

New York City Mun. Labor Comm. v City of New York

2023 NY Slip Op 30031(U)

January 5, 2023

Supreme Court, New York County

Docket Number: Index No. 151169/2022

Judge: Judy H. Kim

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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. JUDY H. KIM PART 05RCP

Justice

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THE NEW YORK CITY MUNICIPAL LABOR COMMITTEE, UNIFORMED SANITATIONMEN'S ASSOCIATION, LOCAL 831 IBT, POLICE BENEVOLENT ASSOCIATION, UNIFORMED FIREFIGHTERS ASSOCIATION LOCAL 94 I.A.F.F. AFL-CIO, UNIFORMED FIRE OFFICERS ASSOCIATION, UNITED FEDERATION OF TEACHERS, COUNCIL OF SCHOOL SUPERVISORS AND ADMINISTRATORS, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 237, IBT, CORRECTION OFFICER'S BENEVOLENT ASSOCIATION, COMMUNICATION WORKERS OF AMERICA NYC LOCAL 1180, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 246, LIEUTENANTS BENEVOLENT ASSOCIATION, SERGEANT'S BENEVOLENT ASSOCIATION, DETECTIVES ENDOWMENT ASSOCIATION, CAPTAINS ENDOWMENT ASSOCIATION, SANITATION OFFICERS' ASSOCIATION, LOCAL 444, UNIFORMED SANITATION CHIEFS ASSOCIATION, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 30, DISTRICT COUNCIL NO. 9 PAINTERS & ALLIED TRADES, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 3, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 891, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 300, BOILERMAKERS, BLACKSMITHS & METAL WORK MECHANICS, LOCAL 5, SERVICE EMPLOYEES INTERNATIONAL UNION SUPERVISORS, LOCAL 621, ORGANIZATION OF STAFF ANALYSTS, N.Y.C. DISTRICT COUNCIL OF CARPENTERS, UBCJA, CORRECTION CAPTAINS' ASSOCIATION, INC., UNITED PROBATION OFFICERS ASSOCIATION, ALLIED BUILDING INSPECTORS, LOCAL 211,

INDEX NO. 151169/2022
MOTION DATE 04/29/2022, 04/29/2022
MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

Plaintiffs,

- v -

THE CITY OF NEW YORK, BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, THE NEW YORK CITY HOUSING AUTHORITY,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 62, 63, 64, 65, 66, 67, 72, 73, 77, 78, 79, 82

were read on this motion for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 68, 69, 70, 71, 74, 75, 83

were read on this motion for

DISMISSAL

Plaintiffs commenced this action on February 8, 2022 seeking: (1) a declaratory judgment that defendants violated the due process rights of their members (the “Terminated Employees”) by terminating these members’ employment upon their failure to produce proof of vaccination for COVID-19 (or obtain an exemption from this requirement) by a date certain, as ordered by the Commissioner of the New York City Department of Health and Mental Hygiene (“DOHMH”); and (2) a permanent injunction enjoining defendants from terminating these unvaccinated employees.

Concurrent with plaintiffs commencement of this action, they moved, by order to show cause for, inter alia, a preliminary injunction preventing the termination of these unvaccinated employees. In a decision and order dated April 21, 2022 (the “Prior Decision”), this Court denied defendants’ motion for a preliminary injunction (New York City Mun. Labor Comm. v City of New York, 75 Misc 3d 411 [Sup Ct, NY County 2022]). The reader’s familiarity with the more detailed factual recitation set forth in the Prior Decision—which is incorporated herein by reference—is presumed.

In motion sequence 002, defendant the City of New York now moves to dismiss this proceeding pursuant to CPLR §3211(a)(7) arguing that the complaint fails to state a claim for a procedural due process violation. In motion sequence 003, defendant the New York City Housing Authority (“NYCHA”) moves for the same relief on the same grounds. These motions are consolidated for disposition and are, for the reasons set forth below, granted.

DISCUSSION

As discussed in the Prior Decision, “[a] procedural due process claim requires the plaintiff to establish (1) possession by the plaintiff of a protected liberty or property interest, and (2) deprivation of that interest without constitutionally adequate process” (Garland v New York City Fire Dept., 2021 WL 5771687 at *5, 2021 US Dist LEXIS 233142 at *10 [EDNY 2021] [internal citations omitted]). As public employees, the Terminated Employees have a constitutionally protected property interest in their continued employment (See Cleveland Bd. Of Educ. v Loudermill, 470 US 532, 538 [1985]). Plaintiffs argue that, as a result, due process required that defendants follow the disciplinary procedures set forth in Civil Service Law §§72, 73 and 75, Education Law §§3020 and 3020-a, and New York City Administrative Code §§14-115, 15-113, and 16-106, as well as the plaintiffs’ respective collective bargaining agreements, prior to their termination.

However, the statutes which plaintiffs point to “prescribe[] the procedures for removal of a protected employee charged with delinquencies in the performance of his [or her] job” (Matter of Felix v New York City Dept. of Citywide Admin. Services, 3 NY3d 498, 505 [2004] quoting Mandelkern v City of Buffalo, 64 AD2d 279, 281 [1978]) which is not the case here. Rather, the vaccination mandate created by the DOHMH orders set forth a qualification of employment unrelated to job performance and are not an attempt to regulate the conduct of City employees in performing their jobs. The termination of a public employee based on their failure to satisfy a qualification of employment unrelated to job performance, misconduct, or competency does not implicate the disciplinary procedures referenced by plaintiffs (See e.g., (Matter of Felix v New York City Dept. of Citywide Admin. Services, 3 NY3d 498, 505 [2004]; see also Matter of New York State Off. of Children and Family Services v Lanterman, 14 NY3d 275, 282 [2010] [dismissal

of plaintiffs for failure to meet credentials required as qualifications of employment was not disciplinary and therefore no CSL §75 hearing required before termination)]; Matter of O'Connor v Bd. of Educ. of City School Dist. of City of Niagara Falls, 48 AD3d 1254, 1255 [4th Dept 2008] [Education Law §3020 and 3020-a inapplicable to teacher's dismissal for failure to satisfy residency requirements for their positions]).

In opposition, plaintiffs largely reiterate arguments already considered and rejected by the Court in the Prior Decision. Plaintiffs also assert, however, that the terminations at issue are unfair because New York State and New York City have, after terminating the Terminated Employees, relaxed or removed various COVID-19 restrictions. This argument is not germane to the limited legal issue before the Court, namely, whether defendants complied with due process requirements in effecting the terminations at issue. Finally, the Court notes that plaintiffs have filed supplemental authority after the submission of the instant motions. However, these cases from courts of coordinate jurisdiction are not binding on this Court and are, in any event, either inapplicable or unpersuasive¹.

Accordingly, it is

ORDERED that the City of New York and New York City Housing Authority's motions to dismiss this action are granted and it is hereby dismissed in its entirety; and it is further

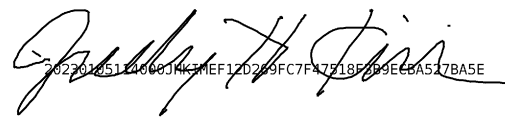
ORDERED that within thirty days from entry of this order, counsel for the City of New York shall serve a copy of this order, with notice of entry, on plaintiff as well as on the Clerk of

¹ For instance, in plaintiff's first submission, Police Benevolent Association of the City of New York, Inc. v City of New York, 2022 N.Y. Slip Op. 33935[U], 4 [Sup Ct, NY County 2022]), the Court concluded that the vaccine mandate created a condition of employment and, therefore, that disciplinary hearings were not required as a predicate to termination. To the extent that the Court held that DOHMH did not have the authority to enforce the vaccine mandate by terminating the employment of noncompliant employees, this argument was never raised in connection with the instant proceeding and is not implicated by the due process arguments before the Court.

the Court (60 Centre St., Room 141B) and the Clerk of the General Clerk’s Office (60 Centre St., Rm. 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “Efiling” page on this court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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1/5/2023
DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE