Matter of Leftridge v City of New York
2018 NY Slip Op 31700(U)
July 18, 2018
Supreme Court, New York County
Docket Number: 655458/2017
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

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In the Matter of the Application of
JOHN LEFTRIDGE

Petitioner,

-against-

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF EDUCATION, CARMEN FARINA, CHANCELLOR OF NEW YORK CITY DEPARTMENT OF EDUCATION

Respondents.

For a Judgment Pursuant to Article 75 of the Civil Practice Law and Rules

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Index No. 655458/2017
Motion Seq: 001

DECISION, ORDER & JUDGMENT

HON. ARLENE P. BLUTH

The cross-motion to dismiss the petition is granted and this proceeding is dismissed.

Background

This proceeding arises out of petitioner's employment as a teacher for respondent New York City Department of Education ("DOE"). Petitioner started working as a teacher in 2001 and worked as a gym teacher for over a decade until he was moved into the classroom in the 2013-2014 school year. Shortly after being assigned to a classroom, petitioner was moved from P.S. 93 to P.S. 3 while charges against him were resolved. In the 2014-2015 school year, petitioner was moved back to P.S. 93.

Petitioner was charged with incompetence and misconduct during the 2014-2015, 2015-2016 and 2016-2017 school years. The matter was assigned to a Hearing Officer who, after

hearing testimony from both sides, sustained the charges against petitioner and imposed a penalty of termination. The Hearing Officer found that the Principal and Assistant Principal, both of whom evaluated petitioner's performance as a teacher, were "credible and convincing witnesses" (NYSCEF Doc. No. 15 at 40). The Hearing Officer concluded that "the Department has established that there was a deficiency in [petitioner's] pedagogy. Second, the [petitioner] was on notice of the deficiency through observations, post-observation meetings with administrators, and the Department's remediation efforts. Third, as stated above, the Department attempted to remediate [petitioner's] deficiency. Finally, the Department has established that despite the remediation, the [petitioner] is still incompetent" (*id.* at 41).

The Hearing Officer acknowledged that petitioner experienced unfortunate personal issues, including the death of his father, which caused him to suffer from anxiety and depression (*id.* at 40). But the hearing officer observed that"[n]o medical or other evidence was introduced to substantiate that [petitioner's] depression was such that it could have adversely impacted his performance" and that he should have requested a leave of absence, which he did not do (*id.*).

The Hearing Offer asserted that petitioner's status as "an ineffective teacher was a consequence of his failing to follow what he learned though professional development" (*id.* at 41). Termination was found to be the appropriate penalty because petitioner "did not acknowledge his own deficiencies or need to correct his pedagogy" and petitioner "did nothing to improve his pedagogy and did not teach" (*id.* at 43). The Hearing Officer added that petitioner's "lack of participation in the observation conferences and his failure to improve his pedagogy demonstrate that [petitioner] is unwilling or unable to improve his pedagogy" and that there was no reason to provide petitioner with another opportunity to improve (*id.*).

Discussion

"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" (*Lackow v Dept. of Educ. [or Board] of City of New York*, 51 AD3d 563, 567, 859 NYS2d 52 [1st Dept 2008]) [internal quotations and citation omitted]. "[W]here 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" (*id.* at 567). The hearing officer's "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. The party challenging an arbitration determination has the burden of showing its invalidity" (*id.* at 567-68). To overturn a penalty of termination the punishment must shock's one sense of fairness (*Matter of Davies v New York City Dept. of Educ.*, 117 AD3d 446, 447, 985 NYS2d 76 [1st Dept 2014]).

A Hearing Officer's decision is not arbitrary or capricious where the "Hearing Officer engaged in a [thorough] analysis of the facts and circumstances, evaluated witnesses' credibility, and arrived at a reasoned conclusion" (*Matter of Davis v New York City Bd./Dept. of Educ.*, 137 AD3d 716, 717, 30 NYS3d 2 [1st Dept 2016]).

Petitioner claims that the Hearing Officer failed to take into account that the principal was out to get him and that he endured substantial hostility while working at P.S. 93. Petitioner stresses that the was provided with no support to run an effective classroom and he was targeted for holding a leadership position with his union.

While petitioner focuses on the actions of his supervisors and others, he fails to dispute

the fact that the observation reports of his teaching performance found that he was an incompetent teacher. Those observation reports highlighted petitioner's inability to properly effectuate a lesson plan. For instance, petitioner was told "there was little or no monitoring of student learning" and "No guidance for their improvement was offered so how could they be aware of an assessment criteria?" (NYSCEF Doc. No. 17 [Observation on March 31, 2015]). Another observation report stated "You displayed little understanding of prerequisite knowledge important to student learning of the content" and "No evidence of learning activities were planned to reflect subtraction as per your submitted lesson plan" (*id.* [Observation on October 7, 2015]).

The fact is that petitioner was rated ineffective on countless components throughout the school years in question. The detailed observation reports evidenced specific criticisms of petitioner's teaching ability rather than a principal "out to get petitioner." The deficiencies in petitioner's pedagogy were similar in each observation report– petitioner was unable to manage student behavior, he did not challenge students' reasoning for their responses, his lesson plans were poor and the objectives for each lesson were poorly executed.

The Penalty Does not Shock the Conscience

"[T]he mere fact that a penalty is harsh, and imposes severe consequences on an individual, does not so affront our sense of fairness that it shocks the conscience, unless it is obviously disproportionate to the misconduct and in contravention of the public interest and policy reflected in the agency's mission" (*Bolt v New York City Dept. of Educ.*, 2018 WL 341034, *3, 2018.NY Slip Op 00090 [2018] [Rivera, J., concurring]). A "court's review is

limited to considering the proportionality of the sanction to the individual's misconduct, including the potential impact on the agency and its interest in deterrence, and whether the sanction appears to minimize or trivialize the individual's conduct" (*id.*).

The Hearing Officer found that petitioner was provided with ample opportunities to improve and that petitioner did not utilize the resources provided to him. In fact, the Hearing Officer stressed that petitioner did not acknowledge he had any deficiencies. The penalty of termination does not shock the conscience in these circumstances.

Summary

While petitioner has numerous complaints about respondents, including respondents' handling of a medical arbitration arising out of a purported on-the-job injury petitioner suffered and alleged misconduct by the principal, that is not the focus of this opinion. This decision is concerned with the Hearing Officer's decision finding petitioner to be an incompetent teacher and firing him. There is no basis to overturn that determination given the substantial documentation demonstrating petitioner's inability to manage a classroom. The fact that petitioner served in a leadership position with his union has nothing to do with whether petitioner could effectively teach children in the classroom. The detailed observation reports show that petitioner could not prepare a lesson plan, execute a lesson plan or implement improvements suggested by supervisors to improve his pedagogy. The Court cannot overlook petitioner's incompetency simply because petitioner did not get along with his supervisors. The Court's main concern is whether petitioner was an effective teacher and he has provided no reason, besides blaming others, for this Court to vacate the Hearing Officer's decision to terminate him.

Accordingly, it is hereby

ORDERED that the cross-motion to dismiss the petition is granted; and it is further

ADJUDGED that the petition of John Leftridge is dismissed, without costs and disbursements.

Dated: July 18, 2018
New York, New York

ARLENE P. BLUTH, JSC

HON. ARLENE P. BLUTH
J.S.C.