

Matter of Meer v Klein
2008 NY Slip Op 33171(U)
November 24, 2008
Supreme Court, New York County
Docket Number: 108315-08
Judge: James A. Yates
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY
PRESENT: Hon. JAMES A. YATES PART 50Y
Justice

In the Matter of the Application of

Index No. 108315-08
MOTION DATE

MELVIN L. MEER,
Petitioner,

MOTION SEQ. NO. 001

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

against

JOEL L. KLEIN, as Chancellor of the New York
City Department of Education, MARTINE
GUERRIER, as Chief Family Engagement Office
of the NYC Dept. of Education, JANET
CARAISCO, as Principal of Public School
188Q, KIMMY MA, as Replacement SLT
Member, and the NYC Dept. of Education,
Respondents.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause - Affidavits - Exhibits...	_____
Answering Affidavits - Exhibits _____	_____
Replying Affidavits _____	_____
Cross-Motion: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Petitioner filed an Article 78 petition seeking reinstatement to his position as parent-member of the PS188Q School Leadership Team (SLT). He also sought declaratory relief and attorneys' fees. Because the determination removing him from the SLT was not made in violation of lawful procedure, was not affected by error of law and was not arbitrary or capricious, the petition is denied and dismissed (see attached Decision and Order).

Dated 11-24-08

ENTER: HON. JAMES A. YATES

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

FILED

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PART 50Y
SUP. CT. N.Y. COUNTY

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50Y**

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In the Matter of the Application of :
MELVIN L. MEER :
Petitioner, :
 :
-against- :

**JOEL L. KLEIN, as Chancellor of the New York
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GUERRIER, as Chief Family Engagement Office
of the NYC Dept. of Education, JANET
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Member, and the NYC Dept. of Education,** :
 :
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Respondents. :
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**Decision and Order
Index No. 108315-08**

Hon. James A. Yates, J.S.C.

The Petitioner, Melvyn L. Meer, was a duly elected and acting parent-member of the School Leadership Team (SLT) at P.S. 188Q, having been elected to serve a two-year term on the SLT commencing on September 1, 2007. SLTs assist in the evaluation and assessment of a school's educational programs and their effect on student achievement. He continued to participate as a member of the SLT until February 15, 2008. On that day, the SLT conducted a business meeting and hearing at the conclusion of which he was removed from his position.

He brings this application, pursuant to Article 78 of the Civil Practice Law and Rules (CPLR), to rescind his expulsion and to direct reinstatement to his position on the P.S. 188Q SLT. He also seeks declaratory relief and attorneys' fees. He claims the determination to remove him was arbitrary and capricious, and an abuse of discretion. He alleges that the SLT's vote, which was passed by a vote of 5-1, was not in compliance with their by-laws. He also contends that there was a lack of advance written notice of the specific allegations against him which deprived him of his due process rights, and a lack of good cause for his ouster. Respondents contend that Mr. Meer was removed from the SLT because of his persistent misconduct and disruptive behavior at meetings, and that appropriate steps were taken to remove him from the SLT consistent with their by-laws.

Factual Background

In 1996, subdivision 15 of Section 2590-H was added to the state Education Law. The provision required the Chancellor of the New York City Department of Education to “[p]romote the involvement and appropriate input of all members of the school community * * * including parents, teachers and school personnel.” On December 3, 2007, a final version of Chancellor’s Regulation A-655 (CR A-655) was enacted in response to that obligation.¹ The regulation (entitled “School and Leadership Teams”) required the Chancellor to set up School Leadership Teams at every New York City public school. SLTs consists of parents and school faculty members and are responsible for developing an annual “Comprehensive Educational Plan” (CEP) for their respective school. However, the regulations direct that school principals make final decisions on CEPs and the school-based budgets. CR A-655 obligates SLTs to form by-laws and operating guidelines. Section VIII of CR A-655 also requires that “SLTs must use a consensus-based decision-making process as their primary means of making decisions.” The PS 188Q SLT by-laws incorporate Roberts’ Rules of Order as the authority for the conduct of SLT meetings.

Petitioner has one child at PS 188Q. His child is enrolled in the Gifted and Talented Magnet Program of School District 26, which is housed at PS188Q. For the past four years he has served as the chair of Community Board 11’s Education Committee. Petitioner holds a doctorate in Economics. He asserts that on the 2005 statewide examination, the students of PS 188Q had a mean scale score that was the highest in School District 26, the highest in the city, and the third highest in the state.

In September 2006, Petitioner became concerned about the mathematics curriculum at the school. He allegedly contacted a member of the school’s SLT who informed him that the change in the mathematics curriculum was not discussed with the SLT. On May 18, 2007, elections for parent seats on the SLT were held. The school’s SLT has 12 members, six parents and six members of the school’s faculty. The school’s principal, Janet Caraisco, the president of the school’s Parent Teacher Association and the school’s United Federation of Teachers (UFT) representative are mandatory team members. The school’s principal is also the Chairperson of the SLT. On May 24, 2007, Petitioner was elected to serve a two-year term on the SLT, commencing on September 1, 2007. Ms. Caraisco and Petitioner continued to disagree over the math curricula at the SLT meetings. He contends that since the curriculum change, the performance on the state math test of PS 188Q fourth graders has fallen. He also concedes that he has taken the floor of the monthly PTA meeting to complain about the principal’s “academic management” of the school.

On December 14, 2007, a parent member of the SLT introduced a resolution to remove Petitioner from the team on the grounds of misconduct. The removal procedure, as outlined in the by-laws, was described. Subsequently, the team member also moved to form a sub-committee to explore Petitioner’s removal. The basis for the resolution was that Petitioner was disruptive

¹ The new regulation superseded an earlier version dated February 3, 2004.

and his actions made the team meetings unproductive. The motion was seconded by another parent and the school's principal. Petitioner successfully challenged the authority of the principal to second the motion and there was no second on the motion. At the next SLT meeting held on January 29, 2008, the removal motion was re-introduced. This time the motion was seconded by a parent and teacher. A Subcommittee on the Removal of a Member was formed to investigate Petitioner's purported misconduct. A questionnaire was completed and each team member, except Petitioner, was asked to fill it out.

On February 15, 2008, the results of the questionnaire were presented to the SLT. These included that his fellow team members unanimously believed that the SLT could not "function in a positive and productive manner" with Petitioner as a member. At that meeting, Petitioner was given an opportunity to make a statement, but he refused. Petitioner stated he felt that his behavior was in compliance with Robert's Rules of Order, and then left. The teacher members were instructed by the UFT not to vote for or against the removal of a parent from an SLT. The Chair informed the SLT members that a two thirds majority vote was required, and that abstentions had no effect on the outcome of a vote under their bylaws and Roberts' Rules of Order. A secret ballot vote was taken, resulting in a five to one decision to remove Petitioner from the SLT.

The resolution expelling Petitioner was immediately followed by the adoption of an amendment to the SLT by-laws at the March 14, 2008 meeting. As a result, removal of a team member is now effective through the end of the scheduled term, not just until the end of the school year. At the March 19th PTA meeting, elections were held to fill the now vacant spot on the SLT. Respondent Kimmy Ma was elected to the vacancy. Petitioner filed a grievance with the Community Superintendent of District 26 on Feb. 15, 2008. By letter, dated March 13, 2008, Michael Best, General Counsel for the Department of Education, wrote Petitioner on behalf of Chancellor Joel Klein. He found that Petitioner's removal from the SLT was processed properly. This Article 78 petition ensued.

Discussion

There is nothing in the record of this case to suggest that any by-laws or rules were violated or that the determination was arbitrary or capricious. In defense of its actions in removing Petitioner from the SLT, Respondents argue that the P.S. 188Q SLT's by-laws set forth the procedures for the removal of a member for misconduct. The by-laws also provide that where there are no set provisions setting forth the procedures to be followed, the most current version of Robert's Rules of Order governs the conduct of the meetings.²

The process here was not unfair to the Petitioner inasmuch as it complied with the

² The most recent version of Robert's Rules of Order is Robert's Rules of Order Newly Revised (10th ed 2000).

specifications of the SLT by-laws and Robert's Rules of Order. Pursuant to the by-laws, the proceeding to expel a member for misconduct in office is to be conducted in a manner that will give the person "charged" sufficient warning and an opportunity to be heard in defense of any behavior alleged against him. A subcommittee is to be formed consisting of two parent members and two teacher members, and it must investigate and report its findings to the SLT membership within 60 days or two meetings. If the conduct alleged warrants expulsion, and is supported by evidence, a requisite two-thirds vote to remove or absolve must be taken.³ As well, Robert's Rules of Order provide that a two-third affirmative vote of members present who vote shall be necessary to adopt a resolution or take other official action.⁴

In this case, upon motion of a team member, and a second by a parent member and a teacher member, a subcommittee was formed to investigate whether Petitioner should be removed. It is evident that Petitioner was afforded sufficient notice of the reasons for his removal. At the December 14, 2007 SLT meeting, at which Petitioner was present, the first removal motion was made and there was discussion regarding Petitioner's alleged misconduct.

³ See Robert's Rules of Order, Article XIII-Legal Rights of Assemblies and Trial of their Members, Section 75 . The section provides, in part:

"Every deliberative assembly, having the right to purify its own body, must therefore have the right to investigate the character of its members. * * * When the charge is against the member's character, it is usually referred to a committee of investigation or discipline, or to some standing committee, to report upon. * * * [T]he committee investigates the matter and reports to the society. This report need not go into details, but should contain its recommendations as to what action the society should take, and should usually close with resolutions covering the case * * * The clerk shall send the accused a written notice to appear before the society at the time appointed, and should at the same time furnish him with a copy of the charges * * * At the appointed meeting what may be called a trial takes place. Frequently, the only evidence required against the member is the report of the committee. After it has been read and any additional evidence offered, the committee may see fit to introduce, the accused shall be allowed to make an explanation and to introduce witnesses, if he so desires. * * * No member should be expelled by less than two-thirds vote * * * The vote shall be by ballot, except by general consent."

⁴ In its "Charts, Tables and Lists", Robert's Rules of Order enumerates those matters which require a two-thirds affirmative vote to pass, including motions to "Expel from membership, notice and a trial also being required unless the offense is committed in a meeting of the assembly" and to "Depose from office where trial is not required * * * and notice has not been given." See Robert's Rules of Order, *supra*, Charts, Tables and Lists; see also Article VIII-Voting, Section 46.

Minutes of that meeting were written and forwarded to SLT members. At the January meeting Petitioner was also present when the subcommittee was formed. As part of its investigation, the subcommittee circulated a questionnaire regarding Petitioner's possible removal. Petitioner was also present at the February meeting when the findings of the subcommittee were presented. The findings showed that the other SLT members unanimously believed that meetings where the Petitioner attended were not productive and could not function in a positive manner. On that day, Petitioner was also afforded an adequate opportunity to defend his actions and to question the members of the sub-committee. Accordingly, the SLT acted within the scope of its removal procedures.

Furthermore, consensus decision-making is not required when an alternative process has been specified in the by-laws. Robert's Rules of Order require that a vote tally should only include votes cast, not abstentions. Therefore, the five to one vote in favor of removal, from which six members opted to abstain, meets the two-thirds vote requirement. As well, the by-laws require a two-thirds majority for the removal of a member. Finally, Petitioner argues that his removal from the SLT was motivated by malicious intent and without cause because of his involvement in litigation now pending over revisions made to CR A-655. However, the Court finds no support in the record for this argument.

Because there is no basis to overturn the determination of removal made by the SLT, Petitioner's application for reinstatement and declaratory relief is denied. Accordingly, his Article 78 petition is dismissed. This constitutes the decision and order of the Court.

Dated: November 24, 2008
New York, New York

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**COUNTY CLERK'S OFFICE
NEW YORK**

JAMES A. YATES, J.S.C.

**PART 50Y
SUP. CT. N.Y. COUNTY**