

**Board of Educ. of the City Sch. Dist. of the City of
N.Y. v United Fedn. of Teachers, Local 2, AFT,
AFL-CIO**

2022 NY Slip Op 33351(U)

October 4, 2022

Supreme Court, New York County

Docket Number: Index No. 451995/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, operating as the New York City Department of Education, DAVID C. BANKS, as Chancellor of the New York City Department of Education,

Petitioners,

- v -

UNITED FEDERATION OF TEACHERS, LOCAL 2, AFT, AFL-CIO, MICHAEL MULGREW, as President of the United Federation of Teachers,

Respondents.

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INDEX NO. 451995/2022
MOTION DATE 10/3/2022
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 32, 33, 34, 35 were read on this motion to/for VACATE - AWARD.

The petition to vacate an arbitration award issued on June 27, 2022 and for injunctive relief enjoining further proceedings is denied. The cross-petition to confirm the award is granted (although the Court observes that the parties are already complying with the directives of the award).

Background

Petitioners commenced this proceeding to vacate an arbitral award in which an arbitrator found that he had jurisdiction over petitioner’s decision to place 82 employees on leave without pay (but with benefits) effective on April 25, 2022 (NYSCEF Doc. No. 2). Each of the 82 teachers allegedly procured fake vaccination cards and used these cards to comply with the COVID-19 vaccine mandate.

The sole issue in this proceeding is the arbitrator’s decision that he has jurisdiction over the dispute about whether petitioners could place these teachers on leave without pay pursuant to

a previous award he issued in September 2021. That award concerned, essentially, the process by which the vaccine mandate for teachers would be implemented. Here, the arbitrator concluded that “While the Department claims its action is unconnected with this Award, it is the Award itself that created a new leave without pay. Absent the Award, the Department was without authority to remove these employees from the payroll without providing a due process hearing” (NYSCEF Doc. No. 2 at 10). The arbitrator then directed the parties to work out the dispute (*id.* at 13).

The Court initially denied petitioners’ request for a temporary restraining order to restrain enforcement of the June 27, 2022 award. Respondents, although they cross-moved to confirm the award, contend that this proceeding is now moot. They point out that the 82 teachers implicated in the fake vaccine card investigation have had their status restored and they are currently receiving pay while the investigation continues (although the teachers have been assigned to different roles). Respondents also observe that nothing remains before the arbitrator because petitioners and respondents are attempting to resolve the issue of back pay through the already-established grievance process under the applicable collective bargaining agreement. In other words, respondents maintain that there is nothing more for the arbitrator to decide because the parties reached a settlement about the 82 teachers.

Petitioners argue that “DOE has allowed the approximately eighty-two employees at issue to return from leave-without-pay status, effective September 6, 2022, but without any back wages, and has re-assigned them to duties that do not require them to report in-person to a school or other DOE facility while the DOE conducts a further inquiry into their compliance with the DOE Vaccine Mandate. However, it cannot be said that a determination by this Court would not

affect the rights of the parties. The parties are not presently in agreement as to what, if any, due-process rights are owed to the employees” (NYSCEF Doc. No. 44, ¶ 29).”

Discussion

The Court finds that the petition is moot. Contrary to petitioners’ claim, the Court does not find that there are outstanding issues. Instead, petitioners appear to want a ruling about hypothetical due process rights and whether petitioners have the right to unilaterally place employees on a leave without pay status. “Courts are generally prohibited from issuing advisory opinions or ruling on hypothetical inquiries” (*Coleman ex rel. Coleman v Daines*, 19 NY3d 1087, 1090, 955 NYS2d 831 [2012]). That is exactly how the Court views the remaining areas raised by petitioners. Petitioners do not dispute that the 82 teachers have been restored to a status where they receive pay, that investigations into the vaccination cards submitted by these teachers remain ongoing and that there is nothing currently pending before the arbitrator with respect to the June 2022 award (the award that petitioners seek to vacate here).

Respondents explained at oral argument that after the investigations are complete, it is their expectation that disciplinary charges will be brought against those who submitted fake vaccination cards. And the issue of back pay also remains pending. Of course, this Court cannot offer rulings about acts that have not yet occurred or opine about the process afforded to teachers who have not yet been charged with anything. And the Court, as stated above, cannot issue a ruling about petitioners’ ability to unilaterally place employees on leave without pay where that issue is no longer a justiciable controversy. The fact is that these employees are no longer on leave without pay.

Summary

In this proceeding, petitioners sought to bar enforcement of an arbitral award. That award merely stated that the arbitrator had jurisdiction over petitioners' handling of 82 teachers who were placed on leave without pay and directed the parties to try and settle the matter or the arbitrator would hold a hearing. There is no dispute that no hearing was ever scheduled or held, that the teachers are currently receiving pay and are no longer on leave without pay status, that the investigation is pending and that the issue about back pay is also in the process of being resolved.

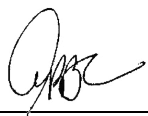
Despite petitioners' preference that this Court weigh in on the initial decision to place these teachers on leave without pay, the Court declines to issue decisions where no controversy remains. Certainly, there may be future disputes about the handling of the investigations, the charges brought against these teachers (if charges are, in fact, brought) and the back pay issue. But those are all potential future issues that are not ripe for adjudication here. This proceeding is limited to the June 2022 arbitral award, an award about which the parties are no longer in dispute.

If petitioners wanted to challenge the award, then they should not have permitted the teachers to have their leave without pay status removed. The Court observes that this proceeding was initially scheduled for July 19, 2022 (well before the start of the current school year) and the parties mutually agreed to two adjournments and eventually reached the apparent settlement that permitted the teachers to return to work. At this point, the award is moot.

Accordingly, it is hereby

ORDERED that the petition is denied as moot and the cross-petition to confirm the award is granted as the parties are already abiding by the terms of the award and the Clerk is directed to

enter judgment in favor of respondents and against petitioners along with costs and disbursements upon presentation of proper papers therefor.

<u>10/4/2022</u> DATE			 <hr/> 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
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input checked="" type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE