

<b>New York City Mun. Labor Comm. v Adams</b>
2023 NY Slip Op 30135(U)
January 12, 2023
Supreme Court, New York County
Docket Number: Index No. 158863/2022
Judge: Richard Latin
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. RICHARD LATIN

PART

46V

Justice

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THE NEW YORK CITY MUNICIPAL LABOR COMMITTEE, UNIFORMED SANITATIONMEN'S ASSOCIATION, LOCAL 831 IBT, DISTRICT COUNCIL 37, UNITED FEDERATION OF TEACHERS, TEAMSTERS UNION LOCAL 237, IBT, COUNCIL OF SCHOOL SUPERVISORS AND ADMINISTRATORS, COMMUNICATION WORKERS OF AMERICA NYC LOCAL 1180, UNIFORMED FIREFIGHTERS ASSOCIATION LOCAL 94 I.A.F.F. AFL-CIO, CAPTAINS ENDOWMENT ASSOCIATION, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 246, LIEUTENANTS BENEVOLENT ASSOCIATION, UNIFORMED FIRE OFFICERS ASSOCIATION, UNIFORMED SANITATION CHIEFS ASSOCIATION, SANITATION OFFICERS' ASSOCIATION, LOCAL 444, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 30, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 3, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 891, ORGANIZATION OF STAFF ANALYSTS, UNITED PROBATION OFFICERS ASSOCIATION, ALLIED BUILDING INSPECTORS LOCAL 211, UNIFORMED FIRE ALARM DISPATCHERS BENEVOLENT ASSOCIATION IAFF, LOCAL 4959, NEW YORK CITY HEALTH SERVICES EMPLOYEES LOCAL 768, DC37, NEW YORK CITY ASSESSORS, APPRAISERS & HOUSING DEVELOPMENT SPECIALISTS LOCAL 1757, DC37, BOARD OF EDUCATION EMPLOYEES LOCAL 372, DC37, NEW YORK CITY TRAFFIC EMPLOYEES LOCAL 1455, DC37, NEW YORK CITY ACCOUNTANTS, STATISTICIANS & ACTUARIES LOCAL 1407, DC37, CIVIL SERVICE TECHNICAL GUILD LOCAL 375, DC37, UNIFORMED EMTS, PARAMEDICS & FIRE INSPECTORS FDNY LOCAL 2507, DC37, NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS,

INDEX NO. 158863/2022

MOTION DATE 01/05/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

Plaintiff,

- v -

ERIC ADAMS, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, DR. ASHWIN VASAN,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20

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

Upon the foregoing documents and after oral argument, it is ordered that this petition pursuant to Article 78 to declare respondents' determination to exclude public-sector workers from the rescindment of vaccination requirements arbitrary and capricious or an abuse of discretion, to declare respondents' determination to exclude public-sector works from the rescindment of vaccination requirements an action in excess of the Department of Health and Mental Hygiene's ("DOHMH") authority and jurisdiction, to declare respondents' determination to exclude public-sector workers from the rescindment of vaccination requirements a violation of the Equal Protection Clause of the New York State Constitution, and to enjoin enforcement of the relevant mandates once the private-sector mandate is ended is determined as follows:

With this proceeding, the petitioners are not arguing that the that the Department of Education vaccination mandate originally issued August 24, 2021 and the vaccination mandate for city employees and certain city contractors originally issued October 20, 2021 (collectively "the public mandates") were improper *ab initio*. Rather, petitioners' more nuanced assertion is that the public mandates can no longer stand against the backdrop of statements from the Mayor and Health Commissioner that we are in the "new normal" and that the emergency is over, and the corresponding rescindment of the private employer vaccination mandate. Petitioners do not seek to dispute whether the public mandates were appropriate during the height of the COVID-19 emergency, stating that they were arguably valid. They even use the emergency/post-emergency distinction, in part, to distinguish this case for res judicata and collateral estoppel purposes from prior cases that sought to strike down the public mandates and failed. At the crux of petitioners' argument is that public employees are now being treated differently for arbitrary reasons as the

DOHMH exceeds its authority in making managerial and employment decisions that circumvent the regular collective bargaining process that the City of New York and labor unions should be engaging in.

Pursuant to CPLR 7803, the court's role in this case is merely to examine, "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed" (CPLR 7803[3]). So long as there is a rational basis for the determination, it must be sustained even if the court would have reached a different determination (*see Matter of Peckham v Calogero*, 12 NY3d 424 [2009]).

With regards to the Equal Protection analysis, where the challenged act does not involve a suspect class, courts will utilize a rational basis standard of review as opposed to strict judicial scrutiny (*see Meresca v Cuomo*, 64 NY2d 242 [1984]). Thus, the classification will be upheld if there is some conceivable legitimate government interest (*id.*).

In order to demonstrate entitlement to injunctive relief, petitioners must establish "a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor" (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839 [2005]).

Here, it is clear that within the context of an emergency, the respondents would have a rational basis and a compelling governmental interest to continue vaccination requirements for public employees in order to ensure the continuity of government operations and that the workforce is able to perform essential services for New Yorkers. Implicit in achieving those goals, they also have an interest in keeping public employees healthy. Furthermore, in times of

emergency, the public vaccination mandates serve to protect not only employees of the City of New York, but the public whom they serve.

Petitioners argue, however, that we are no longer in a time of emergency. They ask the Court not to assess for itself based on its mild degree of scientific certainty whether a post-holiday surge of COVID-19 attributable to a new subvariant, XBB.1.5, constitutes an emergency (*see generally Generoso v Adams*, 74 Misc3d 760, 769 [Sup Ct, Kings County 2022] citing *Marshall v United States*, 414 US 417 [1974]; *Garcia v San Antonio Metropolitan Transit Authority*, 469 US 528 [1985]). Rather, petitioners ask the Court to take notice that the respondents have admitted that the emergency crisis is over (petition ¶¶ 2, 11, 81, 97, 109, 119, 143, 155, and 160). Nevertheless, and even if the Court were persuaded that respondents were using the DOHMH to affect its personnel policies as an end run on collective bargaining practices, this Court is constrained not to look at the words of politicians, but rather their actions. Here, both the Mayor, through executive order, and the DOHMH Commissioner, through a declaration of a public health emergency, have formally declared states of emergency concerning COVID-19 and continue to keep the state of emergency in effect (*see Generoso*, 74 Misc3d at 770-771). To the extent that petitioners believe the Mayor and Commissioner's respective declarations of emergency are bogus, they have recourse to challenge their allegedly arbitrary and capricious nature.


Nevertheless, to the extent that an emergency still persists pursuant to these declarations, respondents have the authority to enforce the public health mandates (*see* NY City Health Code (24 RCNY) § 3.01[d]; Administrative Code of City of NY § 17-104; Administrative Code of City of NY) § 17-109[b]). Moreover, as previously stated, it is clear within the context of an emergency that respondents have both a rational basis and compelling governmental interest to treat public employees different than private employees to ensure the continuity of government operations in

order to perform essential services for New Yorkers. It is for these same reasons that injunctive relief is also inappropriate as the petitioners will be unable to demonstrate a likelihood of success on the merits, and a balancing of the equities would favor the same continuity of government services and protecting of the workforce and public from COVID-19 through the utilization of vaccination (*see Garland v New York City Fire Department*, F574 F Supp3d 120 [ED NY 2021]; *Generoso*, 74 Misc3d at 776).

Accordingly, it is ORDERED and ADJUDGED that the petition is denied and the special proceeding is dismissed.

The Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and judgment of the Court.

<u>1/12/2023</u> DATE			 RICHARD LATIN, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input 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"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE