

<b>Matter of Wilson v New York City Bd./Dept. of Educ.</b>
2011 NY Slip Op 30081(U)
January 13, 2011
Sup Ct, New York County
Docket Number: 111519/10
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN  
J.S.C.

PART 52

Index Number : 111519/2010  
**WILSON, BRENDA**  
vs.  
**NYC BOARD/DEPT OF EDUCATION**  
SEQUENCE NUMBER : 001  
VACATE OR MODIFY AWARD

INDEX NO. 111519/10  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 01  
MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion is decided in accordance with the attached decision.

**FILED**

**JAN 14 2011**

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 1/13/11

egk  
CYNTHIA S. KERN J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

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 52

-----X  
In the Matter of the Application of

BRENDA WILSON,

Petitioner,

Index No. 111519/10

**JUDGMENT/ORDER**

For a Judgment Pursuant to Article 75 of the C.P.L.R.

-against-

THE NEW YORK CITY BOARD/DEPARTMENT  
OF EDUCATION,

Respondent.

**FILED**  
**JAN 14 2011**  
NEW YORK  
COUNTY CLERK'S OFFICE

-----X  
**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Affirmations in Opposition to the Cross-Motion.....	<u>3</u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u>5</u>

In this Article 75 proceeding, petitioner Brenda Wilson (“petitioner”) seeks to vacate the Opinion and Award of Hearing Officer Mary L. Crangle (“Hearing Officer Crangle”) dated August 16, 2010 issued pursuant to Education Law § 3020-a. The New York City Department of Education (the “DOE”) cross-moves to dismiss the petition. This court denies the petitioner’s request and grants the DOE’s cross-motion for the reasons set forth below.

The underlying facts are as follows. Petitioner is a tenured social worker employed by the DOE who worked at P.S. 129 in District 12 in the Bronx. She had worked as a school social worker for the BOE since 1987 and at I.S. 129 since 2000. According to respondent, a number of issues arose concerning petitioner's job performance during the 2005-2006, 2006-2007 and 2007-2008 school years. Petitioner was subsequently suspended from her position in June 2008 and the DOE preferred nine charges against her pursuant to Education Law § 3020-a. These charges included failing to provide students with their mandated counseling, failing to maintain accurate records and reports, failing to translate assessment findings into educationally relevant goals and objectives to meet students' needs, engaging in unprofessional conduct and insubordination, failing to adequately prepare for the provision of mandated counseling services, failing to establish and promote an environment to ensure confidentiality, displaying poor personal and professional qualities by repeatedly reporting to work late and failing to call in absences in a timely manner, failing to properly plan and execute counseling sessions as documented in observation reports, and failing to implement recommendations from observation conferences, meetings, letters to file and professional development. Hearing Officer Mary Crangle was assigned to arbitrate the § 3020-a charges filed against petitioner. A pre-hearing conference was held on February 24, 2009 and hearings were held over 21 separate dates between September 2009 and January 2010, during which time the parties were afforded a full opportunity to present witnesses, testimony, exhibits and arguments in support of their respective positions. On August 16, 2010, Hearing Office Crangle rendered her decision finding that the BOE had met its burden of proof as to specifications 1, 2, 3 as pertaining to the 2007-2008 school year only, 4 in part, 6 as to the 2007-2008 school year only, 7 and 8 and, consequently,

finding just cause for petitioner's termination. Hearing Office Crangle dismissed the other charges against petitioner. On August 27, 2010, petitioner proceeding *pro se* commenced the instant petition seeking to vacate Hearing Officer Crangle's award on the basis that it is not warranted by the record, has no basis in law, is arbitrary and capricious, demonstrates corruption and fraud, ignores alleged "administrative sabotage" of petitioner's job by her principal, constitutes excessive punishment, and is not authorized by Education Law § 3020, § 3020-a and § 2950-j before the charges are voted on by the BOE.

"Education Law § 3020-a(5) provides that judicial review of a hearing officer's findings must be conducted pursuant to CPLR 7511. Under such review an award may only be vacated on a showing of 'misconduct, bias, excess of power or procedural defects'." *Lackow v. Dept. of Education of the City of New York*, 51 A.D.3d 563, 567 (1<sup>st</sup> Dept 2008); *See The City School Dist. of the City of New York v. McGraham*, 2010 WL 2731911 at \*4 (July 13, 2010, N.Y.App. Div. 1<sup>st</sup> Dept.). However, where arbitration is mandated by law, as here, "judicial scrutiny is stricter than that for a determination rendered where the parties have submitted to voluntary arbitration. The determination must be in accord with due process and supported by adequate evidence, and must also be rational and satisfy the arbitrary and capricious standards of CPLR Article 78. The party challenging an arbitration determination has the burden of showing its invalidity." *Lackow*, 51 A.D.3d at 567-568 (internal citations omitted).

In the instant action, petitioner has failed to provide any evidence demonstrating misconduct, bias, excess of power, or procedural defects. Moreover, Hearing Officer Crangel's decision was rational and supported by adequate evidence. Additionally, petitioner's argument that her due process rights were violated because the school board did not vote on the charges

against her is without merit as "Education Law § 2590-f(1)(c) (L 1996, ch 720, § 5), part of article 52-A applicable only to the New York City school district (Education Law § 2590), specifically grants community superintendents authority to appoint and discharge all employees." *Munoz v. Vega*, 303 A.D.2d 253, 254 (1<sup>st</sup> Dep't 2003); Education Law § 2590-f (1)(c).

Accordingly, this court denies petitioner's request for relief under Article 75 of the C.P.L.R. and dismisses the proceeding in its entirety. The DOE's cross-motion to dismiss the petition is granted. This constitutes the decision, order and judgment of the court.

Dated:

Enter: PK  
J.S.C.

**CYNTHIA S. KERN**  
J.S.C.

**FILED**  
**JAN 14 2011**  
NEW YORK  
COUNTY CLERK'S OFFICE