Matter of Williams v New York City Dept. of Educ.
2014 NY Slip Op 32258(U)
August 20, 2014
Supreme Court, New York County
Docket Number: 101583/2013
Judge: Eileen A. Rakower
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

---X

In the Matter of the Application of
CASSANDRA WILLIAMS,

Index No. 101583/2013

Petitioner,

For a judgment pursuant to
Article 75 of the CPLR

DECISION and ORDER

-against-

THE NEW YORK CITY DEPARTMENT OF
EDUCATION,

Mot. Seq. 001

Respondent.

---X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

---X

In In the Matter of the Application of

Index No. 452165/2013

THE NEW YORK CITY DEPARTMENT OF
EDUCATION and DENNIS WALCOTT,
as Chancellor of THE NEW YORK CITY
DEPARTMENT OF EDUCATION,

DECISION and ORDER

Petitioner,

Mot. Seq. 001

For an Order Pursuant to CPLR Article 75,

-against-

CASSANDRA WILLIAMS,

Respondent.

---X

HON. EILEEN A. RAKOWER:

Petitioner, Cassandra Williams ("Petitioner" or "Williams"), brings this petition, pursuant to CPLR § 7511(b)(i)(iii), seeking to vacate the decision rendered by Hearing Officer Patricia Cullen ("HO Cullen" or "Arbitrator") on October 14, 2013 ("the Award"), pursuant to New York State Education Law § 3020-a, and specifically the penalty of $7,000 imposed by HO Cullen.

Williams seeks to vacate the Award on the grounds that HO Cullen lacked subject matter jurisdiction, HO Cullen was biased against Williams, and the penalty imposed was excessive and shocks the conscience. Williams submits the following documents: (1) Notice of Petition and (2) a Verified Amended Petition (attaching the Arbitrator's Decision).

Respondent, The New York City Department of Education ("DOE"), cross-moves to dismiss Williams' motion, pursuant to Sections 7511, 404(a) and 7511, and 3211(a)(7) of the CPLR, on the grounds that the Petition fails to state a cause of action. The DOE also cross-moves for an Order in favor of the DOE directing that the penalty set forth in the Award be vacated and that the Award otherwise be confirmed, and that this proceeding be remanded to the Hearing Officer for the imposition of a penalty not less than termination on the grounds that the arbitrator exceeded her power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made.

The DOE submits the affirmation of Daniel J. LaRose, which annexes as exhibits: a copy of the Award; a copy of the specifications; copies of transcripts of hearings held on February 27, 2013, March 1, 2013, March 6, 2013, March 11, 2013, March 12, 2013, March 21, 2013, March 22, 2013, and April 19, 2013; copies of the DOE's Exhibits received into evidence at Petitioner's hearing; copies of Petitioner's exhibits received into evidence at Petitioner's hearing, a copy of the Memorandum of former Chancellor Harold O' Levy, dated June 6, 2000, and titled "Elimination of Regulations and Chancellor's Circulars ("the Levy Memo").[1]

---

[1] The DOE and Dennis Walcott, as Chancellor of The New York City Department of Education, filed an Article 75 petition under Index No. 452165/13 ("DOE's Action"), seeking to vacate the Award. That matter was assigned to Justice Stallman. Justice Stallman reassigned the DOE's Petition to Justice Rakower as related to Williams' action as they both involved the same Education Law 3020-a

Williams is a tenured teacher holding a Common Branches (grades 1 through 6) license, who was assigned to Central Park East Middle School, also known as Junior High School 13.

On or about September 6, 2012, the DOE served Williams with Specifications, dated September 4, 2012. The first specification against Williams alleged:

1. During the 2010-2011 and 2011-2012 academic years, Respondent [Williams] failed to properly, adequately, and/or effectively plan, and/or execute lessons and/or manage her class, as observed on or about each of the following dates: a. December 2, 2010; b. January 28, 2011; c. April 4, 2011; d. April 12, 2011; e. June 13, 2011; f. October 25, 2011; g. December 19, 2011; and h. May 18, 2012.

The second specification against Williams alleged:

2. During the 2010-2011 and 2011-2012 academic years, Respondent [Williams] failed to implement directives, recommendations, counsel, instruction, and/or professional development from observation conferences, group meetings, and/or one-to-one support with school administrators, support staff and/or other support with regard to: (i) Effective lesson planning; (ii) Effective classroom instruction and lesson execution; (iii) Effective classroom management; and (iv) Effective classroom environment and organization.

The DOE alleged that the Specifications constitute:

1. Just cause for disciplinary action under Education Law 3020-a;
2. Incompetence and/or inefficient service;
3. Conduct prejudicial to the good order, efficiency or discipline of the service;

---

hearing held before HO Cullen and HO Cullen's Decision. While Williams and the DOE's petitions were filed on the same day, the RJI for 101583/13 was filed before the RJI in the DOE's Action. The Court consolidates both actions and this decision resolves both matters.

4. Conduct unbecoming to the Respondent's [Williams] position or conduct prejudicial to the good order, efficiency or discipline of the service;
5. Substantial cause rendering Respondent [Williams] unfit to properly perform obligations to the service;
6. Neglect of duty; and/or
7. Just cause for termination.

On or about September 6, 2012, Williams submitted her Request for Hearing to the DOE. On January 11, 2013, a pre-hearing conference was held before HO Cullen. Hearings were held on February 27, 2013, March 1, 2013, March 6, 2013, March 8, 2013, March 11, 2013, March 12, 2013, March 21, 2013, March 22, 2013, and April 19, 2013. During the hearings, the parties introduced exhibits into evidence and had the opportunity to call and cross-examine witnesses. On April 19, 2013, both parties gave closing arguments and the record was declared closed.

HO Cullen rendered an Opinion and Award on October 14, 2013. HO Cullen found that the DOE proved that Williams "failed to properly, adequately, and/or effectively plan and/or execute lessons and/or manage her class on seven separate dates over the course of the 2010-2011 and 2011-2012 school years..." HO Cullen further found that DOE proved Williams failed to implement directives, recommendations, counsel, instruction, and professional development from observation conferences, group meetings, and on-to-one support in the area of effective classroom instruction and lesson execution.

Based on these findings, HO Cullen concluded that there was in fact just cause to discipline Williams. The Arbitrator sustained Specifications 1a., 1b., 1.c., 1.d., 1.f., 1g., 1.h. and 2(ii). Specifications 1.e., 2(i), 2(iii), and 2(iv) were dismissed. The Arbitrator issued a fine as a penalty in the amount of $7,000 to be deducted from Williams' pay in equal installments over the next twelve months. Williams was also ordered to attend classes on the topics of effective classroom management techniques, lesson pacing, and differentiation of instruction, with the precise length and content to be determined by the DOE, and the cost borne by the DOE. Those classes were to be completed by June 30, 2014.

HO Cullen held that termination was not warranted because "in order to find that termination is the appropriate sanction, [Cullen] must find not only that

Respondent [Williams] is unfit to perform her duties but also that she cannot be rehabilitated."

Education Law § 3020-a(4) provides:

> The written decision shall include the hearing officer's findings of fact on each charge, his or her conclusions with regard to each charge based on said findings and shall state what penalty or other action, if any, shall be taken by the employing board. At the request of the employee, in determining what, if any, penalty or other action shall be imposed, the hearing officer shall consider the extent to which the employing board made efforts towards correcting the behavior of the employee which resulted in charges being brought under this section through means including but not limited to: remediation, peer intervention or an employee assistance plan. In those cases where a penalty is imposed, such penalty may be a written reprimand, a fine, suspension for a fixed time without pay, or dismissal. In addition to or in lieu of the aforementioned penalties, the hearing officer, where he or she deems appropriate, may impose upon the employee remedial action including but not limited to leaves of absence with or without pay, continuing education and/or study, a requirement that the employee seek counseling or medical treatment or that the employee engage in any other remedial or combination of remedial actions.

The grounds for vacating an arbitration award is set out in CPLR §7511(b). That section states:

> 1. The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds the rights of that party were prejudiced by:
>
> (i) corruption, fraud or misconduct in procuring award; or
>
> (ii) partiality of an arbitrator appointed as a neutral; except where the award was by confession; or
>
> (iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a

final and definite award upon the subject matter submitted was not made; or

(iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.

The standard of review governing the court's analysis in this proceeding was succinctly stated by the First Department in *Lackow v. DOE* (2008 NY Slip Op 4744, *3 [1st Dept. 2008]),

> *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' (*Austin v Board of Educ. of City School Dist. of City of N.Y.*, 280 AD2d 365, 365, 720 NYS2d 344 [2001]). Nevertheless, where the parties have submitted to compulsory arbitration, judicial scrutiny is stricter than that for a determination rendered where the parties have submitted to voluntary arbitration (*see Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223, 674 NE2d 1349, 652 NYS2d 584 [1996]; *Cigna Prop. & Cas. v Liberty Mut. Ins. Co.*, 12 AD3d 198, 199, 783 NYS2d 810 [2004]). 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 (*Motor Vehicle Mfrs. Ass'n v State,* 75 NY2d 175, 186, 550 NE2d 919, 551 NYS2d 470 [2002]). The party challenging an arbitration determination has the burden of showing its invalidity. (*Caso v Coffey,* 41 NY2d 153, 159, 359 NE2d 683, 391 NYS2d 88 [1990]).

<u>Williams' Petition to Vacate the Award</u>

Williams argues in her Petition that HO Cullen lacked subject matter jurisdiction to render any decision on any of the submitted specifications. Williams contends the charges brought against her were to have first been presented to the City's Board of Education for a finding a probable cause pursuant to Education Law 3020-a(2), or to the community superintendent pursuant to Education Law 2590-h(38). Williams contends that she was not afforded the protections provided under these provisions where, here, the principal of her school issued the probable cause finding.

In re White-Grier v. The City of New York City Bd./Dept. of Educ., 2012 WL 4485666, the Court stated:

> Petitioner argues that a principal has no statutory authority to sign the finding of probable cause, as this is a responsibility that rests with the chancellor in New York City, or with superintendents. This argument has been unsuccessfully presented to other trial level courts in recent years (*see, e.g, Matter of Haas v. The New York City Board/Dept. of Educ.,* 2012 NY Slip Op. 50606U [Sup Ct New York County 2012, Edmead, J.]; *Matter of Liu v. New York City Bd./Dept. of Educ.,* 2012 NY Slip Op. 300008U [Sup Ct New York County 2012, Lobis, J.]; *Matter of Montanez v. Department of Educ. of City of N. Y.,* 2011 NY Slip Op. 33408U [Sup Ct New York County 2011, Rakower, J.]; *Matter of Dunn v. New York City Dept. of Educ.,* 2011 NY Slip Op 51505U [Sup Ct New York County 2011, Singh, J.]; *Matter of Soleyn v. New York City Dept. of Educ.,* 2011 NY Slip Op. 51897U [Sup Ct New York County 2011, Goodman, J.]; *see also Menchin v. New York City Dept. of Educ.,* 2011 NY Slip Op 51344U [Sup Ct Rockland County 2011, Jameson, J.]). These decisions rely on Education Law § 2590-f (1) (t), providing that in New York City, upon delegation by the chancellor, the community superintendent exercises "all of the duties and responsibilities of the employing board" pertaining to the discipline of teachers, and Education Law § 2590-f (1) (b), providing that in New York City, the community superintendent may "delegate any of her or his powers to such subordinate officers or employees of her or his community district as she or he deems appropriate." Consistently, the courts have read these two statutes to mean that a district superintendent may delegate to a principal the responsibility of preferring charges.

Here, the Chancellor delegated powers to school superintendents, and the superintendent of District 4, the district of Williams' school, delegated the powers to the individual principals of the district. See Delegation Papers, annexed to the Affirmation of Daniel J. LaRose. Therefore, because a principal may be delegated the power to find probable cause and here there was such a delegation, the branch of the petition seeking dismissal of the award based on lack of subject matter jurisdiction is without merit and is denied.

Williams further argues that HO Cullen was partial and biased. Williams alleges that HO Cullen "was biased and under the control of the New York City Department of Education's Administrative Trials Unit (ATU)." In opposition, with regards to Williams' claim that HO Cullen was "controlled" by the DOE or ATU, the DOE states that HO Cullen was mutually agreed upon by the teacher's union and the DOE, and was paid or shall be paid by the State Education Department, not the DOE or ATU.

Petitioner also further alleges that HO Cullen was biased based on HO Cullen's refusal to admit into the record memo #80 on observations and evaluations, and the Performance Management Guide. In opposition, Respondent contends that these documents are guidelines and that Respondent's reliance on Memo 80 is misplaced pursuant to Chancellor Harold O. Levy's issuance of a Memorandum a Memorandum titled "Elimination of Regulations and Chancellor's Circulars" ("Levy Memo"), which is annexed to the affirmation of Daniel J. LaRose.

Where a petitioner challenges an award on the ground that the arbitrator was biased, the petitioner must prove bias by "clear and convincing evidence." (*Zrake v. New York City Dept. of Educ.*, 41 A.D. 3d 118, 118 [1st Dept 2007], *lv dismissed*, 9 N.Y. 3d 1001 [2007[). Here, Petitioner's conclusory allegations of bias on the part of HO Cullen are insufficient to sustain her burden of demonstrating bias on the arbitrator's part.

Williams further argues that the penalty imposed shocks the conscience. The standard of review of a penalty imposed after a hearing is whether the punishment is so disproportionate to the offenses as to be shocking to the court's sense of fairness (*Lackow v. Department of Educ., supra,* 51 A.D.3d 563, 859 N.Y.S.2d 52). The scope of review does not include "any discretionary authority or interest of justice jurisdiction in reviewing the penalty imposed by the Authority" and "the sanction must be upheld unless it shocks the judicial conscience" (*Featherstone v.*

Franco, 95 N.Y.2d 550, 554 [2000], citing *Matter of Pell v. Board of Educ.,* 34 N.Y.2d 222, 232-234 [1974]).

Here, where HO Cullen found that Williams "failed to properly, adequately, and/or effectively plan and/or execute lessons and/or manage her class on seven separate dates over the course of the 2010-2011, and 2011-2012 school years..." and failed to implement directives, recommendations, counsel, instruction, and/or professional development from observation conferences, group meetings, and/or one-to-one support with school administrators, support staff and/or other support with regard to effective classroom instruction and lesson execution for the same years, the penalty of $7,000 penalty and remedial classes was not "so disproportionate to the offenses as to be shocking to the court's sense of fairness."

The DOE's Cross Motion to Vacate the Award

The DOE contends that the penalty imposed by HO Cullen should be vacated on the grounds that the Cullen "exceeded a specifically enumerated limitation on her authority" by imposing an improper standard. The DOE also contends that the penalty imposed should be vacated on the grounds that it is totally irrational and shocks the conscience. The DOE argues, "It shocks the conscience that a teacher deemed to be incompetent by a neutral arbitrator would not be removed from the classroom."

The DOE contends that HO Cullen held that termination was not warranted because "in order to find that termination is the appropriate sanction, [HO Cullen] must find not only that Petitioner is unfit to perform her duties but also that she cannot be rehabilitated."

To show that an arbitrator exceeded the scope of his power such that the award must be vacated pursuant to CPLR 7511(b)(1)(iii), a petitioner must demonstrate that the "arbitrator's award violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power." *(Transp. Workers' Union of Am., Local 100, AFL–CIO,* 6 NY3d 332, 336 [2005]).

Here, the DOE has failed to demonstrate that the HO Cullen's Award "violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power." *(Transp. Workers' Union of Am., Local 100,* 6 NY3d at 336). The decision of HO Cullen was not irrational nor did it exceed a specifically enumerated limitation on the arbitrator's power.

Wherefore it is hereby

ORDERED that Cassandra Williams' petition to vacate Hearing Officer Patricia Cullen's Arbitrator's Award is denied; and it is further

ORDERED that the DOE's cross motion to dismiss the Petition is granted and Williams' Petition is denied; and it is further

ORDERED that DOE's cross-motion to vacate the Arbitrator's Award is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: AUGUST 20, 2014

EILEEN A. RAKOWER, J.S.C.