

Local 621, S.E.I.U. v New York City Police Dept.

2025 NY Slip Op 31335(U)

April 11, 2025

Supreme Court, New York County

Docket Number: Index No. 157946/2024

Judge: Verna L. Saunders

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36

Justice

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INDEX NO. 157946/2024

LOCAL 621, S.E.I.U., and WADYM ZAMIATY,
Petitioners,

MOTION SEQ. NO. 001

- v -

NEW YORK CITY POLICE DEPARTMENT, EDWARD A.
CABAN, JORDAN A. FARNHAM, and CITY OF NEW YORK,
Respondents.

DECISION + ORDER ON
MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15,
16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for ARTICLE 78

In this petition, LOCAL 621, S.E.I.U. ("Local 621"), the certified collective bargaining
representative for all employees of the City of New York and related public employees holding
the title Supervisor of Mechanics (Mechanical Equipment) ("SMME"), and WADYM
ZAMIATY ("Zamiaty") are the petitioners. Zamiaty is an employee of respondents, who was
promoted to SMME in 2013. Zamiaty has been a member of LOCAL 621 since that time.
Petitioners contend that Zamiaty is a tenured civil servant after completing his probationary
period as an SMME, and therefore pursuant to Civil Service Law § 75, he cannot be subjected to
discipline without prior notice of stated charges and an opportunity to contest such charges at a
hearing. The thrust of this proceeding concerns a December 3, 2023 Equal Employment
Opportunity ("EEO") complaint against Zamiaty, wherein it was alleged that he used the word
"cunty" towards a former NYPD Auto Service Worker, Thomas Vittore ("Vittore"), on
December 1, 2023. According to petitioners, Zamiaty directed the word towards Vittore after
being exasperated by Vittore's unpleasant and hostile conduct towards him for approximately
three months. Following an interview by NYPD's EEO Division on December 20, 2023,
concerning the December 1, 2023 utterance, respondents issued a letter dated May 1, 2024, in
which they informed Zamiaty that Vittore's "allegations of employment discrimination made
against you [Zamiaty] are SUBSTANTIATED. The Police Commissioner has directed that you
be issued a Schedule 'B' Discipline." Petitioners assert that they requested but were not
provided with a copy of the December 5, 2023, EEO complaint, including the name(s) of the
complainant(s).

Respondents subsequently issued another letter, dated June 17, 2024, stating that the
word directed towards Vittore was not a violation of Administrative Guide Procedure 332-01,
Employment Discrimination, but rather a violation of the Administrative Guide Procedure 304-
06(2), Prohibited Conduct/Discourtesy: "using discourteous or disrespectful remarks regarding
another person's age, ethnicity, race, religion, gender identity/expression, sexual orientation or
disability. The Police Commissioner has directed that you be issued a Schedule "B" Command
Discipline." In response to Local 621's inquiry seeking clarification of the June 17, 2024, letter,
respondents in an e-mail dated June 18, 2024, communicated that the complaint against Zamiaty

was deemed substantiated for another potential administrative guide violation, not as an EEO violation and therefore, the May 1, 2024, letter is null and void. The communication added that “the letter from June 17th is the revised letter that DAO [the NYPD Advocate’s Office] has received and will be on file.” According to petitioners, the June 17, 2024 determination issued against Zamiaty has and will continue to have the potential to adversely affect his career in terms of opportunities for promotion within the SMME title or otherwise within the NYPD. As such, petitioners urge the court to find that the issuance of the June 17, 2024 determination against Zamiaty was arbitrary and capricious and in violation of Civil Service Law § 75. They also urge the court to issue an order annulling and rescinding the June 17, 2024 determination and enjoining respondents, permanently and *pendente lite* from making any use of the June 17, 2024 determination, and directing respondents to expunge any documents in their files that reflect the June 17, 2024 determination (NYSCEF Doc. No. 1, *verified petition*). Petitioners submit a copy of the NYPD communications dated May 1, 2024; June 17, 2024; June 18, 2024, in addition to the Local 621 contract (NYSCEF Doc. Nos. 3-5; 10).

In their memorandum of law, petitioners contend that it was improper for respondents to issue the June 17, 2024 determination, which carries a penalty of the loss of at least five vacation days, without first allowing Zamiaty a hearing, as this breaches his due process rights. According to petitioners, the law in New York State mandates that the issuance of an EEO determination against a tenured civil servant without a hearing is, in addition to being a due process violation, a violation of Civil Service Law § 75. To the extent that an EEO determination against a tenured civil service employee constitutes discipline, petitioners argue that imposing a discipline without providing a hearing is unlawful and palpably improper. Next, petitioners maintain that they cannot discern whether respondents deem the June 17, 2024 determination to be an EEO determination because the letter seems to dismiss all employment discrimination claims against Zamiaty, while listing the case as “EEO Case # 228.23”. They also articulate that the instant petition should be deemed superfluous if respondents agree that disciplinary action against Zamiaty can be resolved through the grievance procedures established by the collectively bargained Local 621 contract (NYSCEF Doc. No. 11, *petitioners’ memo of law*).

Respondents oppose the application and cross-move for an order, pursuant to CPLR 3211(a)(7), dismissing the verified petition on the ground that they have not deprived petitioners of their statutory due process rights under Civil Service Law § 75. Respondents assert that since the June 17, 2024 letter was merely a referral of the underlying matter to the DAO to determine whether to enforce the NYPD preferred charges, any claim that the substantiation constitutes a discipline against Zamiaty without a statutory hearing is incredulous. According to respondents, Zamiaty has rejected the proposed penalty of a reduction of five vacation days and has instead elected to proceed with a Civil Service Law § 75 hearing or, in the alternative, a grievance hearing pursuant to the collective bargaining agreement. Respondents insist that the instant matter is neither an EEO matter nor was Zamiaty’s use of discourteous language found to be an EEO violation or discrimination of any kind. Further, respondents note that neither the June 17, 2024 letter, nor the EEO Report generated after an investigation into the allegations, have been placed in Zamiaty’s personnel file; rather, they are contained in a confidential NYPD EEO file only to be used as evidence by the DAO. They also assert that the statutory due process set forth in Civil Service Law § 75 is not available where, as here, the determination does not amount to a

reprimand, fine, suspension, demotion, or dismissal. Respondents contend that Zamiaty has not been directed to participate in an additional EEO training as a form of discipline. Next, respondents posit that, to the extent petitioners claim Zamiaty was denied due process under an alternative theory, Zamiaty does not identify a property right of which he was deprived without due process. Respondents assert that Zamiaty was notified of the allegations against him and provided an opportunity to meet with the EEO as part of the investigations. Lastly, respondents posit that their decision to proffer charges against Zamiaty after an investigation, had a rational basis and was neither arbitrary nor capricious because the allegation against Zamiaty was substantiated since he admitted to the use of the discourteous word (NYSCEF Doc. No. 28, *respondents' opposition and cross-motion*). Respondents also furnish, *inter alia*, a copy of the NYPD Disciplinary System Penalty Guidelines; EEO policy; NYPD Administrative Guide; and Zamiaty's declination to accept the proposed disciplinary action (NYSCEF Doc. Nos. 20-23; 27).

In opposition to respondents' cross-motion to dismiss, petitioners maintain that the June 17, 2024 letter against Zamiaty is a formal reprimand that constitutes discipline. As such, petitioners reiterate that the determination against Zamiaty, which was approved by the Police Commissioner that Zamiaty's behavior warrants a Schedule B Command Discipline, without a hearing, is contrary to the prevailing law in New York State. Further, petitioners state that any claims that the determination did not impose discipline on Zamiaty other than that the substantiated EEO findings will be referred to the DAO to determine whether to enforce the preferred charges lacks credulity. Petitioners posit that contrary to respondents claims, Zamiaty was required to undergo further EEO training following the June 17, 2024 determination. They also insist that to the extent the June 17, 2024 determination was issued by the Executive Director of the NYPD EEO Division, bearing "EEO Case #228.23", this is an EEO case, notwithstanding respondents' assertion that the complaint was substantiated under the Administrative Guide Procedure of "Prohibited Conduct/Discourtesy". Moreover, petitioners set forth that even if the adverse determination was not placed in Zamiaty's official personnel file, respondents do not deny that the June 17, 2024 determination will be retained in NYPD or New York City files and could be used against Zamiaty in connection with a future disciplinary or EEO charge or in consideration for a promotion. Next, petitioners maintain that respondents' issuance of the June 17, 2024 determination without first affording Zamiaty due process renders the determination arbitrary and capricious. Zamiaty should be given the opportunity to contest whether the word he used towards Vittore can be rightly deemed as discourteous towards Vittore's age, ethnicity, race, religion, or gender. Lastly, petitioners urge the court to deny respondents an opportunity to file and serve an answer if the cross-motion to dismiss is denied (NYSCEF Doc. No. 33, *petitioners' memo of law in opposition to the cross motion*). Finally, petitioners submit a copy of the notification requiring Zamiaty to report for an Integrity Control Officer assignment (NYSCEF Doc. No. 32, *notice to appear for an ICO assignment*).

In their reply memorandum of law in support of the cross-motion to dismiss, respondents maintain that, contrary to petitioners contentions, petitioners are aware that Zamiaty has only been referred to the DAO to determine the appropriate disciplinary action to be taken, but has not been given a disciplinary penalty. Respondents assert that any action taken against a tenured employee other than a reprimand, a fine, a suspension, a demotion, or a dismissal does not invoke the statutory due process rights set forth in Civil Service Law § 75. According to

respondents, the substantiation here does not constitute a reprimand, a fine, a suspension, a demotion, or a dismissal, and hence, the statutory due process hearing under Civil Service Law § 75 is not triggered. They also state that Zamiaty will not be disciplined until the DAO conducts a full hearing. The June 17, 2024 letter was a recommendation, not an approval, by the Commissioner that Zamiaty be subjected to a Schedule B Command Discipline for accusing a colleague of being “cunty”, which in and of itself is not discipline, argue respondents. They further articulate that the mere act of finding that an employee violated EEO policy is neither a reprimand nor discipline; rather, courts have found the act of placing such findings into the employee’s permanent personnel file, with actual reprimands in the letter, discipline. Next, respondents set forth that contrary to petitioners’ averments, Zamiaty was not directed to attend an EEO training as a result of the June 17, 2024 determination. Also, they assert that the instant matter is not an EEO matter nor was Zamiaty’s use of discourteous language found to be an EEO violation or discrimination of any kind. Respondents posit that the DAO hearing will discuss whether Zamiaty’s use of the word “cunty” was based on “age, ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability.” To find that a pre-determination due process hearing is required, argue respondents, would upend their EEO policies and actions (NYSCEF Doc. No. 35, *respondents’ memo in reply*).

Civil Service Law § 75 provides in pertinent part that: “[a] person described in paragraph (a) . . . of this subdivision shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section.”

The Court of Appeals has held that the failure to hold a pre-determination hearing prior to substantiating allegations against permanent civil service employees in a formal EEO investigation violates their due process safeguards (see *Matter of D’Angelo v Scoppetta*, 19 NY3d 663, 669 [2012]).

Here, petitioners have demonstrated that respondents violated Zamiaty’s due process rights insofar as they failed to conduct a hearing prior to substantiating the EEO complaint and issuing the EEO determination (see *Matter of Local 621 v New York City Dept. of Transp.*, 178 AD3d 78, 81 [1st Dept 2019]). Contrary to respondents’ contentions, due process rights are violated when, without a hearing, a tenured employee is subject to a formal investigation by the EEO office in response to a complaint for use of offensive or derogatory language, a letter substantiating the complaint is issued by the EEO office in consultation with the department head, and same is placed in a file that may adversely affect future employment (see *Matter of D’Angelo v Scoppetta*, 19 NY3d 663, 669 [2012]). Respondents do not contest that the June 17, 2024 letter substantiating the complaint against Zamiaty for his word choice towards a co-worker, purportedly in the DAO files, may adversely impact his opportunity for further career development in the course of his employment with respondents. In light of the undisputed fact that Zamiaty was not afforded a hearing, the court directs that, to the extent the EEO’s June 17, 2024 determination is contained in Zamiaty’s personnel file and/or NYPD records, such documents shall be expunged forthwith (see *Matter of D’Angelo*, 19 NY3d at 669; *Matter of Local 621*, 178 AD3d at 80-81). Given the above, the cross-motion seeking an order dismissing petitioners’ claims is denied. All other arguments have been considered and are either without merit or need not be addressed. Accordingly, it is hereby

ORDERED that those branches of petitioners' motion seeking an order determining that Zamiaty's due process rights under Civil Service Law § 75 were violated and seeking to expunge the EEO determination from all personnel and NYPD files are granted; and it is further

ORDERED that respondents shall expunge copies of all documents containing the June 17, 2024 determination from its files; and it is further

ORDERED that respondents' cross-motion seeking an order dismissing petitioners' claims is denied; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, the counsel for petitioners shall serve a copy of this decision and order, with notice of entry, upon respondents.

This constitutes the decision and order of this court.

April 11, 2025


HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	