

Social Serv. Empls. Union Local 371 v New York City Health & Hosps.
2022 NY Slip Op 33887(U)
November 15, 2022
Supreme Court, New York County
Docket Number: Index No. 150709/2022
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE PART 63M

Justice

INDEX NO. 150709/2022
MOTION DATE 07/19/2022
MOTION SEQ. NO. 001

SOCIAL SERVICE EMPLOYEES UNION LOCAL 371

Petitioner,

- v -

NEW YORK CITY HEALTH AND HOSPITALS,

Respondent.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26

were read on this motion to/for MISC. SPECIAL PROCEEDINGS

The following reads on this Article 78 Petition to direct Respondents – New York City Health and Hospital (“H+H”) “to comply with Sections 61 and 65 of the New York Civil Service Law, by terminating the civil service appointments of all individuals presently holding the position of provisional Sr. Hospital Care Investigator in H+H notwithstanding the existence of a civil service eligible list for said position, directing H+H to cease and desist from making any new appointments to the position of provisional Sr. [Hospital Care Investigator] for so long as said eligible list continues in existence, and directing H+H to appoint to the position of Sr. [Hospital Care Investigator] only those individuals appropriately placed on the current existing civil service eligible list for said position, for so long as said eligible list remains in effect.”

A Virtual Microsoft Teams Appearance was held on November 14, 2022 where in oral argument was conducted.

Respondent submits an answer and a memorandum of law in support. Respondent argues that the Petition should be dismissed (i) for lack of standing and failure to join a necessary party, (ii) that court – ordered appointment is not an available remedy, and (iii) because Respondent’s actions were not arbitrary, capricious, or in bad faith.

It is well – settled “that in an Article 78 proceeding, the scope of judicial review is limited to the issue of whether the administrative action has a rational basis for its determination. The arbitrary or capricious test chiefly ‘relates to ... whether the administrative action is without foundation in fact.’ Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (see CPLR 7803(3); *Pell v. Board of Educ.*, 34 N.Y.2d 222, 230 – 232 [1974]).

New York Civil Service Law 61.1 states, “[a]ppointment or promotion from an eligible list to a position in the competitive class shall be made by the selection of one of the three persons certified by the appropriate civil service commission as standing highest on such eligible list who are willing to accept such appointment or promotion; provided, however, that the state or a municipal commission may provide, by rule, that where it is necessary to break ties among eligible having the same final examination ratings in order to determine their respective standings on the eligible list, appointment or promotion may be made by the selection of any eligible whose final examination rating is equal to or higher than the final examination rating of the third highest standing eligible willing to accept such appointment or promotion.”

Respondent submits the affidavit of Caren M. Alarcon Carabello, Assistant Director in the Division of Human Resources Office of Civil Service & Background Administration for NYC Health + Hospitals.

“Appointment or promotions to titles in the competitive class are made from the eligible list to fill available position. See Civil Serv. L. 61; Rule 4.7.1 of New York City Health + Hospitals Corporation’s Personnel Rules and Regulations. Pursuant to Rule 4.7.2 of the System’s Personnel Rules and Regulations, ‘[a]ppointments or promotions from an eligible list to a position in the competitive class shall be made by selection of one of the three persons certified by the Senior Vice President as standing highest on such list who are available and willing to accept appointment or promotion.’ This is commonly referred to as the ‘one – in – three’

rule. Where fewer than three individuals on the list are willing to accept appointment or promotion, the hiring facility is not required to make a selection at the Hiring Pool. This rule affords the specific municipal employer the ability to exercise its judgment and discretion in making hiring decision, as per Rule 4.7.2 of the New York City Health + Hospitals Personnel Rules and Regulations. Only two candidates – list numbers 196 and 201, interviewed with Woodhull to fill its third and final vacancy. However, in accord with the one – in – three rule, Woodhull was not required to make a selection from the eligible list because fewer than three individuals were interested in filling the final vacancy at the facility. Accordingly, Woodhull was advised to post the remaining position as a provisional opportunity for permanent Hospital Care Investigators (“HCI”) only. On or about August 30, 2021, Nicholas Dougan was appointed to the position of provision Sr. HCI at Woodhull Hospital, effectively filling the final vacancy at the facility. Dougan was not selected from the civil service eligible list. Nicolas Dougan, Giselle Strachan, and Lucinda Reid are the only Provisionals currently serving in the title of Sr. HCI who were appointed to their positions while the civil service eligible list for Exam No. 6533 was still in effect. Despite the appointment of these provision Sr. HCIs as a stopgap measure to address critical staffing needs, Woodhull Hospital, like many other Health + Hospital facilities, continually faced staffing shortages. As previously mentioned, the one – in – three rule guides the selection process at Hiring Pools. The one – in – three rule mandates selection of one of three candidates, if at least three are interested in appointment to the vacant position at a specified facility, but not when there are fewer than three interested. Following the final Hiring Pool on March 23, 2022, however, fewer than three candidates were interested in a position within any particular facility. As such, there were not enough names left on the list to require a facility to choose among three potential candidates for each of its vacant positions. Accordingly, Health + Hospitals was not required to select any additional candidates from the list, and thus the civil service eligible list for Exam No. 6533 on March 23, 2022 was exhausted. A civil service list is exhausted where there are not a sufficient number of names left on the list (three or more) to enable an agency head to choose among three potential candidates for each one position” (see NYSCEF Doc. No. 17 Par. 4 – 6, 17, 25, 30).

Petitioner does not submit an affidavit of anyone with knowledge of the circumstances.

Petitioner’s attorney affirmation affirms, “Petitioners, as the collective bargaining representative of employees of Respondent H + H holding the civil service title of Sr. Hospital Care

Investigator, has a cognizable legal interest in, and standing to sue to ensure for its represented H + H employees and members on the Sr. HCI list, that appointments to that position are made from the eligible list established and in accordance with the Civil Service Law” (see NYSCEF Doc. No. 24 Ps. 6 – 7).

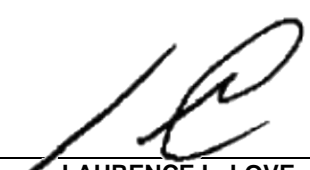
Respondent states in pertinent part in their Reply, “[d]espite Respondent’s having raised the issue in its initial memorandum of law, Petitioner still fails to identify at least three of its members on the eligible list who were willing to accept the Sr. HCI positions at Woodhull Hospital, such that Respondent’s need – based, provisional appointments of Nichols Dougan, Gisell Strachon, and Lucinda Reid would trigger, much less violate, the appointment provision of Civil Service law 61.1” (see NYSCEF Doc. No. 26 P. 9).

The affidavit of Caren M. Alarcon Carabello shows how the administrative action of H + H has a rational basis and is not arbitrary nor capricious. H + H conducted a hiring pool that was both rational and consistent with the applicable Sections of the Civil Service Law. Only two candidates interviewed for the Sr. HCI position. H + H was experiencing staffing shortages, and their procedure to fulfill and stopgap said shortages was well – planned out and methodical, in accordance with New York Civil Service Law.

Based on a full review of all documents provided this Court agrees with Respondent. The method utilized to fill said positions were rational and within the guidelines of the law and requirements.

ADJUDGED that the application is denied and the petition is dismissed, with costs and disbursements to respondent; and it is further

11/15/22
DATE


LAURENCE L. LOVE, J.S.C.