____



_____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION IN MOTION SEQUENCE

FILED
MAR 19 2008
NEW YORK
COUNTY CLERK'S OFFICE

Dated: March 16, 2008

Steven Cahn

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 49

-----X
In the Matter of the Application of
MAUREEN LAWRENCE,

Petitioner,

- against -

THE BOARD OF EDUCATION OF THE CITY
SCHOOL DISTRICT OF THE CITY OF NEW YORK
and JOEL I. KLEIN, as Chancellor of the City School
of the City of New York,

Respondents.

for a Judgment Pursuant to Article 78 of the *Civil
Practice Law and Rules.*

Index No. 101648/2006

FILED
MAR 19 2008
NEW YORK
COUNTY CLERKS OFFICE

-----X
Herman Cahn, J.

Respondents move to renew or reargue, CPLR 2221, the August 14, 2006 Order of this Court that referred the issue of whether or not petitioner voluntarily relinquished her teaching position to a Special Referee to hear and report, and upon renewal or reargument, to dismiss the Petition.

BACKGROUND

Petitioner, Maureen Lawrence, was a tenured teacher, employed by respondent, The Board of Education of the City School District of the City of New York (the "Board of Education").

Petitioner commenced an Article 78 proceeding to contest the termination of her teaching position within District 75, the city-wide district in which students requiring special education

are assigned.

Petitioner alleges that, in September 2005, she suffered from clinically diagnosed depression and was under the care of a psychiatrist. She alleges that, as a result of administrative difficulties at school, her depression exacerbated to such an extent as to render her medically unable to perform her duties for several weeks. On September 7, 2005, petitioner allegedly called her Department assignment to relay her inability to report to work at that time due to her condition. She alleges that, in the following days, she remained unable to report to work.

On October 20, 2005, the Deputy Superintendent sent a letter to petitioner stating that she had been absent since September 7, 2005 and had not contacted her time keeper or school. The letter stated that pursuant to the collective bargaining agreement between the Board of Education and the United Federation of Teachers Local 2, American Federation of Teachers, AFL-CIO (the "UFT Contract"), petitioner was deemed to have abandoned her position as of Friday, October 7, 2006 and was being removed from payroll.

Article 5F of the UFT Contract states:

Teachers who are absent for 20 consecutive school days without notice shall be deemed to have resigned unless they have reasonable cause for failure to notify. The issue of the reasonableness of the cause and the penalty, if any, shall be subject to the grievance procedure, including binding arbitration, set forth in Article Twenty-Two.

On October 25, 2005, petitioner filed a step II grievance, pursuant to the procedure set forth in the UFT Contract, to challenge her termination. A decision was rendered on November 22, 2005 by a Hearing Officer denying petitioner's step II grievance. The Hearing Officer held that "Lawrence received explicit instructions as to where and to whom she was to report her

absences, yet failed to do so on any day from September 7 to October 20, 2005.” On December 21, 2005, Petitioner filed a step III appeal and a step III hearing was held on February 6, 2007.

Petitioner commenced this Article 78 proceeding, arguing that she was entitled to notice and a hearing before being removed from the payroll for her alleged constructive resignation. Respondents cross-moved to dismiss the Petition. Respondents contended that she was not disciplined, but constructively resigned pursuant to the UFT Contract and, thus, was not entitled to a hearing before being terminated.

In the August 14, 2006 Order, this Court held that the UFT Contract did not waive petitioner’s rights to a preliminary hearing under Education Law §§ 3020 and 3020-a, and ordered that the issue of whether or not petitioner voluntarily relinquished her position be referred to a Special Referee to hear and report.

Respondents now bring this motion to renew or reargue stating that the Court overlooked or misapprehended the relevant law, CPLR 2221.

Respondents argue that the Court’s August 14, 2006 Order should be vacated and instead an order should be issued: (1) granting respondents’ cross motion to dismiss the Petition; (2) vacating and annulling the order referring the issue of whether or not petitioner voluntarily relinquished her teaching position to a Special Referee; and (3) affirming the determination that petitioner abandoned her position.

DISCUSSION

A motion for leave to reargue may be granted on a showing that the court overlooked or

misapprehended the facts or the law, CPLR 2221. *Williams P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22 (1st Dep't 1992). However, it is not an avenue to give an unsuccessful party the opportunity to reargue points already made and rejected. *Id.* A motion for renewal, on the other hand, is appropriate when there are new facts not previously known or offered or there has been a change or clarification in the law that will affect the court's prior decision.¹

Respondents argue that only if petitioner is held to have been disciplined rather than to have resigned, can Education Law § 3020-a have any application to petitioner. Section 3020-a of the Education Law provides that a tenured teacher cannot be disciplined or removed from employment without being given notice and a preliminary hearing.

Respondents maintain that Education Law § 3020(4)(a) allows for the procedures set forth under Education Law § 3020-a to be modified. They assert that Article 5F of the UFT Contract is such a modification and, therefore, they were not required to follow the disciplinary procedures outlined in the Education Law, providing for notice and a preliminary hearing.

Respondents further contend that, although the Court relied on *Sanders v Board of Education of the City School District of New York*, 17 AD3d 682 (2d Dep't 2005) in its August 14, 2006 Order, it is inapplicable because there, the petitioner was terminated in 1997 prior to Education Law § 3020(4) being enacted to permit modifications in the disciplinary process found in Education Law § 3020-a. In *Sanders*, a tenured teacher was held to have been disciplined and

¹ While the respondents move for reargument or renewal, only reargument will be considered because renewal is not appropriate given the facts and circumstances.

entitled to the protections of Education Law § 3020 irrespective of the fact that the Board had considered the teacher to have constructively resigned pursuant to Article 5F of the collective bargaining agreement.

Petitioner argues that respondents have not adequately shown that the Court overlooked or misapprehended the facts or the law. Petitioner contends that even though respondents rely on Education Law § 3020(4)(a) to state that modifications to disciplinary procedures are allowed, Article 5F is *not* the section of the UFT Contract that deals with disciplinary procedures. Instead, petitioner maintains that Article 21G was included in the UFT Contract to modify the section 3020-a procedures. As further support for this contention, petitioner notes that Article 5F predated the enactment of Education Law § 3020(4)(a) and, thus, could not have been included as a modification because modifications were not yet allowed.

The motion for reargument is denied. Respondents have not adequately shown that the Court overlooked any relevant law. The Court considered the statutory rights set forth in Education Law §§ 3020 and 3020-a, as well as the applicable provisions found in the UFT Contract. While the Court did not specifically address subsection (4)(a) in its prior decision, the provision had been considered and was found to be inapplicable here.

While Education Law § 3020(4)(a) does allow for modifications of the disciplinary procedures set forth in section 3020-a, Article 5F of the UFT Contract does not serve that purpose. Article 5F has been present in the UFT Contract since before section 3020(4)(a) came into existence. As such, Article 5F was not meant to modify the statutory rights allowed under

section 3020-a. In fact, Article 21G clearly indicates that “[t]enured teachers facing disciplinary charges filed . . . will be subject to section 3020-a as modified by paragraphs 1-11 below.”

(Mariette Affirm, Ex B.) Nowhere in those paragraphs does it reference Article 5F or allow for the procedures set forth in Article 5F to govern this situation.

Accordingly, it is

ORDERED that the motion for reargument or renewal is denied; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

Dated: March 10, 2008

ENTER :



J.S.C.

FILED
MAR 19 2008
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