

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

2023 NY Slip Op 30250(U)

January 25, 2023

Supreme Court, New York County

Docket Number: Index No. 156145/2022

Judge: David B. Cohen

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

PRESENT: HON. DAVID B. COHEN PART 58

Justice

-----X

TINA LYNCH,

Petitioner,

- v -

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, COMMUNITY SCHOOL DISTRICT 21 OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, and UNITED FEDERATION OF TEACHERS

Respondents.

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INDEX NO. 156145/2022

MOTION DATE 11/15/2022, 11/15/2022

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 23, 24, 25, 26, 27, 28, 29, 31, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 49, 50

were read on this motion to/for DISCOVERY.

In this special proceeding arising from petitioner’s employment as a tenured teacher with respondents, petitioner moves, pursuant to CPLR Article 78, for an order and judgment:

(1) annulling respondents’ determination of March 28, 2022, which denied the appeal of her request for a religious exemption and reasonable accommodation and terminated her employment; and (2) awarding her all benefits of employment from October 6, 2022 until the petition is decided (motion sequence one). Respondents answered and oppose the petition.

By notice of motion, petitioner moves pursuant to CPLR 408 for an order granting limited discovery (motion sequence two). Respondents oppose.

As the discovery motion may impact the outcome of the petition, it is addressed first.

I. DISCOVERY MOTION

A. Contentions

This case involves petitioner's request for a religious exemption and reasonable accommodation arising from the COVID-19 pandemic and respondents' policy requiring that all Department of Education (DOE) employees receive a vaccination against COVID-19 before being allowed to enter and work in DOE buildings. Petitioner alleges that she applied for a religious exemption based on her religious beliefs against being vaccinated, but respondents denied her application and ultimately terminated her (NYSCEF 1).

In August 2022, after her termination, petitioner received a response to her Freedom of Information Law request for documents from the Department of Health and Mental Hygiene, which included:

- (1) a letter from the Department of Health's (DOH) former commissioner to an arbitrator, discussing whether fetal cells were used in the development of the COVID-19 vaccines; and
- (2) an almost-entirely redacted email exchange between the United Federation of Teachers (UFT) and the other respondents, related to petitioner's arbitration, with the subject heading of "Urgent Need for Help - UFT Accommodation Process" (NYSCEF 34, 35).

Based on these documents, petitioner alleges that the arbitrator in charge of evaluating exemption requests was improperly taking direction from respondents as to how to deny religious exemption and accommodation requests, and she requests further information from respondents to "make sure they have acted with honor and integrity in the religious accommodation process." If new information indicates that respondents acted improperly, then

petitioner states that she would seek leave to amend the petition to assert that respondents violated lawful procedure and abused their discretion. Petitioner seeks all correspondence between respondents and the arbitration company related to the religious accommodation process (NYSCEF 33).

UFT opposes the application, observing that discovery is generally disallowed in special proceedings and only permitted if “ample need” for the information is shown, and that the information sought by petitioner is irrelevant to her claim that respondents’ determination to deny her accommodation request was arbitrary and capricious. It also contends that permitting petitioner to seek discovery would unduly delay the proceeding (NYSCEF 37).

Respondents Board of Education of the City School District of the City of New York, sued here as DOE, and Community School District 21 of the Board of Education of the City of New York (collectively, City respondents) also oppose, arguing that the information is not relevant to petitioner’s claims, nor is it material and necessary to the adjudication of the petition. In any event, in an Article 78 proceeding, only the administrative record may be examined, and nothing outside of it may be considered (NYSCEF 49).

In reply, petitioner reiterates her arguments (NYSCF 50).

B. Analysis

Pursuant to CPLR 408, discovery in special proceedings is permitted only with leave of the court and if necessary, and if providing the discovery would not unduly delay the proceeding (*Matter of Bramble v New York City Dept. of Educ.*, 125 AD3d 856, 859 [2d Dept 2015]). The party seeking discovery must demonstrate either “ample need” for it or that “unusual circumstances” exist (*Matter of People v Northern Leasing Sys., Inc.*, 193 AD3d 67, 74 [1st Dept 2021] [internal quotations marks and citations omitted], *lv dismissed* 37 NY3d 1088 [2021]).

Petitioner has not established that the requested information is material and necessary to her claim that respondents' determination was arbitrary and capricious, as review of the determination is limited to the administrative record (*see Matter of L&M Bus Corp. v New York City Dept. of Educ.*, 71 AD3d 127 [1st Dept 2009], *aff'd* 17 NY3d 149 [2011] [as record before administrative agency could not be supplemented in Article 78 proceeding, court providently denied motion for leave to conduct discovery]). Moreover, as petitioner has fully presented her arguments in her petition in support of her claim, she does not show an ample need or that unusual circumstances exist for the discovery (*see Matter of CPR/Extell Parcel I, L.P. v Cuomo*, 101 AD3d 473 [1st Dept 2012] [affirming denial of discovery in Article 78 proceeding as petitioner did not show that discovery was material or necessary to assess whether determinations were affected by error or law or arbitrary and capricious]). Petitioner's motion for discovery is thus denied.

II. ARTICLE 78 PROCEEDING

A. Petition (NYSCEF 1)

In her petition, petitioner alleges as follows:

- (1) She began working as a teacher for respondents in 1996, was granted tenure in 2005, and has at all times maintained good standing;
- (2) In August 2021, then-mayor Bill de Blasio and the Commissioner of Health and Mental Hygiene issued an order which required DOE employees to be vaccinated against COVID-19 by September 27, 2021 (NYSCEF 5);
- (3) Around September 2021, UFT filed a Declaration of Impasse regarding the vaccination order with the Public Employment Relations Board, leading to an arbitration;

(4) On September 10, 2021, the arbitrator issued his arbitration award, finding that UFT members seeking medical or religious exemptions from vaccination would be subject to a special “exemption and accommodation requests and appeal process,” and, specifically, for religious exemptions, the exemption had to be “documented in writing by a religious official (e.g., clergy). Requests shall be denied where the leader of the religious organization has spoken in public in favor of the vaccine, where the documentation is readily available (e.g., from an online source), or where the objection is personal, political, or philosophical in nature. Exemption requests shall be considered for recognized and established religious organizations (e.g., Christian Scientists).” (NYSCEF 4);

(5) On or about September 19, 2021, petitioner submitted her first request for a religious exemption, which included a letter written by the pastor of her church, wherein he states that petitioner has been attending the Trinity Tabernacle of Gravesend Church for three-plus years and that the Church objects to the COVID-19 vaccines as they were “developed from animal and aborted human fetal tissue,” as well as a letter by petitioner setting forth the basis for her request for a religious exemption (NYSCEF 7);

(6) On September 21, 2021, petitioner’s request was denied as she “failed to meet the criteria for a religious based accommodation. Per the Order of the Commissioner of Health, unvaccinated employees cannot work in a [DOE] building or other site with contact with DOE students, employees, or families without posing a direct threat to health and safety. [DOE] 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 8);

(7) On September 22, 2021, petitioner appealed the denial by submitting again the same two letters (NYSCEF 9), and the appeal was denied without explanation on October 2, 2021 (NYSCEF 10);

(8) On or about December 1, 2021, petitioner appealed to a Citywide Panel by submitting her prior letter (NYSCEF 12);

(9) On January 7, 2022, the Panel requested that petitioner submit certain additional information (NYSCEF 13), which she provided on or about January 12, 2022 (NYSCEF 14);

(10) On March 31, 2022, the appeal was denied (NYSCEF 15); and

(11) By letter dated April 11, 2022, DOE terminated petitioner's employment, effective April 7, 2022 (NYSCEF 16).

B. Answers

UFT does not oppose the petition (NYSCEF 30). City respondents assert in their answer that they followed federal guidance from the Centers for Disease Control and the Equal Employment Opportunity Commission in promulgating a COVID-19 vaccination policy, while being cognizant that they are required to reasonably accommodate an employee whose sincerely-held religious beliefs conflict with a work requirement, unless the accommodation would create an undue hardship or present a direct threat to others (NYSCEF 38).

As part of petitioner's Citywide Panel appeal, City respondents state that they submitted a Position Statement, which, as pertinent here, provides that in September 2021, the DOE resumed in-person teaching for all students, and all DOE staff were expected to work in person, and "there would be no fully remote staff positions." Moreover, "the vast majority of DOE staff must work in classrooms, lunchrooms, or other indoor settings in close contact for long hours with students, most of whom are unvaccinated and many of whom have preexisting health

conditions . . . Employees who receive exemptions therefore require an assignment that does not involve close contact with students.” (NYSCEF 46).

Therefore, even if an employee could demonstrate a sincerely-held religious belief against the COVID-19 vaccine, granting an exemption would create an undue hardship for the DOE, as

- (1) An exemption from the Vaccine Mandate would result in the inability of [petitioner] to perform the essential functions of the position. [Petitioner’s] position necessarily requires [her] to be in close contact for prolonged periods of time indoors with students, many still unvaccinated. As noted, other mitigation measures provide insufficient protection, particularly when transmission rates remain high;
- (2) State law and applicable collective bargaining agreements, including the operation of seniority systems, generally limit DOE’s ability to transfer staff between schools except in limited circumstances not applicable here. Accordingly, DOE lacks flexibility to unilaterally and expeditiously transfer existing DOE staff around the system to fill gaps created by DOE employees granted exemptions from the Vaccine Mandate;
- (3) More than 3,300 DOE staff have requested religious exemptions (far greater than the number of requests for medical exemptions). In light of these numbers, granting an exemption from the Vaccine Mandate would require the DOE to bear significant costs and operational difficulties. These include (1) identifying or creating sufficient alternative assignments, and (2) hiring and training additional staff to perform the exempted employee’s essential job functions while continuing to pay the exempted employee—effectively requiring the DOE to pay two salaries for one position, and to rely on a replacement for an undetermined period of time. Such costs and uncertainty negatively impact the ability of schools to plan, budget, and effectively support students.

(*Id.*). Therefore, “granting exemptions to employees who work in schools or similar settings generally poses an undue hardship for [DOE] because these employees are unable to perform the essential functions for their positions . . . “ (*Id.*).

C. Contentions

Petitioner argues that the denial of her religious exemption request was arbitrary and capricious as she submitted evidence to support her request, which was rejected by respondents

without any explanation, thus showing that there was no foundation or rational basis for the denial. She maintains that her objection to the vaccines is based on her sincere religious beliefs, and that respondents failed to review them. Petitioner also asserts that respondents did not engage in a “collaborative dialogue” in response to her religious accommodation request, which is required by New York City Administrative Code 8-107(28)(a) and that she could assert a religious discrimination claim against respondents. She observes that she requested to be permitted to work from home or remote full-time, which would have obviated the need for her to be vaccinated, but the request was ostensibly denied (NYSCEF 3).

City respondents assert that their decision to deny petitioner’s exemption request was not unreasonable, arbitrary, capricious, or an abuse of discretion, as they considered petitioner’s request but ultimately concluded that they could not reasonably accommodate her in another position as it would create an undue hardship for them, as set forth in the their position statement, and therefore, their denial had nothing to do with whether petitioner has a sincerely-held religious belief against vaccines. They deny that they failed to give petitioner a reason for their decision, observing that they told her at least twice that it was due to the fact that it would create a hardship for them. City respondents also deny that they did not engage in a collaborative dialogue with petitioner, as they reviewed her request three times and requested additional documents from her, which were also reviewed, and they otherwise followed the review procedure set forth in the arbitration award. They further argue that respondent District 21 is not a proper party as it is not suable entity. If the determination is overturned here, City respondents request that the matter be remanded to them (NYSCEF 48).

In reply, petitioner maintains that City respondents never intended to grant any religious exemptions to teachers, that the number of teachers seeking religious exemptions is lower than

the amount cited in respondents' position statement, and that she performed her job remotely for two years and could have continued to do so. She argues that City respondents have not established that "in-person" teaching is an essential function of a teacher's job or that, therefore, permitting her to teach remotely would be an undue hardship for them. Petitioner also contends that she would have consented to weekly testing in order to teach in the classroom but City respondents did not give her that option (NYSCEF 51).

D. Analysis

Pursuant to CPLR Article 78, a special proceeding may be commenced to challenge a determination issued by a governmental or administrative entity or agency, with the petitioner bearing the burden of establishing that the determination was, as pertinent here, arbitrary and capricious (CPLR 7803). The court may not substitute its judgment for the agency that made the determination, but must decide only whether there is a rational basis for the determination or if it is arbitrary and capricious (*see Cuccia v Martinez & Ritorto, P.C.*, 61 AD3d 609, 610 [1st Dept 2009], *lv denied* 13 NY3d 708 [2009]). When the determination involves factual evaluations made within an area of the agency's expertise, and is supported by the record, the determination must be given great weight and judicial deference (*see Flacke v Onondaga Landfill Sys.*, 69 NY2d 355 [1987]).

Here, DOE's policy, on its face, effectively precluded DOE employees whose work requires them to be "in-person" in DOE facilities from obtaining a religious exemption or accommodation against taking the COVID-19 vaccine. Thus, regardless of whether an employee established that they have a sincerely-held religious belief that prevented him or her from being vaccinated, it appears that DOE nevertheless would deny the exemption or accommodation

request on the ground that granting it would create an undue hardship for it, regardless of any individualized assessment as to the employee's request.

While this policy essentially stifles the right of certain employees to apply for a religious exemption/accommodation, DOE proffered several reasons for enacting it, none of which are irrational or arbitrary and capricious on their face. Pursuant to the policy statement, DOE considered whether it could accommodate religious exemption/accommodation requests by various means, and ultimately decided that it could not do so without endangering the health and safety of students and other employees, incurring costs related to hiring and transferring employees, and otherwise being unable to efficiently run the schools and teach students. Based on these findings, DOE's conclusion that, therefore, a DOE employee who refuses to be vaccinated due to religious beliefs cannot perform the essential functions of an in-person job and to accommodate him or her would create an undue hardship, is also not irrational or arbitrary and capricious, and is entitled to deference here (*see e.g., Maniscalco v New York City Dept. of Educ.*, 563 F Supp 3d 33, 39 [ED NY 2021], *aff'd* 2021 WL 4814767 [2d Cir 2021], *cert denied* 142 S Ct 1668 [2022] [denying injunction requested by DOE employees against vaccine mandate, as, in part, mandate "represents a rational policy decision surrounding how best to protect children during a global pandemic"]; *Kane v De Blasio*, 2022 WL 3701183, *13 [SD NY 2022] [finding that DOE established that granting religious exemptions to DOE employees would constitute undue hardship, as undue hardship is created when it results in more than de minimis cost to employer, and "plaintiffs' inability to teach their students safely in person presents more than a de minimis cost"]; *New York City Muni. Labor Comm. v City of New York*, 73 Misc 3d 621 [Sup Ct, New York County 2021] [denying injunction to school-based DOE employees and dismissing Article 78 petition, because vaccination order was not arbitrary and

agency’s decision to rely on its experts’ conclusions did not render order arbitrary, capricious, or lacking in rational basis]).

Petitioner thus fails to meet her burden in this proceeding. Although she argues that she proposed other ways for her to continue teaching without being vaccinated, DOE had legitimate reasons for rejecting them (see *Maniscalco.*, 563 F Supp 3d at 40 [while “social distancing, mask wearing, and testing may be sufficient to protect other municipal employees in different contexts . . . [i]t is not irrational to conclude that such measures would not adequately protect unvaccinated children in a school setting, especially as some of these children will have preexisting conditions that make them especially vulnerable”]).

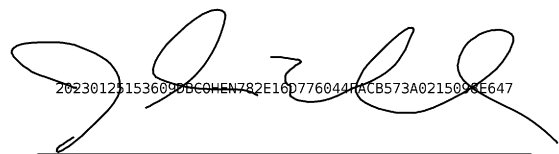
In light of this result, there is no need to address City respondents’ argument related to District 21.

Accordingly, it is hereby

ORDERED, that petitioner’s motion for discovery (mot. seq. 002) is denied; and it is further

ORDERED and ADJUDGED, that the petition (mot. seq. 001) is denied and the proceeding is dismissed.

1/25/2023
DATE


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DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: