

**Schiefer v Board of Educ. of the City Sch. Dist. of
the City of N.Y.**

2022 NY Slip Op 33346(U)

October 4, 2022

Supreme Court, New York County

Docket Number: Index No. 155983/2022

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

ANDREW SCHIEFER,

Petitioner,

- v -

THE BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK, COMMUNITY
SCHOOL DISTRICT 79 OF THE BOARD OF EDUCATION
OF THE CITY OF NEW YORK, UNITED FEDERATION OF
TEACHERS

Respondent.

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INDEX NO. 155983/2022

MOTION DATE 09/29/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for ARTICLE 78.

The petition to annul the determination by respondents the Board of Education of the City School District of the City of New York and Community School District 79 of the Board of Education of the City of New York (“Respondents”) which denied petitioner’s request for a religious exemption is granted.

Background

Petitioner is a tenured teacher who works for respondents. He started working for Respondents in 2003 and gained tenure in 2008 as a math teacher. In connection with the ongoing pandemic, his union, respondent the United Federation of Teachers (“UFT”) entered into an arbitration with Respondents about how to handle a vaccine mandate. An award was

eventually issued that, among other things, set up a process by which individuals (such as petitioner) could seek an exemption from the vaccine mandate (NYSCEF Doc. No. 4).¹

Petitioner then submitted a request for a religious exemption and Respondents denied that request on September 17, 2021. That initial determination stated that “We have reviewed your application and supporting documentation for a religious exemption from the DOE COVID-19 vaccine mandate. Your application has failed to meet the criteria for a religious accommodation because, per the Order of the Commissioner of Health, unvaccinated employees cannot work in a school building without posing a direct threat to health and safety. Due to the configuration for the 2021-2022 school year, which includes no remote classwork, we cannot offer another worksite as an accommodation, as that would impose an undue hardship (i.e., more than a minimal burden) on the DOE and its operations” (NYSCEF Doc. No. 8).

Petitioner appealed this determination and Respondents denied the appeal. The appeal denial was a blank form with the “Denied” box checked (NYSCEF Doc. No. 10). No analysis was included. Petitioner then sought an appeal with a Citywide Panel. That appeal was also denied. This final determination stated “The City of New York Reasonable Accommodation Appeals Panel has carefully reviewed your Agency's determination, all of the documentation submitted to the agency and the additional information you submitted in connection with the appeal. Based on this review, the Appeals Panel has decided to deny your appeal. This determination represents the final decision with respect to your reasonable accommodation request. The decision classification for your appeal is as follows: DOE has demonstrated that it

¹ Curiously, the petition says this arbitration award “is the subject of the Declaratory Judgment” (NYSCEF Doc. No. 1, ¶ 12). The Court has no idea what this means as there is no declaratory relief requested with respect to this arbitration award.

would be an undue hardship to grant this accommodation to the employee given the need for a safe environment for in-person learning” (NYSCEF Doc. No. 10). Petitioner subsequently received a termination letter informing him that he was fired for not receiving the vaccine (NYSCEF Doc. No. 11).

He claims that his termination should be vacated because there was no reason given for the denial and the assertion that there was some sort of undue hardship to accommodate his religious exemption request was a conclusory decision.

In opposition, Respondents insist that the decision to deny petitioner’s religious exemption request was rational. They point to a position statement they claim justifies Respondents’ final determination to deny the request (NYSCEF Doc. No. 40). Respondents argue that petitioner is an in-person instructor and his duties required him to be in close quarters with students and so granting him an accommodation would cause an undue burden on Respondents. They insist the denial was justified by clear and detailed reasoning. Respondents emphasizes that the Citywide panel unanimously voted to deny petitioner’s accommodation request after an in-depth review. Respondents request, in the alternative, that the Court remand the proceeding “for further development of the record.”

In reply, petitioner insists that Respondents did not fulfill its obligation to justify the denial of his exemption request. He maintains that Respondents did not demonstrate that they faced an undue burden or hardship to accommodate his request. Petitioner insists it would be inappropriate to remand this proceeding given that Respondents had ample time to develop the record.

Discussion

In an article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious” (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*id.*). “If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*id.*). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

“Notably, a fundamental principle of administrative law long accepted limits judicial review of an administrative determination solely to the grounds invoked by the respondent, and if those grounds are insufficient or improper, the court is powerless to sanction the determination by substituting what it deems a more appropriate or proper basis. Consequently, neither Supreme Court nor this Court may search the record for a rational basis to support respondent's determination, or substitute its judgment for that of respondent” (*Matter of Figel v Dwyer*, 75 AD3d 802, 804-05, 907 NYS2d 75 [3d Dept 2010] [internal quotations and citations omitted]).

The Court grants the petition. The final determination at issue here, the Citywide Panel determination, does not state a sufficient reason for denying the accommodation request. It merely states, in a conclusory fashion, that Respondents showed it “would be an undue hardship to grant this accommodation to the employee given the need for a safe environment for in-person learning” (NYSCEF Doc. No. 10). There was no individualized explanation or any exploration of why petitioner’s specific tasks prevented Respondents from finding an accommodation.

The Court observes that this decision does not reference the position statement (NYSCEF Doc. No. 40) upon which Respondents heavily rely in their opposition. Therefore, the Court cannot assess whether the final determination adopted those arguments in whole, in part, or not at all. As stated above, the Court cannot search the record for justifications where the ultimate decision did not state a reason for the action taken.

Even if the Court could consider the position statement as part of the reason for the firing, the Court observes that it is simply a generalized statement that does not mention petitioner's specific school or why he could not be provided such an exemption. Rather, it states in one part that "as a general matter this is an undue hardship that has been shown on the ground" (*id.* at 3). It seems that the position statement reflects an assessment by Respondents that they need not provide any accommodations at all, ever. Of course, that contravenes the arbitration award reached between Respondents and UFT. What would be point of setting up a process for providing exemptions only to then permit Respondents to offer a blanket justification to deny all of the requests?

To be sure, many of the reasons cited in this position statement could be compelling reasons to deny the request at issue here if only they had been included in the final determination. Respondents pointed out that 3,300 staff members sought religious exemptions—to accommodate so many requests would surely be a monumental task. But, for some reason, the final determination did not bother to mention that. It just asserted, without explanation, that it would be an undue hardship. That is not sufficient to justify terminating the employment of a tenured teacher.

The Court also denies Respondents' request for a remand. Remand in an Article 78 proceeding is appropriate where a governmental agency seeks to consider new evidence or where

the initial determination was issued on purely procedural grounds and the agency wants to consider a claim on the merits. It is not to permit an agency a chance to write a better or more well-reasoned determination once a Court has identified the ways in which the original decision is lacking. That does not comport with due process nor is it an equitable outcome for petitioner. Respondents had an opportunity to issue a determination that explained why it was denying petitioner's request. It could have, but did not, point to the numerous reasons cited in the position statement. Instead, it issued a conclusory determination that did not contain any rationale whatsoever.

With respect to how much back pay petitioner should be entitled, the Court finds that petitioner should be entitled to back pay from October 15, 2021. Respondents' argument that it need not pay petitioner is without merit. The facts here demonstrate that petitioner timely requested a religious exemption and, now that the Court has found that the denial of that request was arbitrary and capricious, he is entitled to receive income during this time period. Respondents cannot improperly deny his request and then claim petitioner should not get paid for the time his pay was improperly withheld.

The Court dismisses the action against respondent Community School District 79 of the Board of Education of the City of New York as petitioner did not respond to Respondents' claim (offered in opposition) that this entity is not a proper party to this proceeding.


Accordingly, it is hereby

ORDERED that the petition to annul a determination terminating petitioner's employment is granted to the extent that petitioner is entitled to a religious exemption from the COVID-19 vaccine mandate and he shall be entitled to back pay from October 15, 2021, and

petitioner is entitled to costs and disbursements upon presentation of a bill of costs to the Clerk of this Court; and it is further

ORDERED that petitioner shall e-file (as a letter to the Court) a proposed judgment, including the amount of back pay he seeks, along with documentation to substantiate the amount sought on or before October 22, 2022 and respondents shall have until October 29, 2022 to raise any objections (the Court will then determine whether to approve the proposed judgment or take other appropriate action); and it is further

ORDERED that this proceeding is severed and dismissed as against respondent Community School District 79 of the Board of Education of the City of New York.

<u>10/4/2022</u> DATE	 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input checked="" type="checkbox"/> SUBMIT ORDER
			<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE