

Matter of Manning v New York State Unified Ct. Sys.
2015 NY Slip Op 31944(U)
September 23, 2015
Supreme Court, Suffolk County
Docket Number: 15-2928
Judge: Joseph Farneti
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MEMORANDUM

SUPREME COURT, SUFFOLK COUNTY

I.A.S. PART 37

In the Matter of the Application of
CHRISTOPHER MANNING, as President and on
behalf of Suffolk County Court Employees
Association,

By: Farneti, A.J.S.C.
Dated: September 23, 2015

Index No. 15-2928
Mot. Seq. # 001 - MD; CDISPSUBJ

Petitioner,

Return Date: 3-19-15
Adjourned: 4-30-15

For an Order and Judgment pursuant to Article 78
of the Civil Practice Law and Rules,

- against -

NEW YORK STATE - UNIFIED COURT
SYSTEM and CHIEF ADMINISTRATIVE
JUDGE, A. GAIL PRUDENTI,

Respondent.

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In this CPLR article 78 proceeding, the petitioner seeks judgment reversing and annulling the determination of the Acting Deputy Director for Labor Relations (“DDLRL”) of the respondent New York State - Unified Court System (“UCS”) dated October 22, 2014 (“the Decision”), which denied a grievance filed by the petitioner on July 25, 2012. The petitioner is the former president of the Suffolk County Court Employees Association (“SCCEA”), the exclusive bargaining representative for certain nonjudicial employees of UCS in Suffolk County. In his grievance, the petitioner alleged that, in July 2012, “a grade 8 [Court Office Assistant] was used in the courtroom of D-11 (arraignment part) to sit as the second seat in the courtroom to replace an Associate Court Clerk (grade 23) ... There is nothing in the job description of a court office [assistant] that states that they can work in a courtroom.” The petitioner seeks to annul the Decision as arbitrary and capricious, as well as an order directing the respondents to “reinstate the proper Grade and Title to the duties of second seat in courtroom D-11, Arraignment Part” in the District Court, Suffolk County (“District Court”).

In his affidavit in support of this special proceeding, the petitioner swears that he received notice from a member of the SCCEA that a part-time Court Office Assistant at the District Court was reassigned to courtroom D-11 to sit as “second seat” on weekends in place of an Associate Court Clerk (grade 23) and that, since July 9, 2012, that has remained the case. He states that during the regular work week, second seat duties are performed by a New York State Court Officer (grade 18).¹ He indicates that the job description for a Court Office Assistant provided by UCS does not include the performance of work in the courtroom, and that the next two positions in the court assistant title include statements in their job descriptions that Senior Court Office Assistants and Supervising Court Office Assistants may work in courts of every jurisdiction as part clerks. The petitioner further swears that the job descriptions for three additional positions, Court Assistant (grade 16), Senior Court Clerk (grade 21), and Associate Court Clerk (grade 23), provide that they may serve or work “as part clerks.” He attests that the job description for New York State Court Officer (grade 18) explicitly states that they are responsible for maintaining order and providing security in courtrooms.

In his petition, petitioner alleges that, pursuant to Article 18 of the collective bargaining agreement between the parties, a grievance was filed, a grievance meeting was held on September 14, 2012 before the Deputy Director for Labor Relations, and that SCCEA provided copies of job descriptions to the DDLR in support of its position that the Court Office Assistant was performing “out of title” work when reassigned to courtroom D-11 on weekends. The petitioner further alleges that the Decision denying its grievance was e-mailed to SCCEA on or about October 23, 2014, and that the Decision is arbitrary and capricious in that it failed to review the job descriptions that indicate which employees are permitted to work in courtrooms and it failed to analyze “earlier determinations made by prior Directors.” The petitioner sets forth two causes of action, to wit: the first alleging that the Decision is arbitrary and capricious, and the second that the Decision violates Civil Service Law § 61 (2).

As to the petitioner’s claim for relief, it first must be determined if any of the objections in point of law asserted by the respondents require a dismissal as a matter of law. In their answer, the respondents set forth three objections in point of law. The respondents’ first objection in point of law is that the petition fails to state a cause of action. Pursuant to CPLR 3211 (a) (7), the pleadings shall be liberally construed, the facts as alleged accepted as true, and every possible favorable inference given to petitioner (*Leon v Martinez*, 84 NY2d 83, 614 NYS2d 972 [1994]). Here, it is determined that the petition states cognizable causes of action under CPLR article 78.

The respondents’ second objection in point of law is that the Civil Service Law does not “necessarily govern” the New York State Unified Court System, and that the respondents “have acted in a manner consistent with the provisions of the Civil Service Law.” While it is true that Judiciary Law § 211 (1), and that portion of its implementing regulations at 22 NYCRR § 25.20, governs the determination of the issues presented herein, it has been held that the Judiciary Law’s directive that the administrative standards imposed “be consistent with the civil service law,” requires only that they be

¹ Employees of UCS are paid a salary pursuant to a schedule based upon the “grade” assigned to their respective position. Absent circumstances not relevant herein, the higher the grade, the higher the annual salary paid to an employee.

guided, not governed, by it (*Parenti v Pfau*, 110 AD3d 650, 973 NYS2d 646 [1st Dept 2013]). Thus, it is appropriate for this Court to consider the issues and authorities raised in the petitioner's second cause of action for violation of Civil Service Law § 61 (2) whether that statute governs the determination herein or not. The remaining contention in this second objection in point of law goes to the ultimate findings of the Court in this special proceeding, and does not establish the respondents' entitlement as a matter of law to a determination in their favor regarding any of the claims raised in the petition.

The respondents' third objection in point of law contends that venue "more appropriately inheres in New York County for reasons ... that respondents maintain their administrative offices" in that county. To the extent that said objection can be read to assert that venue is improper, the respondents have failed to properly move for relief and they fail to assert any facts to support their contention. To the extent that said objection can be read to assert that venue is inconvenient to themselves or others, the respondents have failed to properly move for relief and they fail to assert any facts to support their contention, or to establish that such a defense is viable. Accordingly, the petitioner's objections in point of law are dismissed.

In her decision dated October 22, 2012, the Acting Deputy Director for Labor Relations sets forth the basic facts, the petitioner's position regarding the issues herein, and Section 18.3 of the collective bargaining agreement between the parties which sets forth the criteria to determine whether an assignment will be considered out-of-title work. In the section entitled "analysis," the DDLR finds that:

This grievance must be denied on the merits ... The question is whether the duties at issue, working in a courtroom, are described in, reasonably related to, or a reasonable outgrowth of the duties in the Court Office Assistant title standard. The duties which the Association contends are out of title are reasonably related to the duties described in the Court Office Assistant, [grade]-8, title standard which specifically identifies as typical duties, "updates court records after court appearances, checks documents, forms, court records ... copies information from calendars, case folders, case records, orders or other source documents onto court records, forms, and documents ... files, retrieves and sorts court papers."

That the function of acting as second chair in the courtroom may be performed by employees in other titles is irrelevant to the inquiry at hand and does not render this out-of-title work for Court Office Assistants. The duties are reasonably related to those duties described in the Court Office Assistant title standard and thus are not out of title. It is also worthy to note that there are numerous courts in Judicial Districts 3 through 8 where Court Office Assistants routinely perform these courtroom duties and are the highest graded clerical title in the courtroom.

It is well-settled that in a special proceeding seeking judicial review of out-of-title work grievances, the Court must ascertain only whether there is a rational basis for the decision or whether it

is arbitrary and capricious (*see Matter of New York State Corr. Officers & Police Benevolent Assn., Inc. v Governor's Off. of Empl. Relations*, 105 AD3d 1192, 963 NYS2d 746 [3d Dept 2013]; *Matter of Brynien v Governor's Off. of Empl. Relations*, 79 AD3d 1435, 912 NYS2d 794 [3d Dept 2010]; *Matter of Winnegar v County of Suffolk*, 13 AD3d 382, 785 NYS2d 524 [2d Dept 2004]). In reviewing an administrative action a court may not substitute its judgment for that of the agency responsible for making the determination (*see Flacke v Onondaga Landfill Sys.*, 69 NY2d 355, 514 NYS2d 689 [1987]; *Matter of Warder v Board of Regents of Univ. of State of N.Y.*, 53 NY2d 186, 440 NYS2d 875 [1981]). In applying the "arbitrary and capricious" standard, a court looks only to whether the determination lacks a rational basis, i.e., whether it was without sound basis in reason and without regard to the facts (*Matter of Pell v Board of Educ.*, 34 NY2d 222 [1974]; *Matter of Halperin v City of New Rochelle*, 24 AD3d 768 [2005], *appeals dismissed* 6 NY3d 890, *lv denied* 7 NY3d 708 [2006]).

The adduced evidence reveals that the job descriptions for all of the positions enumerated by the petitioner except Court Office Assistant and New York State Court Officer include language that the job duties include serving as, or working as, "part clerks," and that the remedy sought in the petitioner's grievance filed July 25, 2010 was "[t]o put the [New York State] Court Officer back in that seat which is the court officers (*sic*) scheduled job Monday through Friday in courtroom D-11."

In his affidavit in opposition to the petition, Warren G. Clark ("Clark"), District Executive Director for the Tenth Judicial District, Suffolk County, describes the staffing, scheduling, and operations of courtroom D-11 on weekends, including its "back offices." He states that, except for the four Court Office Assistants assigned, 12 of the 16 staff assigned on the weekends are working overtime shifts, that a Senior Court Clerk arrives at 9:30 a.m. and "functions as the clerk in the courtroom," and that, when the judge who is presiding takes the bench, one of the Court Office Assistants "leaves the back office and works in the courtroom as what petitioner refers to as 'second seat' to the [Senior Court Clerk]." He indicates that the Senior Court Clerk, among other things, marks the court calendar with certain information, and that the Court Office Assistant "working in the courtroom separately writes much of the same information pertaining to the appearance on court file folders, the case jackets that accompany each action." Clark further swears that the Court Office Assistant "does not serve as a part clerk during weekend arraignments."

It is well-settled that the determination whether work is considered out-of-title is governed by the job specifications for the position which dictate what duties are properly performed under that title (*Matter of Gavigan v McCoy*, 37 NY2d 548, 375 NYS2d 858 [1975]; *Scarsdale Assn. of Educ. Secretaries v Board of Educ. of Scarsdale Union Free School Dist.*, 53 AD3d 572, 861 NYS2d 421 [2d Dept 2008]; *Donegan v Nadell*, 113 AD2d 676, 497 NYS2d 692 [2d Dept 1986]). The collective bargaining agreement between the parties provides, in pertinent part that:

18.3 In determinations regarding out-of-title work under this Article, an employee shall be determined to be working out-of-title, unless:

* * *

(b)The duties are reasonably related to the duties described in the class specifications for the grievant's title;

As noted in the Decision, the duties of a Court Office Assistant include copying information from calendars, case folders, case records, orders or other source documents onto court records, forms, and documents. The job description of a New York State Court Officer lists one of his or her typical duties as "maintains and updates court records." It is determined that the Court Office Assistants assigned to courtroom D-11 on weekends are not acting as part clerks when working as set forth by Clark in his affidavit. The gravamen of the petitioner's contention is that the work assigned to such a Court Office Assistant is out-of-title work because the job description does not authorize work in a courtroom. However, said job description does not set forth the location where the copying of information onto court records and documents is to take place, neither does it foreclose the possibility that such work might take place in a courtroom.

The petitioner's contention that the DDLR failed to consider prior decisions of other directors, to set forth a more extensive analysis, and to review the job descriptions submitted, is without merit. It is undisputed that the petitioner did not submit any relevant prior decisions or precedents to the DDLR, neither does he submit any such decisions in support of his petition. Although he alleges that his association does not have access to prior decisions of the directors, he does not allege that prior decisions exist that are relevant to the issues herein. In her affidavit in opposition to the petition, the DDLR swears that she considered the job descriptions presented by SCCEA, and that "[t]he issue was a straightforward one, not requiring lengthy analysis but rather a plain statement of whether updating case jackets is a duty reasonably related to the duties contained in the [Court Office Assistant] title standard."

It is determined that the Decision has a rational basis and is not arbitrary and capricious. Accordingly, the petition is denied and the proceeding is dismissed.

Submit judgment.



Hon. Joseph Farneti
Acting Justice Supreme Court