

**Matter of Adjunct Faculty Assn. at Nassau
Community Coll. v Nassau Community Coll.**

2014 NY Slip Op 33934(U)

September 16, 2014

Supreme Court, Nassau County

Docket Number: 601138/14

Judge: Karen V. Murphy

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 11 NASSAU COUNTY**

PRESENT:

Honorable Karen V. Murphy
Justice of the Supreme Court

In the Matter of the Application of **X**

**ADJUNCT FACULTY ASSOCIATION AT
NASSAU COMMUNITY COLLEGE,**

Index No. 601138/14

Petitioner(s),

Motion Submitted: 5/13/14
Motion Sequence: 001, 002

-against-

NASSAU COMMUNITY COLLEGE,

Respondent(s),

**For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.**

X

The following papers read on this motion:

Notice of Motion/Order to Show Cause.....	XX
Answering Papers.....	X
Reply.....	
Briefs: Plaintiff's/Petitioner's.....	XX
Defendant's/Respondent's.....	

Petitioner, Adjunct Faculty Association at Nassau Community College, brings this proceeding, pursuant to CPLR Article 78, seeking a judgment: rescinding the fines related to release time compensation ("Release Time Fines") levied against petitioner's bargaining unit members by the respondent; compelling the respondent to provide an accounting sufficient for its members to verify the accuracy of deductions related to missed classes and procedure to correct erroneous calculations; or, in the alternative, declaring that respondent's calculations of the Release Time Fines on the basis of a five-day week were erroneous and ordering that respondent refund the overcharges.

The respondent, Nassau Community College, moves, *inter alia*, pursuant to CPLR §7804(f) for an Order dismissing the petition in its entirety on the ground that the petitioner is not a proper party to commence the within proceeding for review of penalties imposed by the College pursuant to Civil Service Law §210.2 against individual employees who were found to have engaged in an illegal strike.

The petition and motion are determined as herein set forth below.

This Article 78 proceeding, brought by the petitioner, the Adjunct Faculty Association at Nassau Community College (hereinafter referred to as the "AFA"), the bargaining representative for all adjunct faculty members employed by the respondent, Nassau Community College (hereinafter referred to as the "College"), stems from their claims that the respondent improperly levied certain arbitrarily imposed fines against its bargaining unit members (the "Adjuncts") and then failed to provide, both, an accounting sufficient for the Adjuncts to verify the accuracy of such deductions as well as a procedure to challenge the calculation of those fines.

Notably, it is undisputed that the College and the County of Nassau are "joint employers" of the Adjuncts (*Matter of the Petition of Nassau Community College Federation of Teachers*, 30 PERB ¶3003 [1997]).

It is also undisputed that the College and the AFA are parties to a collective bargaining agreement for the period of October 1, 2005 through September 30, 2010 and that no successor agreement has been reached between the parties.

The facts underlying the imposition of the challenged fines are as follows:

Commencing on September 9, 2013 and ending on September 13, 2013, some of the Adjuncts participated in a five day strike (the "Strike"). Thereafter, during the Adjuncts' biweekly pay period of November 14, 2013, November 28, 2013 and December 12, 2013, the College made deductions from the Adjuncts' paychecks due to their participation in the Strike. The only detail given to the Adjuncts when those deductions were made was the amount of the purported "fine."

On February 28, 2014, the Public Employment Relations Board ("PERB") issued a Decision and Order *In the Matter of Adjunct Faculty Association, Nassau Community College, Upon the Charge of Violation of §210.1 of the Public Employees' Fair Employment Act* (Case No. D-283), finding that by engaging in the aforementioned strike, the Association violated Civil Service Law §210.1. As a result of the Association's

participation in the illegal strike, PERB ordered that the dues deduction and agency shop fee deduction rights of the Association be suspended for a period of seven months.

In bringing this proceeding, the petitioner alleges that upon its information and belief, the College made two categories of pay deductions from the Adjuncts' pay: (1) deductions made to penalize the Adjuncts for missing classes (the "Missed Class Fines"); and (2) deductions taken from the Adjuncts "release time" compensation ("Release Time Fines"). Petitioner defines the Release Time compensation as that which is paid to certain Adjuncts pursuant to the parties' collective bargaining agreement and is intended to allow the employee to spend time away from their normal job duties to attend to union business.

At the time these fines were imposed by the College, only the amounts of those fines were stated with no detail concerning how such amounts were calculated or whether they were Release Time Fines or Missed Class Fines. This lack of detail made it impossible for the Adjuncts to contest or verify the accuracy of the College's deductions.

The determination to impose the fines and their calculations were made by the College's acting president and his staff. The County Comptroller implemented the determinations made by the College's acting president by ministerially deducting the fines from the County paychecks issued to the Adjuncts.

Petitioner predicates the instant Article 78 proceeding upon four principal arguments.

First, the petitioner asserts that the College's authority to impose fines upon employees to strike is predicated upon Section 210 of the Taylor Law (Article 14 of the New York Civil Service Law). However, it maintains that there is no authority in that statute to fine employees who are not scheduled to work on their release time earnings. Petitioner states that these employees in almost every case have been fined already for the classes they missed and, that that is all that the statute permits. Thus, by imposing the Release Time Fines, the College acted beyond its authority.

Second, petitioner contends that during the hearings held purportedly to allow the Adjuncts an opportunity to contest the College's determinations concerning Release Time Fines, the College failed to provide the affected Adjuncts with its method for calculating those members' *per diem* release time compensation upon which the College based its fines.

Third, the petitioner submits that upon information and belief the College calculated the Release Time Fines for the Adjuncts by doubling an Adjuncts' purported *per diem* rate of release time compensation and then multiplying that figure by the number of days the Strike purportedly lasted, i.e., five. According to the petitioner, this erroneous five day work

week arbitrarily inflated the release time deductions by approximately forty percent. The petitioner submits that the College's use of a five day work week in its calculations is erroneous because the work weeks of AFA representatives are seven days long.

Fourth, the petitioner also submits that the Release Time Fines were unauthorized by the County which is the joint employer of the Adjuncts; thus, the College exceeded its authority in imposing such fines. Petitioner points out that there is no indication that the County ever assented to or authorized the College's imposition of the Release Time Fines. Indeed, according to the petitioner, the College imposed the Release Time Fines without authorization from or even informing its own Board of Trustees. As such, the College exceeded its authority when it imposed the Release Time Fines without the consent or authorization of either the County or its Board of Trustees.

Respondent, Nassau Community College, opposes the instant proceeding and seeks to dismiss the petition on the ground that the petitioner is not a proper party to commence the within proceeding for review of penalties imposed by the College pursuant to Civil Service Law §210.2 against individual employees who were found to have engaged in an illegal strike. The respondent submits that the statutory right to review determinations made by the College pursuant to Civil Service Law §210.2 belongs to the individual employees and not to the Association.

This Court agrees. As reasoned by the Second Department in *Nassau Educational Chapter Civil Service Emp., Ass'n, Inc. v Board of Ed. of Farmingdale Union Free School Dist.*, 61 AD2d 1049 [2d Dept 1978], the Civil Service Law at Section 210, subdivision 2, paragraph (h) outlines the procedures to be followed by an individual employee who seeks to challenge a determination that he had violated the statute. The Second Department noted:

This paragraph concludes by providing that "(t)he determinations provided in this paragraph shall be reviewable pursuant to article seventy-eight of the civil practice law and rules." Subdivision 2 is limited by its terms to violations by individual employees and the review procedures provided by paragraph (h) are to guarantee the rights of the individual employee . . . (citations omitted).

This proceeding was not commenced by an individual employee. Nor is this a class action law suit commenced by the class of penalized employees. Rather, the proceeding was commenced by the organization which represents these employees.

As noted by the Second Department in *Nassau Educational Chapter Civil Service Emp. Ass'n, Inc. v. Board of Ed. of Farmingdale Union Free School Dist.*, *supra*:

Throughout article 14 of the Civil Service Law (§ 200 et seq.), employees and employee organizations are accorded separate treatment. This is exemplified by section 210, which treats violations by employees in subdivision 2 and violations by employee organizations in subdivision 3. A penalty imposed pursuant to subdivision 2 aggrieves only the employee and not the employee organization. Concomitantly, the right to review a determination made in accordance with subdivision 2 belongs to the individual employee and not to the employee organization.

Therefore, the employee organization herein is not the proper party to have commenced this proceeding. The respondent's motion to dismiss the petition is herewith granted. (*Nassau Educational Chapter Civil Service Emp. Ass'n, Inc. v Board of Ed. of Farmingdale Union Free School Dist., supra*).

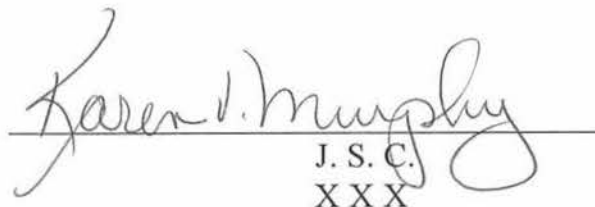
To the extent that the AFA alternatively seeks leave to amend the Petition so as to include the individual bargaining unit members (the Adjunct professors), as proposed petitioners, such relief is also denied. As determined above, the AFA lacks any standing to bring this suit. As such, and despite being a bargaining unit, the petitioner herein also lacks standing to move for an application pursuant to CPLR § 3025(b) to include its individual members as party petitioners herein. Indeed, the right to amend or right to seek leave to amend the pleadings belongs to "a party" (*CPLR § 3025[a], [b]*). Here, the petitioner herein lacks the standing to bring this proceeding and, as such, is not a proper party to this litigation. As such, it also lacks the ability to seek leave of this Court to add the purportedly correct party.

Therefore, the petition is denied in its entirety. All applications not specifically addressed are hereby denied.

The proceeding is dismissed.

Settle judgment on notice.

Dated: September 16, 2014
Mineola, N.Y.


J. S. C.
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ENTERED

SEP 25 2014

NASSAU COUNTY
COUNTY CLERK'S OFFICE