

**District Council 37, AFSCME, AFL-CIO v Board of
Educ. of the City Sch. Dist. of the City of N.Y.**

2023 NY Slip Op 33501(U)

October 4, 2023

Supreme Court, New York County

Docket Number: Index No. 650402/2023

Judge: Shahabuddeen Abid Ally

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. SHAHABUDDEN ABID ALLY PART 16TR

Justice

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DISTRICT COUNCIL 37, AFSCME, AFL-CIO, HENRY GARRIDO, as Executive Director, and LOCAL 372, AFSCME AFL-CIO, SHAUN D. FRANCOIS I, as President, (O/B/O Sharon Twilley-Gaymon),

Petitioners,

- v -

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK (d/b/a THE NEW YORK CITY DEPARTMENT OF EDUCATION), DAVID C. BANKS, as Chancellor of the New York City Department of Education,

Respondent.

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**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-5, 13-18, 21 were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT

Petitioners bring this special proceeding pursuant to Article 75 of the Civil Practice Law and Rules, seeking an order: (1) confirming the January 21, 2022 Award of the Grievance Arbitration Panel (“Award”); (2) directing respondent to comply with the Award by making the Grievant whole in back pay and benefits for the period from March 23, 2019 to September 16, 2020; (3) directing respondent to pay statutory interest on any monies owed to the Grievant; and (4) granting to petitioners all reasonable court costs arising from this proceeding. Respondents have answered and petitioners filed reply. Upon the above cited papers, the petition is granted.

Background

Petitioners DC 37 and Local 372 (collectively “the Union”) and respondent The Board of Education of the City School District of the City of New York d/b/a the New York City

Department of Education (“DOE”) are parties to a collective bargaining agreement which covered the employment of Sharon Twilley-Gaymon (“Grievant”). To resolve a dispute concerning respondents’ alleged failure to maintain their obligations under the collective bargaining agreement, the parties participated in a grievance panel arbitration.

On or about January 21, 2022, after three days of hearings, the arbitrator issued an award on behalf of the grievance panel that ordered the following:

1. The Department did not have good and sufficient reason after due consideration to suspend the Grievant;
2. The appropriate remedy for the violation of Article IX is that the Grievant be granted a leave of absence with pay for a one year period and without charge to time allowances, less any interim earnings, so that she be made whole for any losses sustained for the violation of Article IX for the period March 23, 2019 through March 22, 2020;
3. The appropriate remedy for the violation of Article XXI is the Grievant shall be made whole for any losses she sustained as a result of her suspension during the period March 23, 2020 through September 16, 2020, less interim earnings, if any, and less benefits she received pursuant to Workers' Compensation;
4. The grievance to be sustained in accordance with the above terms.

(petitioner’s exhibit A, 23-24). The Grievant provided an affirmation of interim earnings and the parties engaged in a series of communications regarding compliance with the Award. On or about September 29, 2022, respondent DOE issued a back-pay check in the amount of \$7,856.90.

Petitioners, contending that the amount paid is below the required sum due to the Grievant, commenced the instant proceeding. Respondent answers that based upon their calculations, the Grievant has actually been erroneously overpaid. The petition was submitted on the pleadings on June 29, 2023

Discussion

CPLR § 7510 provides that a court shall confirm an arbitration award upon application of a party made within one year following the award unless the award is vacated or modified in

accordance with CPLR § 7511. Confirmation shall be summarily granted unless vacatur or modification is raised by a party or petitioner's application is untimely (*see Bernstein Family Ltd Partnership v Sovereign Partners LP*, 66 AD3d 1 [1st Dept 2009]).

Here, petitioner's application was timely, as it was commenced within one year of the Award's delivery. The award has not been vacated or modified, and respondent does not cross-move here for an order of vacatur or modification. Respondent's contention that the Award has been satisfied or even overpaid is immaterial, as mootness is not a defense to a proceeding to confirm an arbitration award (*id.* at 205-206 ["In short, it is irrelevant in a proceeding to confirm an award whether there is a dispute about whether the award has been fully satisfied"]). Upon confirmation of the Award, the parties have recourse to dispute the issue of compliance in the context of an enforcement proceeding (*id.* at 206; *see also Pine Street Assoc., L.P. v Southridge Partners, L.P.*, 107 AD3d 95, 100 [1st Dept, 2013]). Absent grounds for vacatur or modification of the Award, the Court is mandated to confirm the Award (CPLR § 7510).

Accordingly, it is hereby:

ORDERED and ADJUDGED that the petition is granted and the Award is confirmed; and it is further


ORDERED that the Clerk of the Court shall enter judgment confirming the Award; and it is further

ORDERED that petitioner shall serve a copy of this order upon respondent and upon the General Clerk's Office with notice of entry within twenty days thereof; and it is further

ORDERED that such service upon the Clerk 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 "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.

<p>10/4/2023 DATE</p>	 _____ SHA ABUDDEEN ABID ALLY, A.J.S.C.	
<p>CHECK ONE:</p>	<input checked="" type="checkbox"/> CASE DISPOSED <input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED <input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE
<p>APPLICATION:</p>	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	
<p>CHECK IF APPROPRIATE:</p>		