

Matter of Dobbins v Marks

2017 NY Slip Op 30144(U)

January 11, 2017

Supreme Court, Suffolk County

Docket Number: 1165/15

Judge: Paul J. Baisley, Jr.

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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXXVI SUFFOLK COUNTY

PRESENT:
HON. PAUL J. BAISLEY, JR., J.S.C.

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In the Matter of the Application of
WILLIAM DOBBINS, as President of the SUFFOLK
COUNTY COURT EMPLOYEES ASSOCIATION,
INC., WILLIAM G. AMUTIS, DONALD J. BALDI,
EILEEN A. CONRAD, JOHN R. EBERHARDT IV,
CARLOS G. FIGUEROA, JANET D. GOCHMAN,
MICHELLE L. KERNS-AZZONE, KATHRYN M.
KOCUREK, MARINA A. LYNCH, DIANE E.
MONTES, DIANE PARNES, MICHAEL A. PARISI,
CONNIE F. RABER, DANIELE G. RICCARDELLA,
RICHARD ROCCIO, NICHOLAS J. TABILE,
VINCENT D. VALLARIO, EREC B. BURGESS,
TARALEE FLEMING, DANIEL R. GENTILE,
MARY L. MINGOIA, DONNA M. MYLETT,
GLADYS ROSADO and ELIZABETH SEIBERT,

INDEX NO.: 1165/15
MOTION DATE: 6/30/2016
MOTION NO.: 001 CASEDISP

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Petitioners,

For a Judgment pursuant to Article 78 of the Civil
Practice Law and Rules

-against-

LAWRENCE K. MARKS, as Chief Administrative
Judge of the Office of Court Administration, State of
New York-Unified Court System,

Respondent.

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Upon the following papers numbered 1 to 50 read on this Article 78 petition : Notice of Motion/ Order to Show Cause and supporting papers 1-44 ; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 45-50 ; Replying Affidavits and supporting papers ; Other ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the petition is granted to the extent that the first cause of action on behalf of petitioners William G. Amutis, Donald J. Baldi, Eileen A. Conrad, John R. Eberhardt IV, Carlos G. Figueroa, Janet D. Gochman, Michelle L. Kerns-Azzone, Kathryn M. Kocurek, Marina A. Lynch, Diane E. Montes, Diane Parnes, Michael A. Parisi, Connie F. Raber, Daniele G. Ricardella, Richard Roccio, Nicholas J. Tabile and Vincent D. Vallario is remanded to the respondent Chief Administrative Judge for further consideration and action in accordance with the decision in *O'Neill v. Pfau* and the instant decision, order and judgment of this Court; and it is further

ORDERED and ADJUDGED that the second cause of action on behalf of Erec B. Burgess, Taralee Fleming, Daniel R. Gentile, Mary L. Mingoia, Donna M. Mylett, Gladys Rosado, and Elizabeth Seibert is dismissed.

This Article 78 proceeding was commenced on January 22, 2015 by the then-President of the Suffolk County Court Employees Association (“SCCEA”), Christopher Manning, and 24 bargaining unit members employed by respondent in the titles of NYS Court Officer and Court Officer on December 22, 2004, against the then-Chief Administrative Judge of the Office of Court Administration, State of New York Unified Court System (“UCS”), Hon. A. Gail Prudenti. Pursuant to a stipulation of the parties, “so-ordered” by the undersigned on May 17, 2016, the current president of the SCCEA, William Dobbins, and current Chief Administrative Judge of the UCS, Hon. Lawrence K. Marks, were substituted in place and in stead of Christopher Manning and Justice Prudenti, respectively.

The underlying facts that are relevant to this proceeding are as follows:

By Administrative Order dated January 8, 2004 (AO/072/04), the Chief Administrative Judge reclassified the Court Security Title Series of UCS, abolishing the distinction between command lines assigned to courts of limited jurisdiction and those assigned to courts of general jurisdiction. Among other things, the Administrative Order eliminated the titles of Court Officer (JG-16) and Senior Court Officer (JG-18) and established the new titles of NYS Court Officer, which was then assigned a Judicial Grade of 17 (JG-17), and NYS Court Officer – Trainee (which was assigned a Judicial Grade of 14). Individuals holding the title of Court Officer (JG-16) who had two or more years of service were placed in the title of NYS Court Officer, and were advanced from salary grade JG-16 to JG-17. Court Officers who had not yet completed their mandatory two-year training retained their title and salary grade until they became eligible for promotion to NYS Court Officer.

On December 22, 2004, the Chief Administrative Judge issued a second Administrative Order (AO/534/04) that reallocated the NYS Court Officer title from the JG-17 salary grade to the JG-18 salary grade. The Administrative Order also made the grade change retroactive to January 8, 2004. The effect of making the reallocation retroactive was that all individuals formerly holding the Court Officer (JG-16) title who were reclassified as NYS Court Officers (JG-17) on January 8, 2004 and then reallocated to JG-18 on December 22, 2004 received their salary increase from the JG-16 salary grade to the JG-18 salary grade in a single increment rather than in two increments, which resulted in their receiving less money.

As a result of this and other perceived inequities not relevant in the instant proceeding, the then-president of the SCCEA commenced an Article 78 proceeding in this Court under Index No. 15871/05, *Matter of O’Neill v Pfau* (hereinafter, “*O’Neill*”). By decision, order and judgment dated January 7, 2011, this Court (WHELAN, J.) determined, as relevant herein, that so much of the December 22, 2004 Administrative Order as made the reallocation retroactive to January 8, 2004 was arbitrary, and without support in the record or in the Judiciary Law, and accordingly

remanded the matter to the respondent Chief Administrative Judge “for further consideration consistent with the decision of the court, on behalf of the petitioners who are NYS Court Officers and those similarly situated members of the petitioner Association.”¹

The *O’Neill* judgment was thereafter appealed to the Appellate Division, Second Department, which affirmed Justice Whelan’s determination that the retroactive application of the salary adjustment was without rational basis in the record, and that petitioners were financially harmed by it and were entitled to the relief sought as to that order (*i.e.*, a determination that the application of the December 22, 2004 order was prospective only) (*Matter of O’Neill v Pfau*, 101 AD2d 731 [2d Dept 2012]).

On June 12, 2014, the Court of Appeals, *inter alia*, affirmed so much of the Appellate Division’s order as found that because the record contains no explanation or rationale for the retroactive application of the December 2004 order, petitioners demonstrated their entitlement to the relief sought as to that order (*Matter of O’Neill v Pfau*, 23 NY3d 993 [2014]).

In September and October of 2014, purportedly in accordance with the decision and judgment of the Suffolk County Supreme Court in *O’Neill v Pfau*, as modified and affirmed by the Appellate Division, Second Department, and affirmed by the Court of Appeals, UCS made retroactive wage and interest payments to 127 individuals who “were counted as participating in the *O’Neill* litigation” – *i.e.*, those individuals “serving in the NYS Court Officer title, and assigned to Suffolk County, on December 22, 2004” (Affidavit of Lawrence K. Marks, sworn to May 29, 2015, ¶13).

On January 22, 2015, the then-president of the SCCEA commenced this Article 78 proceeding on behalf of 17 individuals who were serving in the NYS Court Officer title on December 22, 2004 but were transferred to Suffolk County after that date (the “transferees”), as well as on behalf of seven individuals hired in the title of Court Officer (JG-16) who had completed less than two years of service as of January 8, 2004 and did not get promoted to the NYS Court Officer title (JG-18) until after December 22, 2004. None of the 24 petitioners received retroactive payments or salary adjustments in September/October 2014 when 127 other Suffolk County NYS Court Officers received theirs.

Petitioners allege that the transferees are within the class of people included as petitioners in *O’Neill* and that the determination of respondent to exclude them from the class was arbitrary and capricious. Petitioners’ first cause of action seeks an order directing respondent to recalculate the salaries of the transferees to reflect that the reallocation was effective on December 22, 2004, and to make retroactive salary payments to them with interest. Petitioners’ second cause of action seeks an order directing that respondent include the seven petitioners who were designated as Court Officer (JG-16) on January 8, 2004 in the reallocation and make retroactive salary payments to them with interest.

Respondent disputes that the 24 petitioners herein are within the class of persons entitled to benefit from the holding of *O’Neill*, because they were not NYS Court Officers in Suffolk County when *O’Neill* was commenced, they did not participate in the *O’Neill* matter, and they did

¹ 31 Misc 3d 184 (Sup Ct 2011).

not separately bring suit to challenge the Administrative Order. Respondent argues that petitioners' claims have been time-barred for nine years and should be dismissed.

With respect to the transferees, this Court is constrained to agree with petitioners. As pleaded in paragraph 1 of the Second Amended Petition, dated October 21, 2010, the *O'Neill* proceeding was brought on behalf of Thomas P. O'Neill himself, as President of SCCEA, "*and on behalf of bargaining unit members employed by the Respondent [UCS] as NYS Court Officers...on January 4², 2004 and/or December 22, 2004*" [emphasis added]. This description of the intended petitioners is the crux of the instant proceeding, and the focus of this Court's determination.

As this Court parses the foregoing language, it appears that the broad universe of "bargaining unit members" (*i.e.*, those individuals who were then members of the bargaining unit) is modified by the language that follows, narrowing the class of "bargaining unit members" to those who were employed by UCS as NYS Court Officers on one or both of the enumerated dates. The Court does not read the petition to require that the petitioners have been *both* members of the SCCEA *and* NYS Court Officers on January 8, 2004 and/or December 22, 2004, or, expressed another way, that they have been employed by UCS as NYS Court Officers in Suffolk County on either or both of those dates.

This interpretation is supported by Justice Whelan's decision, which noted the "singular procedural history" of the *O'Neill* matter, in particular, the fact that the matter was never assigned to a judge until more than four years after it was commenced on July 22, 2005 (*O'Neill v Pfau*, 31 Misc 3d at 186, footnote 2). After the matter was assigned to Justice Whelan, the petition (which had already been amended once) was amended again, specifically to "expand[] the relief requested to include all similarly situated members of the petitioner Association" (*id.*). The Second Amended Petition, dated October 21, 2010, was filed with the court more than five years after the proceeding was originally commenced, during which time numerous NYS Court Officers had been transferred to Suffolk County. The intentment of the amendment to include the transferees within the scope of the relief sought in *O'Neill* is plain.

The record herein reflects that when the second amended petition was filed in *O'Neill*, petitioners William G. Amutis, Eileen A. Conrad, John R. Eberhardt IV, Carlos G. Figueroa, Janet D. Gochman, Michelle L. Kerns-Azzone, Kathryn M. Kocurek, Marina A. Lynch, Diane E. Montes, Diane Parnes, Michael A. Parisi, Connie F. Raber, Daniele G. Ricardella, Richard Roccio, Nicholas J. Tabile, and Vincent D. Vallario were all "similarly situated" to the original *O'Neill* petitioners, in that they were all members of the bargaining unit, and they were all employed by UCS as NYS Court Officers on January 8, 2004 and/or December 22, 2004. Moreover, by the time UCS made retroactive payments to 127 SCCEA NYS Court Officers in 2014 after the Court of Appeals decision in *O'Neill*, the petitioner Donald J. Baldi was also "similarly situated" to the *O'Neill* petitioners. Accordingly, this Court is constrained to conclude that the 17 transferee petitioners named herein should have received those retroactive payments as well.

² This appears to be a typographical error. It should have read January 8, 2004, the date of the Chief Administrative Judge's order amending the court security classification plan.

Respondent's interpretation of the petition improperly grafts onto the pleading a conjunctive to circumscribe the class of petitioners to include those individuals who were *both* bargaining unit members *and* NYS Court Officers on either or both of the two dates, but respondents' interpretation is not supported by the plain language of the petition, which contains no such conjunctive.

As to the statute of limitations issue raised by respondent, an agency action is "final and binding...when the petitioner seeking review has been aggrieved by it or it has impact on the petitioner" (*Matter of Carter v State of New York*, 95 NY2d 267 [2000]). Here, the transferees became aggrieved when 127 of their Suffolk County Court Officers received the retroactive salary adjustment mandated by *O'Neill* and they did not. Accordingly, their claims herein are not untimely.

Three successive courts have now determined, in accordance with the *O'Neill* petitioners' request, that the December 22, 2004 order, having been found to be arbitrary and capricious, is to be applied prospectively from the date it was issued. If the order was arbitrary and capricious as applied to NYS Court Officers who were so employed in Suffolk County on December 22, 2004, it is equally arbitrary and capricious as applied to those individuals who were employed as NYS Court Officers on December 22, 2004, but who came to Suffolk County sometime within the ten-year period the *O'Neill* case was making its way through the courts.

In light of the foregoing, the Court finds that it was arbitrary and capricious to deny the 17 transferee petitioners the retroactive benefit accorded to their similarly situated bargaining unit members under *O'Neill*. Accordingly, the Court finds that, as to the first cause of action, the matter should be remanded to the Chief Administrative Judge for further action and determinations in accordance with *O'Neill* and the instant determination.

As to the second cause of action, however, the Court finds that petitioner has not established that petitioners Erec B. Burgess, Taralee Fleming, Daniel R. Gentile, Mary L. Mingoia, Donna M. Mylett, Gladys Rosado, and Elizabeth Seibert were "similarly situated" to the *O'Neill* petitioners and the transferees herein on January 8, 2004 and/or December 22, 2004. The submissions establish that none of them had completed two years in that position before they were promoted, as required by the court security classification plan adopted by UCS on January 8, 2004. Since none of the seven petitioners named in the second cause of action were NYS Court Officers on January 8, 2004 and/or December 22, 2004, they have not demonstrated their entitlement to the retroactive pay that the *O'Neill* petitioners received and to which this Court has concluded the present transferee petitioners are entitled. In light of the foregoing, the second cause of action is dismissed.

The foregoing constitutes the decision, order and judgment of this Court.

Dated: January 11, 2017

HON. PAUL J. BAISLEY, JR.
J.S.C.