Heller v Bedford Cent. Sch. Dist.
2014 NY Slip Op 33928(U)
October 2, 2014
Supreme Court, Westchester County
Docket Number: 2014/58656
Judge: Charles D. Wood

To commence the statutory time period for appeals as of right (CPLR 5513[a]) you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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ADAM B. HELLER,

DECISION AND ORDER

Petitioner, Index No. 2014/58656

-against-

BEDFORD CENTRAL SCHOOL DISTRICT,

Respondent.

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WOOD, J.

The following documents numbered 1-52 were read in connection with the petitioner's motion for an order to vacate the hearing officer's decision:

Petitioner's Notice of Motion, Verified Petition, Counsel's Affirmation, Exhibits 1-40.	1-43
Petitioner's Memorandum of Law.	44
Respondent's Verified Answer, Memorandum of Law, Kass Affirmation, Exhibits.	45-51
Petitioner's Reply Memorandum.	52

This petition is brought by the petitioner under CPLR Article 75 and §3020-a of the Education Law to vacate the decision of the arbitrator ("hearing officer"), and the subsequent termination of the petitioner's employment by the respondent ("District"). The petitioner argues that the hearing officer's findings were not grounded in fact, *dehors* the record, and were thus

arbitrary and capricious. On July 22, 2014, at the request of both parties, oral argument was heard by the court.

In reaching conclusions of fact and law on the issues, the court has reviewed, evaluated and considered the record and the exhibits in evidence (see generally Vizzari v State of New York, 184 AD2d 564 [2d Dept 1992]; Wester v State of New York, 247 AD2d 468 [2d Dept 1988]). The failure of the court to specifically mention any particular piece of evidence in its decision does not mean that it has not been considered. Where applicable, evidence is reviewed in light of statutory criteria or other criteria defined by applicable case law which must be considered in reaching certain conclusions of law. The court recognizes the importance of the instant decision to the parties. The decision rendered by this court is not made lightly or unadvisedly, but is instead a result of its careful review of the exhibits and submissions, and its application of relevant law and considerations of equity. The following is the court's decision, stating the facts it deems essential.

Both parties correctly point out in their memoranda that the court's usual role is to examine the statutory grounds for vacating the hearing officer's decision [CPLR 7511(b)], and to determine whether any apply to this decision by this hearing officer (corruption, fraud or misconduct; partiality of the hearing officer; exceeding the arbitrator's power; failure to follow procedure of Art. 75). However, as here, where the parties are subject to compulsory arbitration, an additional layer of scrutiny applies. The hearing officer's decision "must have evidentiary support and cannot be arbitrary and capricious" (Matter of Santer v. Board of Education of E. Meadow UFSD., 23 NY3d 251 (2014), quoting City School Dist. of the City of N.Y. v.

McGraham 17 NY3d 917,919 [2011]). Finally, when reviewing compulsory arbitrations in education proceedings, "the court should accept the arbitrator's credibility determinations, even where there is conflicting evidence and room for choice exists" (Middletown Enlarged City School Dist. v. Schwartz, 39 Misc3d 1219, quoting Matter of Saunders v. Rockland Board of Coop. Educ. Servs., 62 AD3d at 1013 [2d Dept 2009]).

At bar, the petitioner, who was 35 years old during this 3020-a hearing process, was employed by the district as a tenured teacher of secondary English since 2005. On June 21, 2013, the districts's superintendent, Dr. Jere Hochman, charged the petitioner of failing to cooperate with a psychiatric examination that the district had directed him to undergo pursuant to Section 913 of the New York Education Law" and second, that the petitioner was not psychiatrically fit to return to work, and would constitute an undue danger to the safety of students and faculty. The petitioner requested a hearing on these charges, which was held before Hearing Officer Jeffrey Sherman for eight days commencing on December 2, 2013. The petitioner was represented by counsel at the hearing and as evidenced by the record, had a full opportunity to produce witnesses, offer evidence and cross examine witnesses. On May 12, 2014, the hearing officer issued a decision finding the petitioner guilty of both of the charges and imposed the penalty of discharge. The decision recited (among other things) that the petitioner in email messages expressed paranoia about government controlled weather catastrophes, economic collapse and poisonous snow, ultimately causing chaos and imminent doom; and was in possession of a shotgun, and a .22 caliber semi-automatic rifle. The hearing officer also noted

the petitioner's "detached" demeanor at the hearing, made findings of credibility of witnesses, which is his province, and which this court must accept.

All the same, the court observes that the hearing officer's thirty-five page decision, is hardly a model decision. It is one that engages in: meandering musings; personal observations and gratuitous compliments to the District and law enforcement; and assumptions and conclusions that are outside the record and entirely irrelevant to his decision[1]. For the legally trained eye, it is a somewhat painful read. However, these side comments by the hearing officer do not demonstrate partiality or bias. They may be thoughts best left unexpressed in a judicial or arbitration decision, but they are not evidence of partiality, nor is anything else contained in the decision.

Moreover, the court recognizes the degree of deference accorded the arbitrator in matters of credibility, and based upon this record, finds that the arbitrator's award was not arbitrary and capricious or irrational, had a plausible basis, and there was evidentiary support for the arbitrator's finding of guilt as to the two charges. The arbitrator presented a detailed analysis of the circumstances, evaluated the witnesses' credibility, and arrived at a reasoned conclusion (Denhoff v Mamaroneck Union Free School Dist., 101 AD3d 997, 998 [2d Dept 2012]), despite the deficiencies his decision may have in terms of ideal form, structure, or restraint from irrelevant chatter and musings. Contrary to the petitioner's arguments, the conclusions reached by the hearing officer are supported by the evidence, and the charges are sufficiently addressed pursuant to Education Law 3020-a (4) in a manner that affords the petitioner due process. With

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[1]Endnote 6: "I assume he is a registered voter."

respect to the penalty imposed (termination), the respondent district points out, and the court agrees, that despite the petitioner's otherwise unblemished disciplinary history, termination would be appropriate for either Charge I or Charge II. Here, both charges were sustained. This penalty does not shock the conscience, inasmuch as there were legitimate safety concerns for the children and employees of the district that needed to be explored and addressed with the petitioner before he could be cleared to return to work. The hearing officer specifically found, after hearing the audio with Dr. Lerman (R-J, Ex. 40), that the petitioner gave "measured, cautious, attenuated responses to many of Dr. Lerman's poignant, open-ended questions, lending credence to Dr. Lehrman's conclusion that the respondent was not completely forthcoming" (Ex. 1, at 20). The hearing officer considered the totality of the evidence and his determination for petitioner's removal did not exceed a limitation of his power, was not irrational, and did not violate public policy.

Having found a rational basis for the hearing officer's decision, petitioner's application to vacate the hearing officer's determination must be and is hereby denied, and the petition is dismissed.

The foregoing constitutes the Decision & Order of the court. All applications not specifically addressed are denied.

Dated: **October 2, 2014**
White Plains, New Yor

HON. CHARLES D. WOOD
Justice of the Supreme Court