

Jodre v Locust Val. Cent. School Dist.

2011 NY Slip Op 31076(U)

April 14, 2011

Supreme Court, Nassau County

Docket Number: 016833/10

Judge: Jeffrey S. Brown

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SHORT FORM ORDER

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

**P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE**

-----X **TRIAL/IAS PART 21**
ROBERTA-MICHELE JODRE,

Petitioner,

Index No. 016833/10

- against -

Mot. Seq. # 3

Mot. Date 2/23/11

Submit Date 3/31/11

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**LOCUST VALLEY CENTRAL SCHOOL DISTRICT
and ANNA HUNDERFUND, in her Official Capacity
as District Superintendent of the Locust Valley
Central School District,**

Respondents.

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The following papers were read on this motion:	Papers Numbered
Notice of Petition, Affidavits (Affirmations), Exhibits Annexed.....	1
Answering Affidavit	2,3,4
Reply Affidavit.....	5,6

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Proceeding by the petitioner Roberta-Michele Jodre pursuant to CPLR Article 78 to, *inter alia*, set aside a determination of the respondent Locust Valley Central School District dated May, 4, 2010, which abolished the petitioner's position as tenured District Director of Guidance Services.

The petitioner Roberta-Michele Jodre was hired in November of 2004 by the respondent Locust Valley Central School District ["the District"] as its District Director of Guidance Services and was later granted tenure in 2007 (Pet., ¶¶ 13-14).

According to the District, in recent years the fiscal environment for school districts, Locust Valley among them, has become particularly difficult, largely because of significant cuts in State aid, increases in unfunded mandates and material increases in fixed costs and contractual

salary obligations, all of which generated an initial, District-wide shortfall of some \$5.5 million for the 2010-2011 school year (Hunderfund, Aff., ¶¶ 7-10).

In response, the District implemented a series of cost cutting measures, including, *inter alia*, programs cuts, staff reductions of some 20% since 2008, and also the “fractionalization” and/or consolidation of certain work duties formerly performed by abolished and unfilled titles (Hunderfund, Aff., ¶¶ 15-18).

In May and June of 2010, and in accord with its budgetary strategy, the District’s Board voted to eliminate a series of positions and titles, including the petitioner’s tenured job title, thereby generating, according to the District, a total savings of some \$3.4 million (Hunderfund, Aff., ¶¶ 25-29; Exh., “I”). At the time the petitioner’s title was abolished, the District contends that it hired a new Assistant Principal, a separate but previously existing job title which had become vacant when the person holding that title was reassigned to the District’s middle school (Hunderfund, Aff., ¶¶ 30-37).

With respect to the petitioner’s former duties, the District contends that they were to be fractionalized or divided up and assigned in part to the newly hired Assistant Principal and to other, existing personnel, with no one individual to perform in excess of 50% of those duties (Hunderfund, Aff., ¶¶ 30-36; 38-39; Gottessman Aff., ¶ 65).

In October of 2009, and prior to the elimination of her job title, the petitioner had filed a complaint with the Commission of Education alleging, *inter alia*, that she had been harassed and, in effect, disciplined without due process of law; namely, she alleged that her job responsibilities had been altered and minimized in bad faith, claims which were later rejected as both untimely and unfounded on the merits by the Commissioner in a subsequently issued decision (*see, Appeal of Roberta-Michele Jodre*, Decision No. 16,162 [October 8, 2010]).

In August of 2010, the petitioner commenced the within proceeding pursuant to CPLR article 78, alleging, among other things, that the District improperly utilized the budgetary and fiscal crises as a pretext to impose discipline and illegally dismiss her (Pet., ¶¶ 38-42). In substance, the petitioner contends that at the time her position was abolished, the District hired the new Assistant Principal in bad faith and assigned all of the petitioner’s work duties to that new hire (Jodre Opp. Aff., ¶¶ 6-7; Hunderfund, Aff., ¶¶ 30-31). Moreover, the petitioner further asserts that despite the Assistant Principal’s distinct work title, this new hire allegedly performs only and exclusively the duties which she formerly performed as District Director of Guidance Services (Jodre Opp. Aff., ¶¶ 6-7, 17-18, 21, 25).

The respondents have answered and denied the material allegations of the petition. The verified petition is now before the court for review and resolution. Upon the papers submitted, the petition should be denied and the proceeding dismissed on the merits.

A public employer may abolish civil service positions for the purpose of economy or efficiency (*see*, Civil Service Law § 80 [1]; *Matter of Aldazabal v Carey*, 44 NY2d 787, 788 [1978]; *Matter of Hritz-Seifts v Town of Poughkeepsie*, 22 AD3d 493 [2005]), “as long as the position is not abolished as a subterfuge to avoid statutory protection afforded civil servants before they are discharged” (*Civil Service Employees Ass'n, Inc., Local 1000, AFSCME, AFL-CIO v. Rockland County*, 39 AD3d 641, quoting from, *Matter of Della Vecchia v Town of N. Hempstead*, 207 AD2d 484, 484-485 *see generally*, *County of Chautauqua v. Civil Service Employees Ass'n*, 8 NY3d 513, 519-520 [2007]; *Matter of Aldazabal v. Carey*, 44 NY2d 787, 788 [1978]; *Young v. Board of Ed. of Central School Dist. No. 6, Town of Huntington*, 35 NY2d 31, 34 [1974]).

A petitioner bears the burden of proving that the abolition of his or her position was the product of bad faith or an attempt to circumvent applicable provisions of the law (*Aldazabal v. Carey, supra*; *Mucci v. City of Binghamton*, 245 AD2d 678, 679; *Rose v. City of Newburgh*, 239 AD2d 587; *Matter of Piekelnia v. Axelrod*, 92 AD2d 968, 969).

Since decisions with respect to the abolishment of positions “are within the wide latitude accorded boards of education” “[a] petition challenging such discretionary decisions should be dismissed where any reasonable explanation of the conduct is shown” (*Schimmel v. Board of Educ., South Kortright Cent. School Dist.*, 111 AD2d 966; *Matter of Rappold v. Board of Educ.*, 95 AD2d 890).

With these principles in mind, the Court agrees that the District has established its *prima facie* entitlement to dismissal of the verified petition.

Preliminarily, the petitioner concedes that her position “is not within Section 80 of Civil Service Law,” but claims that the statute provides analogous support for her claims (Jodre Opp. Aff., ¶ 27). Putting aside the fact that Civil Service Law § 80 is inapplicable to her job title, the record demonstrates that at the time the petitioner’s job was abolished, there existed *bona fide* financial and budgetary considerations significantly impacting upon the District’s ability to fulfill its educational mission (*Linney v. City of Plattsburgh*, 49 AD3d 1020; *Cohen v. Crown Point Cent. School Dist.*, 306 AD2d 732, 733; *Mucci v. City of Binghamton, supra*, 245 AD2d 678, 679; *Klos v. Town of Babylon, supra*, 237 AD2d 291; *Della Vecchia v. Town of North Hempstead*, 207 AD2d 484, 485; *Gagnon v. Board of Educ. of Manhasset Union Free School Dist.*, 119 AD2d 674). The elimination of the petitioner’s job title was only one component of a District-wide program of staff reductions and cost cutting measures approved by the Board in April and May of 2010. In the exercise of its “nondelegable discretion to determine” staffing and budgetary needs (*County of Chautauqua v. Civil Service Employees Ass'n, supra*), the District could rationally, and in good faith, conclude that its fiscal strategy would be best furthered by abolishing certain positions and/or filling formerly vacant titles and then consolidating work duties and obligations to promote the desired economy (*see generally, Shields v. Dinga*, 222

AD2d 816, 818; *Anderson v. Board of Co-op. Educational Services, supra*, *Piekielniak v. Axelrod, supra*, 92 AD2d at 969; *Currier v. Tompkins-Seneca-Tioga Bd. of Co-op. Educational Services*, 80 AD2d 979 *see, O'Donnell v. Kirby*, 112 AD2d 936, 937).

Although the petitioner claims, *inter alia*, that the new Assistant Principal is performing only her former duties and no others, “the assumption of the duties of petitioner's abolished position by another employee, in itself, is not proof of bad faith” (*Shields v. Dinga, supra see, Anderson v. Board of Co-op. Educational Services*, 128 AD2d 614, 615; *Piekielniak v. Axelrod, supra*, 92 AD2d at 969; *Connolly v. Carey*, 80 AD2d 936). Nor is there any dispute that the Assistant Principal's job, which was not a newly created title, is nominally distinct from that of the petitioner's former title and that its specifications include duties and responsibilities separate from those associated with the petitioner's former title. In any event, the documentary evidence attached to the petitioner's opposing papers does not establish that the new Assistant Principal is only and exclusively performing the petitioner's former duties (*e.g., Shields v. Dinga, supra; Piekielniak v. Axelrod, supra*).

While the newly hired Assistant Principal may be performing tasks which the petitioner formerly performed, the rationale underlying the District's fiscal savings strategy was, in part, to consolidate and expand the duties performed by certain existing titles and/or to “fractionalize” tasks to achieve further savings (Hunderfund, Aff., ¶¶ 13-19)(*Currier v. Tompkins-Seneca-Tioga Bd. of Co-op. Educational Services, supra; Connolly v. Carey, supra*, 80 AD2d 936 *see generally, Rose v. City of Newburgh*, 239 AD2d 587, 588). “However one may choose to differ about the wisdom of that procedure, it cannot be said that the * * * [District] was arbitrary or capricious in adopting and following it” (*Saur v. Director of Creedmoor Psychiatric Center*, 41 NY2d 1023, 1024 [1977]; *O'Donnell v. Kirby, supra*).

Lastly, and while the Commissioner's October 2010 decision was rendered before the petitioner was dismissed, the Commissioner nevertheless reviewed the petitioner's allegations that, *inter alia*, the District had harassed and/or disciplined her in violation of applicable law, and rejected those claims.

The Court has considered the petitioner's remaining contentions and concludes that they are lacking in merit.

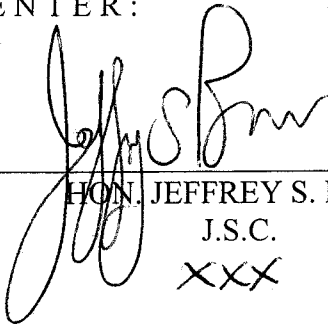
Accordingly, it is,

ORDERED that the petition is **denied** and the proceeding is dismissed on the merits.

The foregoing constitutes the decision and order of this Court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
April 14, 2011

ENTER:



HON. JEFFREY S. BROWN
J.S.C.
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APPEARANCES

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ENTERED
APR 18 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE