

**Matter of Trupiano v Board of Educ. of the E.
Meadow Union Free School Dist.**

2010 NY Slip Op 32264(U)

August 10, 2010

Supreme Court, Nassau County

Docket Number: 025812/09

Judge: Michele M. Woodard

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

-----X
In the Matter of the Application of
GINA TRUPIANO,

Petitioner

-against-

**MICHELE M. WOODARD
J.S.C.
TRIAL/IAS Part 12
Index No.: 025812/09
Motion Seq. Nos.: 01 & 02**

BOARD OF EDUCATION OF THE EAST MEADOW
UNION FREE SCHOOL DISTRICT,

DECISION AND ORDER

Respondent.

To Vacate a Decision of a Hearing Officer Pursuant To
Education Law §3020-a(5) and CPLR §7511 and Article 75
of the CPLR

-----X
Papers Read on this Motion:

Petitioner's Amended Notice of Petition	01
Respondent's Notice of Cross-Petition	02
Petitioner's Memorandum in Support of Petition	xx
Respondent's Verified Answer	xx
Respondent's Reply Memorandum of Law	xx
Respondent's Memorandum of Law in Opposition	xx
Petitioner's Reply Memorandum of Law in Further Support of Petition	xx

This proceeding, brought pursuant to CPLR article 75, seeks to vacate the determination of a Hearing Officer made pursuant to Education Law §3020-a, dated November 30, 2009, which, after a hearing, sustained the charge preferred against the petitioner herein, Gina Trupiano, by the respondent, Board of Education of the East Meadow Union Free School District and, as penalty for her actionable misconduct on March 2, 2007, issued a counseling memo.

Petitioner, Gina Trupiano ("Trupiano"), petitions this Court, pursuant to CPLR §7511 and Education Law §3020-a(5) for a judgment vacating the Hearing Officer's award and determination of guilt of Specification 1 of the disciplinary charges and/or the Hearing Officer's determination of the penalty, on the grounds that his decision is irrational, arbitrary and capricious and not based upon

[* 2]
adequate or substantial evidence in violation of state law. She also seeks an order remanding the proceeding to a different Hearing Officer for reconsideration of the penalty.

The respondent, Board of Education of the East Meadow Union Free School District (hereinafter referred to as "School District"), in turn, cross petitions, pursuant to CPLR §7511(b)(1)(iii), for a judgment vacating the penalty portion of the Hearing Officer's award on the basis that the Hearing Officer exceeded his authority and remanding that portion of the award for a determination of an appropriate penalty.

The petition and cross-petition are determined as herein set forth below.

Petitioner, Gina Trupiano, is a tenured teacher employed by the respondent, School District. She is also a member of the East Meadow Teachers Association ("EMTA"), the bargaining unit that represents the School District's teaching personnel.

The School District is comprised of nine school buildings including Woodland Middle School ("Woodland") in East Meadow, New York. Petitioner is employed by the School District at Woodland.

The School District and EMTA were parties to a collective bargaining agreement for the period covering September 1, 1999 through August 31, 2004. They did not reach a successor agreement until July 2007. In the interim, from September 2004 through March 2007, the School District teachers engaged in numerous activities to protest the fact that they did not have a successor agreement in place. The protests included picketing the School District's school buildings.

On or about March 16, 2007, the School District, pursuant to Education Law §3020-a preferred the following disciplinary charges, in the form of one specification, against Trupiano for her involvement in a teacher parking activity at Woodland. The Charge, in full, reads as follows:

Charge I – Misconduct

Specification 1: On or about March 2, 2007, the Respondent [Gina Trupiano] intentionally created a health and safety risk by purposefully situating her vehicle alongside the curb on Wenwood Drive in front of the Woodland Middle School in order to preclude children from being dropped off at curbside. The action resulted in children being dropped off in the middle of the street which resulted in an otherwise avoidable and unnecessary health and safety hazard.

The hearing on the disciplinary Charge was conducted pursuant to Education Law §3020-a, before Hearing Officer Howard C. Edelman, on September 17, 2008, December 3, 2008, January 12,

2009, March 24, 2009 and August 25, 2009. The Hearing Officer issued his decision on November 30, 2009.

In the arbitration, the Hearing Officer was called upon to determine whether Trupiano engaged in actionable misconduct on March 2, 2007 and, if so, what penalty, if any, would be appropriate for her actions. It was undisputed at the hearing that during the negotiation process between the EMTA and the School District, EMTA engaged in various activities, including demonstrations and picketing, in an effort to communicate the negotiation issues to the residents of the School District. It was also undisputed that, per the decision of the EMTA, on March 2, 2007, Trupiano and approximately fifteen other East Meadow teachers lawfully parked their cars on both sides of Wenwood Drive, a public street, in front of the Woodland Middle School. It was also undisputed that the teachers additionally placed placards in the front and/or rear windows of their vehicles notifying the community of the ongoing negotiations for a new collective bargaining agreement taking place between the EMTA and the School District. The Hearing Officer also found that no teachers' car directly blocked the entrance or exit of the driveway in front of the Woodland Middle School nor were any parking violations committed.

At the hearing, the Petitioner herein, Trupiano, urged the Hearing Officer to dismiss the Charge as against her on the grounds that the School District did not act in accordance with the "just cause" principles specified in the Education Law §3020-a and as applied to the facts of this case. Specifically, Trupiano argued that as it was undisputed that no school official asked her to move her vehicle while she was parked on Wenwood Drive, she was not given notice that she was doing anything but legally parking on a public street. Trupiano further argued that she had a constitutionally protected right to peacefully picket in a public area before the beginning of the school day. Moreover, and in opposition to the School District's argument, Trupiano argued that no safety hazard developed as a result of her and the other teachers parking on the public street and that even if a safety hazard existed, the School District had failed to present any evidence to establish the requisite *mens rea* that Trupiano intentionally created the safety hazard.

At the conclusion of the arbitration hearing, the Hearing Officer issued a decision finding Trupiano culpable of the Charge, and ordering that a counseling memo be issued to her.

The Hearing Officer agreed with Trupiano that she did not knowingly and purposely park her vehicle alongside the curb in front of Woodland on the morning of March 2, 2007 with fifteen or so

other teachers in order to create a hazard. Yet, despite the fact that the Hearing Officer did not find any illegal conduct in Trupiano's conduct, he concluded that by doing so, Trupiano "created a safety hazard to children." He noted that as a result of Trupiano's actions and those of other teachers who participated in the parking activity, traffic was "backed up to a greater extent than normal," and "many students" could no longer be dropped off at curbside and were instead, dropped off in the middle of the road. The Hearing Officer rejected Trupiano's argument that the District did not prove that she maintained the requisite intent to prove the Charge. Citing to the doctrine "one can presume to intend the natural consequences of one's actions," the Hearing Officer concluded that Trupiano intended to create a health and safety risk. Her actions and the circumstances surrounding her actions, he found, established such intent. Applying his earlier notion that children dropped off in the street, in traffic, constitutes a hazardous situation, the Hearing Officer reasoned that Trupiano "also had to know a potentially hazardous situation existed" for children. The Hearing Officer found Trupiano guilty of misconduct and awarded a counseling memo be issued to Trupiano, counseling her not to engage in "any potentially harmful behavior" in the future.

Specifically, with respect to the penalty, the Hearing Officer disagreed with the School District's request for a one month suspension finding it compelling that Trupiano acted "without malice or intent to harm" and that ingress and egress to the school was not blocked. Additionally, the Hearing Officer noted that as no school official had ever instructed Trupiano to move her car, she could not be charged with being insubordinate, but rather merely engaging in activities requested by her union leaders. Thus, even though he determined that there was no actual danger to any student, parent or anyone else, he assessed culpability against Gina Trupiano.

Upon the instant application, Gina Trupiano, petitions this Court, pursuant to CPLR §7511 and Education Law §3020-a(5) for a judgment vacating the Hearing Officer's award and determination of guilt of the Charge.

In pertinent part, Education Law § 3020-a "Disciplinary procedures and penalties" provides as follows:

5. Appeal. Not later than ten days after receipt of the hearing officer's decision, the employee or the employing board may make an application to the New York State Supreme Court to vacate or modify the decision of the hearing officer pursuant to section seven thousand five hundred eleven of the civil practice law

and rules. The court's review shall be limited to the grounds set forth in such section.***

CPLR §7511(b), “Vacating or modifying award”, in turn, provides, in pertinent part, as follows:

(b) Grounds for vacating.

1. The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were prejudiced by:

(i) corruption, fraud or misconduct in procuring the award; or

(ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or

(iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or

(iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.

Consistent with the public policy in favor of arbitration, the grounds specified in CPLR §7511 for vacating or modifying an arbitration award are few in number and are narrowly applied. “Courts are reluctant to disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined” (*Goldfinger v Lisker*, 68 NY2d 225, 230 [1986]). Thus, the list of potential objections in CPLR §7511[b] and [c] is exclusive (*Geneseo Police Benevolent Ass'n, Council 82 v Village of Geneseo*, 91 AD2d 858 [4th Dept 1982]), *affd* 59 NY2d 726 [1983]).

In petitioning this Court to vacate the Hearing Officer’s determination of culpability, Trupiano submits that he “exceeded his power” under CPLR §7511(b)(1)(iii). Moreover, based upon a plain reading of the four grounds outlined in CPLR §7511(b)(1), it is obvious that, given the facts of this case, only subsection (iii) is applicable to the matter at hand. This Court finds that subsections (i), (ii) and (iv) do not apply.

Under the rule that has emerged from the cases, an arbitrator is found to “exceed” his or her power in only three circumstances: (1) the arbitrator has exceeded a specifically enumerated limitation on his or her authority; (2) the decision is totally irrational; or (3) the award is violative of a strong

public policy (*Board of Education of the Dover Union Free School District v Dover-Wingdale Teachers' Ass'n*, 61 NY2d 913, 915 [1984]; cf. *Rochester City School District v Rochester Teachers' Ass'n*, 41 NY2d 578, 582 [1977]). However, where, as here, the proceeding is conducted pursuant to statute or is otherwise compulsory, the scope of review is enhanced; that is, if the parties are required by statute to arbitrate their dispute, due process requires "closer judicial scrutiny of the arbitrator's determination" (*Motor Vehicle Accident Indemnification Corp. v Aetna Casualty & Surety Co.*, 89 NY2d 214, 223 [1996]). The "more exacting" standard (*Furstenberg v Allstate Insurance Co.*, 49 NY2d 757, 758 [1980]), which is applicable to issues of fact as well as law, has been described more recently by the Court of Appeals as follows: "[A]n award in a compulsory arbitration proceeding must have evidentiary support and cannot be arbitrary and capricious" (*Motor Vehicle Accident Indemnification Corp. v Aetna Casualty & Surety Co.*, supra at 223). This enhanced standard of review afforded to awards which are the product of compulsory arbitration is consistent with the notions of due process since, in that context, the parties are involuntarily denied initial resort to the judicial system (*City School District of the City of New York v Hershkowitz*, 7 Misc. 3d 1012[A] [Sup. Ct. New York 2005]). Thus, the enhanced standard to be applied to review of awards which are the product of compulsory arbitration is "broad," requiring that the award be in accord with due process, supported by adequate evidence, and must also be rational and satisfy the arbitrary and capricious standard of CPLR Article 78 (*Motor Vehicle Mfrs. Assoc. Of the United States, Inc. v State of New York*, 75 NY2d 175 [1990]).

In that regard, the Court of Appeals has explained the nature of the arbitrary and capricious standard in Article 78 cases in *Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222 (1974) as follows: "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Id.* at 231). The question, said the Court, is whether the determination has a "rational basis" (*Id.*).

It has been held that a school board in a disciplinary case against a tenured teacher is free to draw reasonable conclusions from facts on the record and, on review, a court may only determine if those conclusions can be rationally supported (*Kinsella v Board of Ed. Of Central School Dist. No. 7 of Towns of Amherst and Tonawanda*, 64 AD2d 738 [3rd Dept 1978]). Thus when reviewing compulsory arbitrations in education proceedings such as this, this Court "should accept the arbitrators' credibility

[* 7]
determinations, even where there is conflicting evidence and room for choice” (*Matter of Saunders v Rockland Board of Cooperative Educ. Services*, 62 AD3d 1012, 1013 [2d Dept 2009]).

As low as this “rational basis” threshold is for upholding the arbitrator’s decision, this Court finds that the arbitrator herein did not meet that mark. In this case, the Hearing Officer’s decision that Trupiano is culpable of the charge preferred against her is not “amply supported by the evidence”, and this Court therefore finds that his determination is “arbitrary or capricious.” While the Hearing Officer’s decision is indeed thoughtful, the irony is that the Hearing Officer therein repeatedly acknowledges that Trupiano broke no laws on March 2, 2007, was engaged in a constitutionally protected form of free speech and that she “obviously...did not wish harm to any child.”

It is worth noting again that the charge preferred against Trupiano (and the charge that the Hearing Officer found her guilty of) reads as follows:

Charge I – Misconduct

Specification 1: On or about March 2, 2007, the Respondent [Gina Trupiano] *intentionally* created a health and safety risk by purposefully situating her vehicle alongside the curb on Wenwood Drive in front of the Woodland Middle School *in order to preclude children from being dropped off at curbside*. The action resulted in children being dropped off in the middle of the street which resulted in *an otherwise avoidable and unnecessary health and safety hazard*.

Based upon a plain reading of the Charge and given the arbitrator’s findings that “obviously, Trupiano did not wish harm to any child,” that she had a constitutionally protected right to peacefully picket, and that she never blocked the ingress and egress to the school, this Court is hard pressed to find a rational basis for his decision that she created a safety hazard by her actions and therefore, is culpable of the charge.

In as much as the Hearing Officer cites to *In re Joshua F.*, 309 AD2d 1012 [3rd Dept 2003] for the proposition that “one can [nevertheless] presume to intend the natural consequences of one’s actions,” reliance thereupon is entirely misplaced and arbitrary. *In re Joshua F.* is a Family Court matter dealing with a juvenile who threw a plastic bottle at a vehicle. As a result of the plastic bottle hitting the vehicle it was thrown at, the vehicle was dented. The “natural consequence” was a dented car and the inference was that the dent was intended because it resulted from the juvenile’s throwing of the bottle. This is hardly analogous to the case at hand particularly where the Hearing Officer is persuaded that Trupiano never intended to wish any harm on the child. The credibility of witnesses at a

hearing is left to the offices of the hearing officer, and not the court (*Matter of Mack Markowitz Oldsmobile v State Div. of Human Rights*, 271 AD2d 690 [2d Dept 2000]). In this case, the Hearing Officer believed Trupiano's story of merely complying with her Union leaders instructions to peacefully protest the collective bargaining agreement (or the absence thereof). Yet, he nevertheless found her culpable of the Charge preferred against her. In light of the Hearing Officer's finding that Trupiano did not intend to harm any child, this Court finds his determination that "one can [nevertheless] presume to intend the natural consequences of one's actions," too far attenuated to be deemed rational.

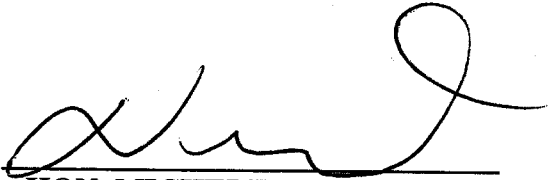
Moreover, this Court finds that crediting the Hearing Officer's findings as a whole precludes this Court from determining that there was a rational basis for the Hearing Officer's determination that Trupiano was culpable for the charge preferred against her particularly where there is no question that she was at all times legally parked, and engaged in a lawful activity at all times, and did not block the ingress and egress to the school.

Having found no rational basis for the Hearing Officer's decision, petitioner, Gina Trupiano's application to vacate the Hearing Officer's award and determination of guilt of the Charge is **granted**.

Under these circumstances, this Court herewith denies the Respondent, School District's cross petition for a judgment vacating the penalty portion of the Hearing Officer's award as **moot**.

This constitutes the Decision and Order of the Court.

DATED: August 10, 2010
Mineola, N.Y. 11501

ENTER: 
HON. MICHELE M. WOODARD
J.S.C.

ENTERED
AUG 17 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE