

**Matter of Mannion v Doherty**

2011 NY Slip Op 31233(U)

May 9, 2011

Supreme Court, New York County

Docket Number: 116520/2010

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.  
Justice

PART 52

Joseph Mannion

INDEX NO. 116520/10

John J. Doherty

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 01

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on 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 annexed decision.

**FILED**

MAY 10 2011

NEW YORK  
COUNTY CLERK'S OFFICE

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

Dated: 5/9/11

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.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 52

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

JOSEPH MANNION, as President of the Sanitation  
Officers Association, Local 444 Service Employees  
International Union, and, THE SANITATION OFFICERS  
ASSOCIATION, LOCAL 444 SERVICE EMPLOYEES  
INTERNATIONAL UNION,

Petitioners,

Index No. 116520/2010

For a Judgment Pursuant to Article 78 of the  
Civil Practice Laws and Rules,

-against-

JOHN J. DOHERTY, as the Commissioner of the  
Department of Sanitation of the City of New York; THE  
DEPARTMENT OF SANITATION OF THE CITY OF  
NEW YORK; JAMES F. HANLEY, as Commissioner of  
The New York City Office fo Labor Relations; EDNA  
WELLS HANDY, as the Commissioner of the New York  
City Department Citywide Administrative Services; THE  
NEW YORK CITY DEPARTMENT CITYWIDE  
ADMINISTRATIVE SERVICES; MICHAEL R.  
BLOOMBERG, as Mayor of the City of New York; and  
THE CITY OF NEW YORK,

Respondents.

-----X  
HON. CYNTHIA 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.....	1
Answering Affidavits and Cross Motion.....	2
Affirmations in Opposition to the Cross Motion.....	3
Replying Affidavits.....	4
Exhibits.....	5

**FILED**  
**MAY 10 2011**  
NEW YORK  
COUNTY CLERK'S OFFICE

Petitioners brings this petition seeking a temporary restraining order and a preliminary and permanent injunction enjoining the respondents captioned above (collectively the "City") from demoting one hundred Sanitation Supervisors to the position of Sanitation Worker effective January 1, 2011. The City cross-moves to dismiss petitioners' petition. The request for a temporary restraining order was previously denied by this court. The court now denies petitioners' request for a preliminary and permanent injunction and grants the City's cross-motion for the reasons set forth below.

The relevant facts are as follows. As imposed by the City of New York to address its budget deficit, the Department of Sanitation of the City of New York ("DSNY") was obligated to reduce its expenditures for the Fiscal Year 2011 which begins July 1, 2010 by \$40.101 million. One of the essential services that DSNY provides is the removal of ice and snow from the City streets. Prior to the beginning of the snow season for the winter of 2010-2011, DSNY reviewed its resources and determined that even with the hiring of an additional 100 sanitation workers, DSNY was in danger of not having enough snow removal workers during a severe storm. During this review, DSNY also determined that it could function with fewer Sanitation Supervisors. As a result, in September 2010, DSNY met with petitioners and requested that Sanitation Supervisors agree to drive snow plows and salt and sand spreader trucks when required, which are not a part of their regularly assigned duties. The Sanitation Supervisors refused this request. As a result of the Sanitation Supervisors' refusal to comply with the City's request, the City decided to eliminate one hundred Sanitation Supervisor positions and demote these supervisors back to the title of Sanitation Worker in order to have enough Sanitation

Workers to drive the snow plows and salt and sand spreader trucks.

On October 19, 2010, the City informed the union representing the Sanitation Supervisors that forty-five probationary Sanitation Supervisors would be returned to their permanent civil service title of Sanitation Worker and fifty-five permanent Sanitation Supervisor positions would be eliminated and those supervisors would be returning to the next lower occupied title of Sanitation Worker. On December 22, 2010, petitioners brought this proceeding seeking a temporary restraining order and a preliminary injunction preventing DSNY from proceeding with its plans to eliminate the Sanitation Supervisor positions. As this court has previously denied petitioners' request for a temporary restraining order, this court will only address petitioner's claims for a preliminary and permanent injunction.

As an initial matter, the court finds that the City's argument that this court does not have jurisdiction to hear this matter to be without merit as this court has jurisdiction to determine whether the City's determination to demote its employees had a rational basis under Article 78 of the CPLR. This court also has jurisdiction to determine whether the City's decision to demote the employees was made in bad faith in violation of New York's Civil Service Laws.

To prevail on a motion for a preliminary injunction, the movant must demonstrate: (1) probability of success on the merits; (2) danger of irreparable injury in the absence of the preliminary injunction; and (3) a balancing of the equities in its favor. *See Coinmach Corp. v Fordham Hill Owners Corp.*, 3 A.D.3d 312, 314 (1<sup>st</sup> Dept 2004).

In the instant case, petitioners cannot demonstrate a likelihood of success on the merits. "The law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious." *Goldstein v Lewis*, 90 A.D.2d

748, 749 (1<sup>st</sup> Dep't 1982). "In applying the 'arbitrary and capricious' standard, a court inquires whether the determination under review had a rational basis." *Halperin v City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep't 2005); see *Pell v Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974)("[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.") "The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.' Arbitrary action is without sound basis in reason and is generally taken without regard to facts." *Pell*, 34 N.Y.2d at 231 (internal citations omitted).

In the instant action, the court finds that the City's decision to demote one hundred Sanitation Supervisors back to Sanitation Worker status had a rational basis. DSNY made the decision to demote Sanitation Supervisors back to Sanitation Worker status based on its calculations of the number of Sanitation Workers it would require to service the roads during the winter season. Further, DSNY determined that it had more Sanitation Supervisors than it needed for the upcoming winter season. Although petitioners argue that they proposed other means of saving costs that were more agreeable to them, the standard is not whether the City utilized the option most favorable to petitioners. Rather, the applicable analysis is whether the action had a rational basis. As the court finds that the City's decision to allocate its employees to conform with its anticipated needs and budget is rational, the court denies petitioners' request.

Petitioners have also failed to meet their burden of establishing that the City's decision to eliminate the Sanitation Supervisor positions was conducted in bad faith in violation of the Civil

Service Law. "It is settled law that a public employer may, in the absence of bad faith, collusion or fraud, abolish positions for purposes of economy or efficiency. It is petitioner's burden of proving that the abolition of his position was brought on by bad faith or in an effort to circumvent the Civil Service Law. To satisfy such burden, petitioner must eliminate bona fide reasons for the elimination of his position, show that no savings were accomplished or that someone was hired to replace him." *See Mucci v City of Birmingham*, 245 A.D.2d 678, 679 (3d Dept 1997).

The court finds that petitioners have failed to meet their burden of demonstrating bad faith on the part of the City. It is undisputed that savings would be accomplished by demoting the one hundred Sanitation Supervisors. Petitioners admit in their petition that the demotion of the Sanitation Supervisors would result in savings for the City. It is also undisputed that no one was hired to replace the demoted Sanitation Supervisors. Further, the City has provided a bona fide reason for eliminating the Sanitation Supervisor positions in that it eliminated those positions because DSNY had more Sanitation Supervisors than necessary and fewer Sanitation Workers than required to drive the snow plows and salt spreaders in the event that a snowstorm hit New York City. As petitioners have failed to meet their burden of demonstrating that the City eliminated the Sanitation Supervisor positions in bad faith, the court finds that there is no need for a hearing with regard to these issues.

Petitioners' claim that the City violated Civil Service Law § 61 by asking the Sanitation Supervisors to perform out-of-title duties is also without merit. Section 61 permits DSNY to assign the Sanitation Supervisors to perform out-of-title duties in the event of a temporary emergency situation. Such was the case in the instant action. DSNY requested that Sanitation

Supervisor drive the plow trucks and salt spreaders only in the event that the City required more drivers than available in the pool of Sanitation Workers. Therefore, the court finds that DSNY did not violate Civil Service Law § 61.

Finally, petitioners' claim that the City violated Civil Service Law § 63 by terminating the probation of the forty-five probationary Sanitation Supervisors is also unavailing. The City has a right to terminate probationary employment provided it is not done in bad faith or for improper or impermissible reasons. *See Swinton v Safir*, 93 N.Y.2d 758, 763 (1999). As discussed more fully above, DSNY's decision to demote the Sanitation Supervisors, including the forty-five probationers, was based on economic reasons. As petitioners have failed to bring forth evidence demonstrating bad faith, improper motive or impermissible reasons for the demotion, the court finds that the City did not violate Civil Service Law § 63.

As petitioners cannot succeed on any of these theories, they do not have a "likelihood of success" on the merits of their action. Since petitioners must establish all three elements of entitlement to a preliminary injunction (*see Coinmach*, 3 A.D.3d 312, 314), their failure to establish any one element means that the injunction must be denied.


For the aforementioned reasons, petitioners' request for a preliminary injunction is denied and petitioners' request for a permanent injunction is also denied. The City's cross-motion to dismiss the petition in its entirety is granted. This constitutes the decision, order and judgment of the court.

Dated: 5/9/11

**FILED**

**MAY 10 2011**

**NEW YORK  
COUNTY CLERK'S OFFICE**

  
\_\_\_\_\_  
J.S.C.  
**CYNTHIA S. KERN**  
J.S.C.