

Matter of Hickey v New York City Dept. of Educ.

2009 NY Slip Op 31918(U)

August 19, 2009

Supreme Court, New York County

Docket Number: 117557/04

Judge: Louis B. York

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. LOUIS B. YORK PART 2
Justice

-----X
In the Matter of the Application of
HELEN HICKEY,
Petitioner,
For a Judgment Under Article 78 of the Civil Practice
and Rules

Index No. 117557/04
Motion Date _____
Motion Seq. No. 001
Motion Cal. No. _____

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION
("Doe"),
Respondents,

-----X
The following papers, numbered 1 to _____ were read on this motion to Vacate an Arbitration Award

PAPERS

NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

This is a proceeding under Article 75 of the CPLR to vacate an arbitration award fining the petitioner for two weeks salary as a result of her insubordination and defective teaching techniques. The Court finds that there was substantial evidence in the record to support the arbitrator's record and, therefore, denies the motion.

Background

At the time of the incidents leading to the hearing determination challenged in this proceeding, the petitioner had taught in Staten Island schools primarily in the fourth and fifth

grades in the Staten Island school system.

In May of 2002, because of conflicts with her administrators, petitioner was removed from the classroom and assigned to the district office. Eventually, she was assigned to another school - P.S. 19 where she quickly ran into trouble with the principal, Mary Petrone. Ms. Petrone had observed the plaintiff in and out of the classroom and found her performance inadequate. They included dissatisfaction with tardy and incomplete lesson plans, a failure to produce her plan book when requested, leaving students unattended, not calling students by name, etc. Ms. Petrone and Marcia Goar, the supervisor of the 19 principals in the district who had also observed the petitioner at the request of the district superintendent, met with petitioner to point out deficiencies in petitioner's methods and advise how to improve her performance. They allege that she became hysterical, shouting and finger pointing at Ms. Petrone and, in effect, making a shambles of the meeting.

The petitioner contends that any inadequacies in her performance were the result of assigning her to troubled students who were having difficulties with their academics after her 34 years of teaching mainstream students, especially such children in kindergarten and first grade where she had no training or experience in early childhood education. Frequently, she had to teach in hallways and stairwells where there were constant interruptions. She continuously asked for training, but got very little. This proceeding was instituted seeking to set aside petitioner's termination.

The Hearing

The matter was heard by a hearing officer over a period of ten days. Ms. Petrone and Ms. Goar testified as did the petitioner and her expert witness, Mr. Levenberg, along with several other witnesses for the respondent. The record reveals a full opportunity for direct and cross-examination.

Petrone and Goar outlined the reasons for bringing this proceeding, essentially articulating the facts as described above in greater detail. Petitioner's expert, Professor Levenberg, also testified. A former principal in the public school system, he trains supervisors and writes and lectures on education. He stated that she should have been given much more training for these types of students, that one or two observations of her classroom performance was an inadequate basis to judge her, and effective teaching could not take place in hallways and stairwells. Nevertheless, the Hearing Officer found Ms. Petrone and Ms. Goar to be the most credible and sincere witnesses. On the basis of their testimony, the Hearing Officer found petitioner guilty of seven specifications dealing primarily with unsatisfactory job performance and insubordination, but only penalized her for two months of salary.

Contentions

Petitioner cites three reasons in support of this motion claiming that the arbitrator

- 1) exceeded his power as his determination was not supported by the record;

- 2) the imposition of a fine shocks the conscience, and
- 3) the award is against public policy.

Respondent counters that the award is supported by evidence in the record and denies there is any conscience shocking or violation of public policy.

Decision

The basis for vacating an arbitrator's award lies in CPLR 1511(b)(1)(3): "an arbitrator or person making the award exceeded his power ..." and (b)(i)(iv);" "failure to follow the procedure of this article ..."

In determining whether or not to uphold the determination of the arbitrator, the Court must determine whether the evidence in the record supports her determination and whether the principles of due process were observed (*Motor Veh. Mfgs. Ass'n. Of U.S. v State of New York*, 75 NY2d 175 [1999]; *Hegarty v Board of Education of the City of NY*, 5 AD2d 771, 772 [2d Dept 2004]). Furthermore, the determination must not be arbitrary and capricious or in violation of a strong public policy and the punishment must not be so disproportionate as to be shocking to one's sense of fairness, *id* at 773.

In reviewing the record, the Court holds that these criteria were met. The petitioner had a full and fair opportunity to contest the Board's determination. The testimony of Ms. Petrone and Goar, which the hearing officer mostly relied on, was found to be more credible by him than any of the other witnesses. The relatively mild penalty for these misdeeds does

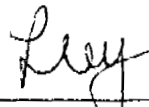
not shock the Court as I hold that it was a fair and proportionate response to the petitioner's violations. Nor was it against any strong public policy that this Court is aware. Accordingly, it is

ORDERED and **ADJUDGED** that the petition to vacate the arbitrator's award is denied and dismissed; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

Dated: 8/19/09

Enter:



Louis B. York, J.S.C.

UNFILED JUDGMENT

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Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE