

**Police Benevolent Assn. of the City of N.Y. v
deBlasio**

2021 NY Slip Op 32764(U)

December 22, 2021

Supreme Court, New York County

Docket Number: Index No. 160674/2021

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 52M

Justice

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POLICE BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC., ON BEHALF OF ITS MEMBERS, PATRICK LYNCH,

Petitioner,

- v -

BILL DEBLASIO, DAVE CHOKSHI, DAWN PINNOCK, ANNABEL PALMA, DERMOT SHEA, NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, NEW YORK CITY BOARD OF HEALTH, NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES, NEW YORK CITY COMMISSION ON HUMAN RIGHTS, NEW YORK CITY POLICE DEPARTMENT,

Respondent.

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INDEX NO. 160674/2021
MOTION DATE N/A
MOTION SEQ. NO. 001

INTERIM DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 13, 25, 26, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38, 39, 40

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR

This petition arises out of allegations that respondents have imposed an arbitrary and capricious COVID-19 vaccination mandate on members of the New York City Police Department (NYPD) as it has been implemented.1 For the purposes of this interim order this Court will address the preliminary injunction and temporary restraining order sought.2

Petitioners allege that the NYPD has abandoned established reasonable accommodation policies by failing to promulgate rules or procedures designed to properly evaluate and determine requests for medical and religious exemptions. Petitioners challenge the application process, and the evaluation and determination of reasonable accommodation applications submitted by NYPD

1 This petition does not challenge the NYPD vaccination mandate. Thus, this Court takes no position whether such mandate is lawful or not, but for purposes of this decision, assumes that it is lawful.

2 For purposes of this decision, the term "petitioners" will include the Sergeants Benevolent Association and the Detective Endowment Association, both of whom have been given intervenor status in this action.

members for religious and medical exemptions to the vaccine mandate. Further, petitioners argue that the appeals of denials of reasonable accommodation applications will prove futile, because of the lack of the NYPD providing reasons for those denials. Petitioners seek to enjoin Respondents from further consideration of the applications for reasonable accommodations pending judicial review and determination of the issues presented.

Petitioners aver that the balancing of equities is in favor of the petitioners as there is no risk of public harm from an injunction, as petitioners contend that a relatively small number of officers that applied for a reasonable accommodation thus having a minimal effect on public health.

Respondents contend that a preliminary injunction is improper at this time because petitioners have failed to establish irreparable harm. Further, respondents argue that petitioners delay in bringing the instant petition nearly five weeks after the implementation of the mandate supports the position that there is no emergency requiring an injunction. While respondents conceded that police officer's received denial letters without reasons, there has since been a change and a checklist is provided to the denied applicant. *See* NYSCEF Doc. 36. Moreover, respondents allege that petitioners lack standing to bring the instant petition.

Undisputed Facts

On October 20, 2021, the City of New York (the "City"), through an order issued by the Department of Health and Mental Hygiene (DOHMH), imposed the COVID-19 vaccine mandate, requiring that City employees and certain City contractors provide proof of vaccination by 5 p.m. on October 29, 2021. Following the issuance of that order the City issued a set of Frequently Asked Questions (FAQs). The FAQs provide that City employees may apply for religious or medical accommodations to exempt themselves from compliance with the vaccine

mandate. The FAQs provide that, beginning November 1, 2021, City employees who are not in compliance with the vaccine mandate and have not applied for a reasonable accommodation seeking exemption would be placed on leave without pay.

The FAQ advised that an employee seeking an accommodation had to apply to their agency's EEO Office by October 27, 2021. An employee who requested an accommodation by October 27, 2021 and was awaiting a determination may continue to report to work but must also continue to submit a negative COVID-19 test result within every seven-day period. The FAQs also provided that an employee may submit an accommodation request after October 27; however, if the request was not approved by November 1, the employee must remain on leave without pay until it is decided. Further, the FAQs also provide information regarding how an employee can appeal a denial of an accommodation request and allow for an employee to continue work during while the appeal is pending.

On or about November 17, 2021, the NYPD began releasing denial letters to officers that requested reasonable accommodations to be exempt from the COVID-19 vaccine mandate. *See* NYSCEF Doc. 6. The letter fails to specify the type of accommodation requested and the reason for the denial. It appears, however, as noted above, that at least for the religious exemption, a new letter has been recently sent.

Discussion

“A movant's burden of proof on a motion for a preliminary injunction is particularly high” *Council of the City of NY v Giuliani*, 248 AD2d 1, 4 [1st Dept 1998]. A party seeking a preliminary injunction must clearly demonstrate (1) the likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the injunction is not issued; and (3) a balance of

the equities in the movant's favor. (*Doe v Axelrod*, 73 NY2d 748 [NY 1988]; *Housing Works, Inc. v City of New York*, 255 AD2d 209 [1st Dept 1998]).

First it should be noted that this Court finds that petitioners have established irreparable harm. For a person to be faced with a “jab or job” ultimatum could very well lead that person to go against medical advice or violate their religious beliefs if the determination which denied the requested reasonable accommodation was incorrect. Thus, this is distinguishable from instances where the only issue is the loss of pay or the loss of employment, which can be compensated through an action seeking monetary damages.

The Court also feels that for the most part, the issue is not ripe. The proper time for these concerns to be addressed are through Article 78 proceedings upon the exhaustion of all other proceedings. However, it is for this Court to determine if any Article 78 Courts will be able to address those Article 78 proceedings with the necessary information at the appropriate time. It is well established that when an agency makes a determination to deny a benefit the agency has an obligation to provide its reasoning. *See, e.g., Matter of Koch v Sheehan*, 21 NY3d 697, 703-04 [2013] (excluding physician from Medicaid program arbitrary and capricious where record did not reflect reasons for decision); *Punnett v Evans*, 26 AD2d 396, 399 [1st Dept 1966] (holding that courts will not sanction agency behavior that fails to apprise the court of the basis for its finding).

For those instances where the respondents have failed to provide any information as to why a request for accommodation has not been provided, an Article 78 Court would be unable to evaluate the rationality of such decision. Moreover, it appears undisputed that when an appeal is to be brought, the applicant must give reasons as to the basis for the appeal. This Court does not see how that can be done if the applicant does not have any reason for why their initial

application was denied. Accordingly, the factor of likelihood of success on the merits weighs in favor of petitioners for those who have not received any information as it appears all potential Article 78 petitions in such circumstances would be granted and at the very least remanded for further agency action.

The form recently uploaded by the NYPD, which is part of the record, does appear to give enough such information. *See* NYSCEF DOC. 36. However, the City indicates that it only recently began to use such a form. As such, a partial preliminary injunction is necessary to ensure that no action is taken until such time as the proper information through this form is provided to all applicants. Moreover, such form only includes religious exemption request, and not medical exemption requests.

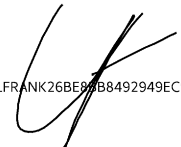
Finally, the Court does not make a determination as to the balancing of equities. The City remains in the midst of a global pandemic, while at the same time, religious freedom is an important consideration. This Court need not decide that balance in this case, and this Court declines to do so. The other two prongs allow this Court to decide this case. Accordingly, it is hereby

ORDERED that the City of New York is enjoined from rendering a final determination denying a religious or medical exemption until such time as the proper information is provided to this applicant consistent with the decision above; and it is further

ORDERED that the City of New York provide this Court and petitioners with how information denying a medical exemption shall be provided, akin to the current religious exemption form, and such medical exemption denials may only be given following this Court's review and endorsement of such form; and it is further

ORDERED that the appeals process shall begin anew at the time that the information required above is provided to the applicant.

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12/22/2021
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
	<input type="checkbox"/>	SETTLE ORDER	DENIED	SUBMIT ORDER	OTHER
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	REFERENCE
CHECK IF APPROPRIATE:					