

Matter of Osiecki v Stanley

2010 NY Slip Op 33778(U)

August 30, 2010

Sup Ct, Suffolk County

Docket Number: 19244/2010

Judge: Paul J. Baisley

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MEMORANDUM

COPY

SUPREME COURT - SUFFOLK COUNTY

PRESENT:**HON. PAUL J. BAISLEY, JR., J.S.C.**

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 In the Matter of KATHERINE OSIECKI, NICOLE
 ALTIMARI, TARA LINTON, DEAN TARULLI,
 KATHLEEN FUREY, MARTHA WELLER and SAVE
 THE COLLEGE AT SOUTHAMPTON, INC.,

Petitioners,

-against-

SAMUEL L. STANLEY, JR., as President of Stony
 Brook University, STATE UNIVERSITY OF NEW
 YORK AT STONY BROOK, THE BOARD OF
 TRUSTEES OF THE STATE UNIVERSITY OF NEW
 YORK AT STONY BROOK and THE STONY
 BROOK COUNCIL,

Respondents,

For Relief Pursuant to Article 78 of the
 New York Civil Practice Law and Rules.

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I.A.S. PART 36

By: Baisley, J.S.C.

Dated: August 27, 2010

INDEX NO.: 19244/2010

MOT. NO.: 001 MG - CASEDISP

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Petitioners commenced the instant Article 78 proceeding on May 25, 2010 to challenge the April 7, 2010 decision of respondents Samuel L. Stanley, Jr., as president of Stony Brook University; the State University of New York at Stony Brook ("SUNY Stony Brook"); and the Board of Trustees of the State University of New York ("SUNY Trustees") to substantially close the Southampton satellite campus of SUNY Stony Brook ("Stony Brook-Southampton") effective August 31, 2010, allegedly for budgetary reasons.¹ By order to show cause (COHEN, J.) dated May 25, 2010, petitioners also moved for a preliminary injunction enjoining respondents from implementing their plan to close Stony Brook-Southampton pending the determination of the Article 78 proceeding. The individual petitioners are students currently enrolled at Stony Brook-Southampton, a small residential campus that, capitalizing on its proximity to the ocean, offers specialized programs in environmental studies, marine and atmospheric sciences, and "sustainability" studies. Petitioner Save the College at Southampton, Inc. is a not-for-profit corporation formed for the purpose of opposing respondents' plan to close Stony Brook-Southampton.

¹ It appears that all Stony Brook-Southampton dormitories will be closed and that the approximately 800 Southampton students enrolled for the 2010 academic year will be forced to relocate to the main campus in Stony Brook for housing as well as coursework, and that the Southampton campus will remain open only for limited research functions.

Although the petitioners have asserted five separate causes of action in their verified petition, the principal basis of the Article 78 proceeding and of petitioners' motion for a preliminary injunction is respondents' alleged violation of Education Law §356, which, among other things, requires the Stony Brook Council to review and make recommendations on "major plans" that affect SUNY Stony Brook, as well as to review and make recommendations with respect to the SUNY Stony Brook budget. Petitioners allege – and respondents do not appear to dispute – that the Stony Brook Council did not review, participate in or make recommendations with respect to the decision by the other respondents to close Stony Brook-Southampton, or with respect to the budget that assertedly mandated the closure. Petitioners allege that the process by which respondents arrived at the decision was thus fatally flawed and that accordingly the determination must be reversed.

Moreover, petitioners assert that they are entitled to a preliminary injunction pending the Court's determination of the Article 78 proceeding, and have submitted affidavits, the affirmation of counsel, and a memorandum of law in support of their motion for such relief. Respondents submitted affidavits and a memorandum of law in opposition to the motion for a preliminary injunction and in opposition to the petition. It appears, however, that respondents did not file an answer or certified transcript of the record of the proceedings as required pursuant to CPLR §7804(d) and (e), nor did they interpose a motion to dismiss the proceeding pursuant to CPLR §7804(f). While the Court is empowered to direct respondents to submit an answer and certified record (CPLR §7804(e)), the Court finds that such an imperative, which will further delay a determination of this time-sensitive matter, is unwarranted in this instance. It appears that the issues raised in petitioners' motion for a preliminary injunction are identical to the issues in the underlying Article 78 proceeding. Those issues, and the parties' positions with respect thereto, have been fully briefed and argued in the parties' respective submissions. Moreover, there do not appear to be any disputed issues of material fact. Rather, the dispute is as to whether Education Law §356 was violated in this instance and whether any such alleged violation mandates a reversal of respondents' determination. That dispute, the Court finds, may be determined as a matter of law upon the record presently before the Court.

Education Law §356(1) provides that: "[s]ubject to the general management, supervision and control of and in accordance with rules established by the state university trustees, *the operations and affairs of each state-operated institution of the state university shall be supervised locally by a council consisting of ten members, nine of whom shall be appointed by the governor and one of whom shall be elected by and from among the students of the institution [emphasis added].*" The statute further provides that with respect to the institution or institutions for which it serves, the council shall exercise certain enumerated powers. As relevant to the instant proceeding, those powers include the following:

"(b) *review all major plans of the head of such institution for its more effective operation and make such recommendations with respect thereto as it deems appropriate [emphasis added].* Such plans shall be submitted for approval by the [SUNY Trustees], together with the recommendations of the council with respect thereto. The [SUNY Trustees] shall determine what constitute such major plans, which are hereby generally defined to include, among others, plans for the appraisal or improvement of the faculty and other personnel, expansion or restriction of student admissions, appraisal or improvement of academic programs and of standards for the earning of degrees, expansion of institutional plants and appraisal or improvement of student activities and housing;

“(c) make regulations governing the care, custody and management of lands, grounds, buildings and equipment;

“(d) review the proposed budget requests for such institution prepared by the head thereof and recommend to the state university trustees a budget for such institution” (Education Law §356(3)).

The submissions reflect that, in accordance with its statutory mandate, the Stony Brook Council did participate in the state university’s initial decision to acquire the former Southampton College property from Long Island University for \$35,000,000.00 in 2005. On September 9, 2005, the Council passed a formal resolution expressing its strong support for the acquisition and, recognizing that operating shortfalls were likely, authorizing the university president to continue to work to identify resources that “would enable the University to successfully operate the campus in the public interest without diverting critical resources needed by Stony Brook University.” It thus appears that the acquisition of the Southampton campus was acknowledged by respondents to be a “major plan” invoking the Council’s statutory review-and-recommend duty and authority. Respondents have offered no authority or evidence to establish that their recent precipitous decision to close the Southampton campus and relocate its students and academic programs and classes to the larger main campus is not also a “major plan” as contemplated by the statute, requiring the participation of the Stony Brook Council in the decision-making process.

Moreover, while respondents defend their determination to close Southampton as being “part of a multilayered response to cuts in University’s allocation of state funding and a long-standing inability to operate Southampton without fiscal shortfalls,” there is no showing that the Stony Brook Council reviewed the SUNY Stony Brook budget or offered its recommendations with respect thereto as expressly required by Education Law §356(3)(d). In light of the Stony Brook Council’s previously expressed concerns regarding the proposed financial plan and projected financial shortfalls in connection with the operation of the Southampton campus, its exclusion from the current decision-making process which so heavily implicates those financial and budgetary concerns is inexplicable.

Since the submissions establish that the respondents neither sought nor obtained the recommendations of the Stony Brook Council with respect to the proposal to close the Southampton campus, which is manifestly a “major plan” affecting the operation of the university, the Court is constrained to agree with petitioners that the Education Law §356 was violated. Moreover, the Court finds that compliance with the statute is mandatory, and that the violation justifies vacatur of the determination (*Matter of Syquia v Bd. of Ed. of Harpurville CSD*, 80 NY2d 531 [1992]). It is well established that in determining whether a statutory provision is mandatory or merely directory, the court will look to both the statutory language and the underlying legislative intent (*id.*). It is manifest that, although “general management, supervision and control” with regard to the statewide university system is vested in the SUNY Trustees, the councils mandated by §356(1) are intended by the legislature to play a major supervisory and advisory role with respect to the operations and affairs of the individual institutions of the university at the local level. In accordance with that intent, the legislature has imbued the councils with broad powers and duties with respect to their institutions’ faculty and other personnel, including the university president; student admissions; academic programs; physical plant; budget; student discipline; and student housing. Moreover, the language of the statute is mandatory, providing that the Council “shall” exercise its enumerated powers.

The Court finds that because the decision to close the Southampton campus constitutes a “major plan” for the more effective operation of the institution, and because it is predicated on assertions regarding the university’s budget, and because it implicates the care, custody and management of the university’s lands, grounds, and buildings, all of which are areas of concern statutorily ascribed to the Stony Brook Council, the Council should have been involved in the determination regarding the future of the Southampton campus. The failure of the respondents to ensure its participation mandates that the determination be annulled.

Accordingly, the petition is granted pursuant to CPLR §7804(e), the respondents’ determination to close the Southampton campus is annulled, and respondents are enjoined from proceeding with the plan to close the Southampton campus until such time as they comply with the mandates of Education Law §356. In light of the foregoing the motion for a preliminary injunction is denied as moot.

Petitioners are directed to submit a judgment on notice to respondents.

Dated: August 30, 2010

PAUL J. BAISLEY, JR.

J.S.C.