

Matter of Siclari v City of New York

2010 NY Slip Op 30969(U)

April 16, 2010

Supreme Court, New York County

Docket Number: 103863/09

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. JOAN A. MADDEN

PRESENT: _____ J.S.C.

PART 11

Index Number : 103863/2009
SICLARI, YVONNE
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

his 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~~ *Article 78 petition*
is determined in accordance with the
annexed decision, order and judgment.

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 1419).

Dated: April 16, 2010

[Signature]
HON. JOAN A. MADDEN s.c.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X

In the Matter of the Application of
YVONNE SICLARI,

Petitioner,

-against-

Index No. 103863/09

THE CITY OF NEW YORK and THE
NEW YORK CITY DEPARTMENT OF
EDUCATION,

Respondents.

-----X

JOAN A. MADDEN, J.:

In this CPLR article 78 proceeding, petitioner, a tenured teacher at the Margaret P. Emery Elm Park School in Staten Island, New York, seeks a judgment ordering that a charge that she employed the use of corporal punishment against a student be expunged from her record and that the unsatisfactory job performance rating (U Rating) that she received for the period from August 2007 to June 2008, be overturned.

Background

The incident that gave rise to the alleged corporal punishment complaints against petitioner occurred on or about October 16, 2007, when three students complained about petitioner. The initials of the names of these three students are I.S., T.M.W. and C.R. Although the written statements of I.S., T.M.W. and C.R. are not entirely consistent, included in their statements are claims that petitioner, in a school hallway, slapped I.S., pushed T.M.W. and grabbed and/or squeezed the arm of C.R. It is undisputed that, other than petitioner, there was

no known adult witness to the alleged incident. As discussed below, only the incident involving C.R. was sustained.

Petitioner received a U Rating on her performance evaluation in June 2008. On the rating form, the only negative comment is “corporal punishment - physical abuse.” Petitioner requested an appeal of the rating, and a review was conducted by the Chancellor’s Committee of the respondent New York City Department of Education (DOE), on October 24, 2008. At the hearing, the petitioner was represented by her union. The Committee recommended that petitioner’s appeal be denied and the U Rating be sustained.

According to the Chancellor’s Committee’s report, petitioner received the U Rating based on substantiated allegation of corporal punishment, lesson plans that were not done, and the documentation submitted for the hearing. In the “Findings” section of the report, the Committee states that the “main reason” for petitioner’s U Rating was a “substantiated allegation of corporal punishment.” The Committee also concluded that the school principal conducted an investigation, and in her supervisory judgment, determined that the allegation was true, and thus rated the petitioner’s performance unsatisfactory.

The record provided by the DOE demonstrates that the school principal conducted an investigation, seeking information from teachers, and other adult school employees, as well as students, and recorded her findings in writing. The principal’s documentation reflects that the principal spoke about the matter with petitioner, bringing to her attention the allegations against her, and that petitioner denied that the incident occurred and stated that she had spoken with C.R.’s mother about his homework, but never mentioned any incident because there was nothing to report.

The record documents submitted by DOE include the previously mentioned written statements of the three students involved in the alleged incident, as well as the written statements of two other students, whose initials are I.H. and T.W. There is no indication that I.H. and T.W. were involved in the alleged incident.

I.H.'s statement provides: "[C.R.] and [I.S.] didn't have to go to the bathroom and [M]s. [S]iclari said that if they didn't she will [*sic*] call the[ir] parents. We went to the library and she grabbed [C.R.] by the arm. Once sh[e] grabbed me when I was drawing." T.W.'s statement provides: "[at library] Mrs. Saclari [*sic*] grabbed [C.R.] by his arm and squeezed his arm and . . . said 'I will call your parents' said Mrs. Saclari [*sic*]. [T]hen [C.R.] said 'well you can't because nobody[']s home' and then Mrs. Saclari [*sic*] pulled [I.S.] outside and then [I.S.] came in very angry and yelling." The record also includes a typed written statement by the school librarian, stating that when C.R. came into the library, he was agitated and shouted "[h]ow would [you] like it if she squeezed your arm.'"

Analysis

In an Article 78 proceeding, the court's review of an administrative action is limited to a determination of whether the administrative decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion (CPLR 7803 [3]). "The arbitrary or capricious test chiefly relates to whether a particular action should have been taken or is justified . . . and whether the administrative action is without foundation in fact" (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974] [citation and quotation marks omitted]). An action is arbitrary and capricious when it is taken "without sound basis in reason and . . . without regard to the facts" (*id.*). Essentially, the court's function is complete upon

finding that a rational basis supports the agency's determination (*see Howard v Wyman*, 28 NY2d 434 [1971]).

In seeking Article 78 relief, petitioner asserts that respondents' actions were arbitrary and capricious, not supported by substantial evidence and a breach of respondents' regulations. Specifically, petitioner argues that it can not be shown by a "preponderance of the evidence" that petitioner subjected C.R. to corporal punishment, as defined by Regulation of the Chancellor number A-420 (A-420).¹ In paragraph 13 of the amended petition, petitioner avers that she did not use physical force to punish C.R.. Petitioner also argues, in the alternative, that the use of such force would have been permitted pursuant to A-420.²

DOE opposes the petition, asserting that the record evidence reveals a rational basis for the principal's findings that petitioner employed corporal punishment. DOE also argues that petitioner improperly relies on A-420, since she did not raise any issue as to that regulation at the hearing, and has consistently denied the use of physical force. DOE contends that, in the event the court considers petitioner's argument that the use of force was permissible, petitioner has not shown that she met A-420's requirement that physical force be used only in those instances

¹ A-420 prohibits the use of corporal punishment, but provides that a teacher may use reasonable physical force for self-protection or the protection of another or property, or to "restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school district functions, powers or duties, if that pupil has refused to comply with a request to refrain from further disruptive acts, provided that alternative procedures and methods not involving the use of physical force cannot be reasonably employed for" self-protection, or to protect another or property.

² While petitioner was written up once for not having lesson plans in her possession, as the DOE does not address this issue, the petitioner's annual evaluation does not mention the plans, and the Chancellor's Committee, in its findings, indicates that it based its decision on the corporal punishment charge, the court need not address any issue as to petitioner's lesson plans.

where alternative procedures and methods not involving the use of such³ force cannot reasonably be employed.

In reply, petitioner does not address her A-420 argument. Instead, petitioner contends that the witnesses upon whom the principal relied gave conflicting versions of the events. Petitioner also contends that the decision to substantiate one of three allegations of the complaining students (grabbing or squeezing C.R.'s arm), but not the other two (the slapping and pushing allegations), based solely on inconsistent, self-serving statements, that were found by the principal to be at least in part inaccurate, is arbitrary and capricious. Petitioner argues that the principal could not rationally determine that the statements of the three complaining students do not provide a sufficient level of evidence concerning the slapping and pushing allegations, and also find that these same statements were sufficient to demonstrate that petitioner grabbed C.R.'s arm. Petitioner further argues, essentially, that because the "substantiating of the corporal punishment allegations [by the principal] was arbitrary and capricious, it necessarily follows that" the U Rating, based on this arbitrary act, was also arbitrary and capricious.

Petitioner's argument ignores that the record contains the statements of T.W. and I.H., and the principal's notes about her conversations with these students. Thus, while I.S., T.M.W. and C.R. gave somewhat conflicting versions of the events, and the principal did not find other support for their slapping and pushing allegations, the principal could have credited the statements of I.H. and T.W., which substantiate C.R.'s allegation that petitioner grabbed and/or squeezed his arm. Certainly matters that involve a misbehaving student who makes an accusation against a teacher are of concern, and are difficult in that, among other things, questions about the student's motive for making the accusation may arise. Here, however,

petitioner contends that no incident occurred, and there is no basis in the record from which an inference may be drawn that T.W. and I.H. were involved in the incident, or had a motive to lie. In any event, it is respondent agency's function to weigh the evidence (*see Matter of New York City Bd. of Educ., Community School Dist. No. 1 v Batista*, 54 NY2d 379, 384-385 [1981]), as well as to resolve issues of credibility when there is conflicting evidence (*see Matter of DeLion Grocery v New York State Liq. Auth.*, 224 AD2d 298 [1st Dept 1996]). That a court might have come to a different conclusion, or decided the matter differently, is of no moment (*see Matter of Mid-State Management Corp. v New York City Conciliation and Appeals Board*, 112 AD2d 72 [1st Dept], *affd* 66 NY2d 1032 [1985]).

As petitioner avers that she did not use physical force against the students, her argument that use of such force was permissible pursuant to A-420 is moot. In any case, petitioner, who carries the burden to demonstrate her contentions in this proceeding, does not demonstrate that she first used alternative procedures and methods not involving the use of force, as required by A-420.

While petitioner states that the principal called an impromptu meeting, in December 2008, at which she criticized petitioner's teaching, classroom management, and organizational skills, this meeting was held over a year after the October 2007 alleged incident, and many months after petitioner received the U Rating in June 2008. As such, and accepting, as true, petitioner's contention that this meeting occurred, this event alone is not sufficient to demonstrate earlier bad faith on the part of the principal, if indeed that was what petitioner is attempting to suggest. Furthermore, as the record contains some evidence to supports a finding that petitioner engaged in corporal punishment, and petitioner has not demonstrated that such

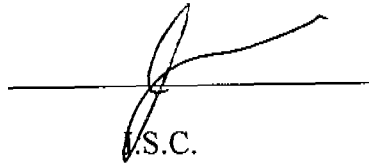
evidence is unreliable, respondents' determination was not arbitrary or capricious, and petitioner's application must be denied.

Accordingly, it is

ORDERED and ADJUDGED that the petition is denied in its entirety and the proceeding is dismissed.

DATED: April 16, 2010

ENTER:


J.S.C.

**HON. JOAN A. MADDEN
J.S.C.**

UNFILED JUDGMENT

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