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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MARCY S. FRIEDMAN, J.S.C. PART 57

Index Number : 117885/2009
SOC. SERV. EMPLOYEES UNION
VS.
CITY OF NEW YORK
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. 117885/09
MOTION DATE
MOTION SEQ. NO. 001
MOTION CAL. NO.

this ~~motion~~ petition for Art. 78

| | PAPERS NUMBERED |
|---|---|
| Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... | 1 |
| Answering Affidavits — Exhibits | 2 |
| Replying Affidavits | |

Memo of Law M1

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this ~~motion~~ petition is

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION/ORDER.

FILED
APR 19 2011
NEW YORK
COUNTY CLERK'S OFFICE

RECEIVED
APR 18 2011
MOTION SUPPORT OFFICE
NYS SUPREME COURT - CIVIL

Dated: 4/14/11

MARCY S. FRIEDMAN, J.S.C.

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

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

x

In the Matter of the Application of

SOCIAL SERVICE EMPLOYEES UNION, LOCAL 371, AFSCME, AFL-CIO, FARYCE B. MOORE, as President, and SHARON CARROLL, LENNOX CAMPBELL, JOYCE E. COLEMAN, TAMARA DALEY, ADEBAYO DWOSENI, LINDA JAMES GASKIN, PAULINE MOORE, TONI SHEPARD, KAREN SIMMONS, LORI WADE, REEVA WHITE, ALESIA YOYO, TOUSSAINT WEBB, PEDRO FORLONG, individually and on behalf of others similarly situated, employed by Respondents,

*Petitioners*,

- against -

CITY OF NEW YORK ADMINISTRATION FOR CHILDREN'S SERVICES, JOHN B. MATTINGLY, as Commissioner, CITY OF NEW YORK DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES (DCAS), and CITY OF NEW YORK,

*Respondents.*

For a Judgment Pursuant to Article 78, CPLR

Index No.:117885/09

DECISION/ORDER

In this Article 78 proceeding, petitioners challenge respondents' determination laying off petitioners from their Child Welfare Specialist (CWS) and Child Welfare Specialist Supervisor (CWSS) positions with the City of New York Administration for Children's Services (ACS). Petitioners are the President of the Social Service Employees Union, Local 371, and employees who held the titles of CWS or CWSS for at least 10 years. (Pet. ¶ 5.) Although there are only 14

employee petitioners, there were 287 layoffs from these titles. (Id., ¶ 16.)

This proceeding arises out of the restructuring of ACS, the agency which provides foster care and preventive services to children and families. By resolution dated December 17, 2008, as part of the restructuring, the City created two new civil service titles, Program Evaluator (PE) and Child and Family Specialist (CFS). (Pet., ¶ 15, Ex. E.) On or about September 14, 2009, respondents announced the layoffs of the 287 CWS and CWSS employees. (Id., ¶ 16.)

Petitioners allege that respondents acted arbitrarily and capriciously and in violation of Civil Service Law § 80 in terminating their CWS and CWSS positions and failing to designate comparable job titles. (Pet., ¶ 1.) Petitioners appear to claim that respondents have bypassed the merit and fitness requirements of the Civil Service Law by "hir[ing] new employees from the street, who had less (or no) seniority and less experience than incumbent CWS and CWSS [employees]." (Id., ¶¶ 33-34.) They also allege that respondents have made layoffs "out of seniority and without regard to comparable job titles." (Id., ¶ 46.) While petitioners acknowledge that "Civil Service Law § 80 permits Respondents to abolish and change positions," they contend that "such actions, including the layoff procedure, may not, as here, be implemented arbitrarily and capriciously in bad faith and/or without regard to seniority." (Id., ¶ 3.)

In opposition, respondents contend that the new competitive civil service titles of PE and CFS were created in order to implement an initiative called Improved Outcomes for Children, which "call[ed] for skilled ACS staff to be interacting regularly and in person with families and children at conferences in order to participate in the key safety decision-making meetings." (Ans., ¶¶ 65, 71.) According to respondents, the new titles required personnel with education

and experience "significantly greater" than that required for the CWS and CWSS titles. (Id., ¶¶ 65, 68.) Respondents also contend, and petitioners do not dispute, that many employees in the CWS and CWSS positions who applied for and met the minimum qualifications for the CFS and PE positions were appointed. (Id., ¶ 76.) As to layoffs, respondents contend that, in response to a City-wide mandate, ACS was required to reduce its overall budget and determined that "layoffs should target the positions which were already being eliminated as a result of the restructuring." (Ans., ¶¶ 82-83.) They further contend that layoffs were based on seniority and that employees who have been laid off will be eligible for rehiring based on seniority. (Id., ¶¶ 89, 94.)

It is well settled that "[a] public employer may abolish civil service positions for the purpose of economy or efficiency" (Matter of Civil Serv. Empls. Assn, Inc., Local 1000 v Rockland County Bd. Of Coop. Educ. Servs., 39 AD3d 641, 642 [2nd Dept 2007]), so long as it does not act "in bad faith." (See Matter of Aldazabal v Carey, 44 NY2d 787 [1978].) Indeed, the determination to abolish a position or to create new positions with differing duties is, in the absence of bad faith, an "undisputed management prerogative for the public's benefit," held by the public employer. (See Matter of County of Chautauqua v. Civil Serv. Empls Assn., Local 1000, 8 NY3d 513, 521 [2007] [internal quotation marks and citations omitted]; Aldazabal, 44 NY2d at 787.)

The party challenging the abolition of a title and subsequent layoffs bears the burden of proving bad faith. (See Aldazabal, 44 NY2d at 787; Matter of Hritz-Seifts v Town of Poughkeepsie, 22 AD3d 493 [2nd Dept 2005].) Bad faith may be shown by proving that the action was undertaken to circumvent the protections of the Civil Service Law, or by "eliminat[ing] bona fide reasons for the elimination of [the petitioner's] position, [or] show[ing]

that no savings were accomplished." (See Matter of Linney v City of Plattsburgh, 49 AD3d 1020, 1021 [3d Dept 2008] [internal quotation marks and citation omitted].) "Bad faith may [also] be demonstrated by evidence that a newly hired person performed substantially the same duties as the discharged employee." (Matter of Civil Serv. Empls. Assn. [Rockland County Bd.], 39 AD3d at 642-643 [internal quotation marks and citations omitted]. See Wipfler v Klebes, 284 NY 248 [1940] [decided under predecessor Civil Service Law § 31-b].) The court's inquiry, in determining whether the duties of the newly created position were the same or substantially similar to the duties of the abolished position, is highly fact-specific. (See id.)

As a threshold matter, the court holds that this proceeding is barred by the statute of limitations to the extent that it challenges respondents' creation of the new titles or their failure to designate comparable job titles for which petitioners would qualify. The resolution creating the titles was adopted on December 17, 2008. This proceeding was not brought until January 2010, well beyond the four month limitations period for commencement of an Article 78 proceeding. (See CPLR 217[1].)

To the extent that petitioners' claim is that the PE and CFS titles are equivalent to the CWS and CWSS titles, this claim is without merit. It is well settled that newly created positions are not the "same or similar" to abolished positions when they have different certification requirements. (See Matter of Civil Serv. Empls. Assn. [Rockland County Bd.], 39 AD3d at 642-643.) While some of the job responsibilities in the new and the old job titles overlap, review of the "Qualification Requirements" for the titles demonstrates that they are materially different, and that the requirements for the PE and CFS titles are, as claimed by respondents, substantially greater. Both the CWS and CWSS titles require a baccalaureate degree, and the CWSS title

requires a baccalaureate degree plus 30 credits towards a masters of social work or a graduate degree in a related field, and case work experience. (See Ans., Ex. 6.) In contrast, at a minimum the CFS title requires a masters degree in social work plus New York State registration as a Licensed Clinical Social Worker. The CFS title also requires experience in family team conferences or family group decision-making, or in other specified clinical group work, or in conducting professional trainings. Similarly, the PE title requires a masters degree in social work or other specified fields plus specified experience, or a baccalaureate degree and experience in specified fields. (Id., Ex. 7.)

Finally, to the extent that petitioners claim that respondents have not made layoffs of workers in the CWS and CWSS positions based on seniority, they rest solely on the conclusory allegations of the petition and fail to cite any specific instance in which a laid off worker's seniority rights were not respected. Petitioners also fail to make any factual showing in support of their apparent further claims that respondents have not hired persons with greater qualifications than petitioners' for the new titles, or that the job duties being performed by persons appointed to the new titles are the same as those that petitioners performed.

By prior decision and order dated November 23, 2010, this court exercised its discretion to grant petitioners discovery as to which CWS and CWSS employees were appointed to the PE and CFS positions. The court also authorized discovery as to the qualifications of persons appointed by ACS to the PE and CFS positions, and the job duties actually being performed by the appointees. This discovery has now been conducted. However, petitioners still have not brought to the court's attention any evidence showing that any CWS or CWSS employee who applied for and met the Qualification Requirements was not transferred into a PE or CFS

position, or that any of the newly hired PE and CFS employees did not meet the Qualification Requirements for those positions. Nor have they made any showing that the job duties being performed in the PE and CFS positions are the same as or substantially similar to those in the CWS and CWSS positions.

The court recognizes the severe impact of the layoffs on petitioners and other employees in the CWS and CWSS titles, and has carefully considered petitioners' claims. However, the court cannot find on this record that petitioners have sustained their burden of demonstrating that respondents acted in bad faith in implementing the layoffs, or that the layoffs were made for reasons other than budget shortfalls that indisputedly affect not only ACS but many other essential City agencies.

It is accordingly hereby ORDERED and ADJUDGED that the petition is dismissed, and the Clerk is directed to enter judgment accordingly.

This constitutes the decision and judgment of the court

Dated: New York, New York
April 14, 2011

MARCY FRIEDMAN, J.S.C.