Matter of City of New York v Social Serv. Empls. Union Local 371
2019 NY Slip Op 32922(U)
October 4, 2019
Supreme Court, New York County
Docket Number: 450730/15
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: **DEBRA A. JAMES** **PART 59**
Justice

In the Matter of the Application of CITY OF NEW YORK; the CITY OF NEW YORK ADMINISTRATION FOR CHILDREN'S SERVICES; and GLADYS CARRION, COMMISSIONER OF THE CITY OF NEW YORK ADMINISTRATION FOR CHILDREN'S SERVICES,

Petitioners,

- v -

SOCIAL SERVICE EMPLOYEES UNION LOCAL 371; ANTHONY WELLS, PRESIDENT OF SOCIAL SERVICE EMPLOYEES UNION LOCAL 371; and EDWARD OKORO,

Respondents.

Index No.: 450730/15

Motion Date: _____

Motion Seq. No.: 01

Motion Cal. No.: _____

The following papers, numbered 1 to 27 were read on this petition to vacate.

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____	
Answering Affidavits - Exhibits _____	
Replying Affidavits - Exhibits _____	

Cross-Motion: ☒ **Yes** ☐ **No**

Upon the foregoing papers,

Petitioners move to vacate the penalty imposed by the Arbitrator in the Opinion and Award dated December 11, 2014, (the "Award") before the New York City Office of Collective Bargaining captioned In the Matter of the Arbitration between Social Service Employees Union Local 371, District Council 37, AFSCME, on behalf of Edward Okoro, Child Protective Specialist II and NYC

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check One: ☒ **FINAL DISPOSITION** ☐ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST** ☐ **REFERENCE**

☐ **SETTLE/SUBMIT ORDER/JUDG.**

Administration for Children's Services, Case No. A-14162-12 (the "Arbitration"). Petitioners do not seek any other relief before this court other than the challenge to the penalty imposed by the arbitrator. The individual respondent and his union cross-move to confirm the arbitration decision and award.

According to the Award, individual respondent Edward Okoro was first employed by petitioner Administration for Children's Services (ACS) in 1993 and assumed the title of Child Protective Specialist Level II (CPS II) in 1996. In February 2012, respondent was served with one charge and six specifications in connection with his duties as a CPS II. Following a conference and internal contractual grievance procedure, ACS terminated the petitioner as of March 26, 2012. Respondent Union filed for arbitration on the respondent's behalf resulting in the Award at issue here.

The Award upheld the petitioner's findings of respondent's misconduct to the extent of finding that respondent falsely recorded in ACS's records in three separate cases that home visits were made to three separate families when in fact it was found that respondent did not make the home visits in September, October and November 2011 as claimed. In upholding the specifications that respondent did not make three home visits as respondent claimed in ACS's system, the arbitrator also upheld

three related specifications that respondent's timesheets reflecting the unmade home visits were also violative.

The arbitrator then held

> In fraudulently entering the Progress Notes with which he is charged, the Grievant engaged in transgressions that the City accurately describes as egregious misconduct. However, after considering the record in its entirety, including each and every document offered by the parties with their briefs, I conclude that the Grievant should be given a second chance. Certainly there are instances in which dismissal is the appropriate penalty even where the employee has a long history with the employer that includes no prior discipline. This is not one of them.
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> * * *
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> The Grievant's misconduct in connection with the allegations herein was anomalous. In light of the record in its entirety, I believe a disciplinary penalty short of termination of his employment is appropriate. . . . The remedy shall be reinstatement of the Grievant by ACS to his position of CPS II without any back pay and/or benefits no later than 15 workdays following the date of this Award.

The petitioner seeks to vacate only the award relying on the Court's decisions in Matter of Social Serv Employees Union Local [Opuoru] v City of New York (56 AD3d 322 [1st Dept 2008]) and (100 AD3d 422 [1st Dept 2012]).

"It is settled that an arbitration award may not be vacated unless it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power." City School Dist. of City of New York v Campbell, 20 AD3d 313, 314 (1st Dept 2005) (citations and internal quotations omitted). In Opuoru, supra, the Court stated that

> Grievant, a Child Protection Specialist Supervisor II with the New York City Administration for Children's Services (ACS), pleaded guilty to grand larceny in the fourth degree, for filing false income tax returns using confidential ACS client information to fraudulently claim entitlement to state and local tax credits. We find that the arbitrator's award, which determined that while grievant had engaged in a censurable course of conduct that justified punishment he should be restored to his supervisory position at ACS, is irrational, and defies common sense. Reinstated to the position of ACS supervisor, grievant again would have access to the ACS database from which he extracted the information he used to perpetrate his crime. In view of the foregoing, we need not reach the issue of whether the award violates public policy.

Matter of Social Serv Employees Union Local [Opuoru] v City of New York, 56 AD3d 322 (1st Dept 2008) (citations omitted). Petitioner asserts that based upon Opuoru, the court here should similarly find that the Award in this case that reinstated respondent is irrational on the grounds that a finding of egregious misconduct mandates dismissal.

While in no way condoning the departures found by the arbitrator, the court finds that petitioner has failed to demonstrate that the circumstances of this case are analogous to Opuoru or that the award is irrational on the facts presented here. Unlike Opuoru as cited in the Award, the respondent was not convicted of a crime although criminal charges were filed against the respondent and subsequently dismissed and the record sealed. The respondent here does not hold a supervisory position as was the case in Opuoru and there is no allegation that the respondent upon reinstatement would have access to confidential

information to misuse in a criminal enterprise. The arbitrator also noted in mitigation that in two of the instances of misconduct the respondent did conduct telephone conversations in place of the required and falsely attested to site visits in two of the three cases "providing some evidence that the Grievant did not abandon his responsibilities to the extent that" all of his actions were suspect and unreliable.

As stated by a Justice of this Court, "[a]bsent authority for the proposition that an employee guilty of misconduct may never be reinstated to the same position held when [he] committed the misconduct, [petitioner] has failed to demonstrate that the arbitrator's decision to reinstate [respondent]'s employment is irrational." Social Serv. Employees Union v New York City Health, 2012 NY Slip Op 31641[U] (Sup Ct, NY County, June 15, 2012 [Jaffe, J.)]. Thus the court finds here that the carefully reasoned decision of the arbitrator was not irrational as alleged by the petitioner.

Similarly, the Court has held "the public policy exception as applying only in cases in which public policy considerations, embodied in statute or decisional law, prohibit, in an absolute sense, particular matters being decided or certain relief being granted by an arbitrator. Stated another way, the courts must be able to examine an arbitration agreement or an award on its face without engaging in extended factfinding or legal analysis, and

conclude that public policy precludes its enforcement." New York City Tr. Auth. v Transp. Workers Union of Am., Local 100, AFL-CIO, 99 NY2d 1, 7 (2002). The petitioner's allegations fail to clear the very high hurdle to the application of the public policy exception on the facts presented here and therefore the Award is not subject to reversal on that ground.

Accordingly, it is

ORDERED and ADJUDGED that the petition is DENIED; and it is further

ORDERED and ADJUDGED that the cross-motion to confirm the award is GRANTED and the AWARD is CONFIRMED in its entirety.

This is the decision and order of the court.

Dated: OCT 04 2019 ENTER:

DEBRA A. JAMES J.S.C.