SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: ALEXANDER W. HUNTER JR **PART** 33

Justice

Index Number : 113029/2011
ROBERTS, LILLIAN
vs.
NYC DEPARTMENT OF EDUCATION
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____ **, were read on this motion to/for** _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** 1-17

Answering Affidavits — Exhibits _____ **No(s).** 18-35

Replying Affidavits _____ **No(s).** 36-41

Upon the foregoing papers, it is ordered that this motion is

See memorandum decision and judgment annexed hereto.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 4/11/12

_____, J.S.C.
ALEXANDER W. HUNTER JR

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

1. CHECK ONE: ..... ☑ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☑ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33

----------X

In the Matter of the Application of
Lillian Roberts, as Executive Director of District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO and Santos Crespo, as President of Local 372 of District Council 37, and Leonard Allen, a legal guardian, Eva Caceras, a parent coordinator, Regina Dudley, a parent coordinator, Marielys Garcia, a parent coordinator, Cliftonia Johnson, a community associate, Sharon McCorkle, a parent coordinator, Guadalupe Osorio, a school aide and parent, Maria Skinner, a school aide, and Lisa Slade, a family worker, on behalf of themselves and others similarly situated,

Petitioners,

For a Judgment pursuant to C.P.L.R. Article 78

-against-

The Board of Education d.b.a. the Department of Education of the City of New York, and Dennis M. Walcott, as Chancellor of the City School District,

Respondents,

----------X

Index No.: 113029/11

Decision and Judgment

HON. ALEXANDER W. HUNTER, JR.

In this hybrid proceeding, the application by petitioners for an order pursuant to C.P.L.R. Article 78 and for a declaratory judgment pursuant to C.P.L.R. 3001, declaring respondents' determination to terminate 642 employees in the titles of school aide, health aide, family worker, community associate, and parent coordinator as arbitrary, capricious, and in bad faith and to declare respondents' determination to implement a 3.26% reduction across all schools as violative of Education Law § 2590-r(g) is denied.

In 2007, the Fair Student Funding ("FSF") program was established to provide New York City schools with 100% of the $3.2 billion in additional funding by 2011. To date, New York City schools have only received $1.8 billion of the $3.2 billion. Respondents assert that the current fiscal year budget contains a $2 billion increased revenue commitment from New York City to cover the loss of $853 million in Federal stimulus funds and the State's $812 million in education cuts. Under the FSF program, formulas were devised to determine how much funding each school should receive. However, due to the lack of State funding, some schools do not

receive the money calculated for them under the formulas. At the same time, there are a number of schools that are above formula. The Independent Budget Office has determined that changing these schools' budgets to comport with the FSF program must be done gradually so as to not destabilize them.

Despite the addition of City dollars, respondent the Board of Education d.b.a. the Department of Education of the City of New York ("DOE") still needed to make additional school budget reductions. The United Federation of Teachers ("UFT") agreed to end all teacher sabbaticals for one year and to reform the Absent Teacher Reserve pool, which would reduce substitute teacher costs. These UFT concessions are expected to save approximately $57 million. As a result of the Program to Eliminate the Gap and increased tax revenue projections, the direct cut to school budgets was reduced from $370 million to $178 million.

The DOE evaluates the needs of each school and calculates what its budget should be given the limitations of its overall budget. These recommendations are then presented to the PEP for modification or adoption. Thereafter, the principals of each school determine how to use the funds they receive to best meet the needs of their students.

On June 27, 2011, the Panel on Educational Policy ("PEP") reviewed and adopted the proposed budget on an emergency basis. The DOE administrators tried to consider and make all feasible and reasonable efforts to ensure an equitable allocation of funding. Ultimately, the PEP reduced the budget by $178 million which amounted to all school budgets being reduced by 3.26%. The City Council approved the budget on June 29, 2011. On August 17, 2011, the PEP adopted the budget that have been previously approved on an emergency basis. On October 7, 2011, respondent DOE effected layoffs in twenty-four titles represented by seven different labor unions.

Petitioners argue that respondents' determination to terminate 642 employees is in violation of Education Law § 2590-r(g), which they maintain requires the Chancellor to adopt budgets and implement reductions in an equitable manner that considered the needs of each community. Petitioners assert that the DOE failed to consider other viable alternatives before choosing termination. Local 372 met with the DOE and proposed: 1) the recoupment of the $16.5 million in Tax Levy Funds over Formula; 2) reducing the number of hours that these employees worked each day; and 3) two furlough days on the days when school aides report for work but when no students are in attendance. Contrary to the DOE's assertion, petitioners contend that District Council 37 ("DC 37") was not the only union to reject the City's proposal to tap into the union health fund. Moreover, petitioners argue that the DOE misled principals into believing that parent coordinators would be excessed, where an individual keeps his or her job and their salary is funded by a central budget instead of a school-based budget, instead of being terminated.

Parent coordinator and petitioner Regina Dudley's position was eliminated in October 2011. In September 2011, Principal Rochan changed the title of school aide Edwarth Morris to community associate. Petitioners assert that Mr. Morris is performing the same functions as a parent coordinator. Parent coordinator and petitioner Eva Caceras' position was eliminated in

October 2011. Principal Theodoro hired someone else to perform the same functions as well as four other hires between August and September 2011. Petitioners maintain that there have been over 900 title changes within the Local 372 membership in September and October of 2011 which suggests that principals changed titles of favored employees to retain them in new titles. Petitioners argue that terminating employees and hiring new employees to perform the same duties is indicative of bad faith. Having funds available and implementing over 600 layoffs is also indicative of bad faith.

Respondents oppose the petition in its entirety and argue that petitioners have failed to establish that the DOE is in violation of any law and fails to establish that its determination to adopt a budget which resulted in a reduction of funds to schools was arbitrary, capricious, or done in bad faith. Respondents maintain that Education Law § 2590-r(g) is inapplicable in the instant proceeding because the final budget that was adopted by the City Council and the Mayor did not reduce or increase the budget previously adopted by the PEP or DOE. Respondents assert that they considered DC 37's proposals, however they felt that these proposals would do more harm than good to all DOE students. Petitioners have also failed to establish that the layoffs were executed in bad faith within the narrow meaning of the Civil Service Law, because there was a bona fide financial reason in effectuating the layoffs. Finally, respondents argue that DOE decisions regarding the staffing, supervision, and the allocation of resources are not arbitrary and capricious and are not justiciable claims.

In reply, petitioners argue that they have demonstrated that the layoffs were done in bad faith to retaliate against the unions. If there was no bona fide financial reason for the termination, no savings were realized, or someone was hired to replace the terminated employee, then the termination was done in bad faith. Petitioners assert that there was no economic justification for the terminations especially in light of other available options such as reducing the number of hours for the school aides. Petitioners also argue that the impact of the school-based budget cuts were not considered and therefore was a violation of Education Law § 2590-r(g). Lastly, petitioners contend that as taxpayers and residents of the City of New York, they have a vested interest in the allocation of the DOE's funds. They maintain that the DOE terminated the employment of over 600 people without regard to the facts.

As a policy matter, courts will not interfere in areas that it is ill-equipped to undertake and where another branch of government is more suited to the task. **Jones v. Beame, 45 N.Y.2d 402 (1978).** "[A]bsent a showing of an ultra vires act or a failure to perform a required act, the decision of a school official involving an inherently administrative process, which is uniquely part of that official's function and expertise, presents a nonjusticiable controversy." **Matter of Parent Teacher Assn. of P.S. 124M v. Board of Educ. of City School Dist. of City of N.Y., 138 A.D.2d 108, 113 (1st Dept. 1988).**

Decisions concerning the allocation of scarce school resources and school staffing levels are left to the discretion and sound judgment of school administrators. **See, Matter of New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82, AFSCME, AFL-CIO v. Cuomo, 64 N.Y.2d 233 (1984); Matter of Bokhair v. Board of Educ. of the City of N.Y.,**

(1978). Therefore, this court finds that petitioners' claims regarding the DOE's decision to reduce all school budgets by 3.26% and to terminate 642 employees are nonjusticiable.

Based on the foregoing, this court need not determine whether respondents' determination was arbitrary and capricious. However, it should be noted that a determination is arbitrary and capricious when it is made "without sound basis in reason and is generally taken without regard to the facts." **See Matter of Pell v. Bd. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 N.Y.2d 222, 231 (1974).** "Even though the court might have decided differently were it in the agency's position, the court may not upset the agency's determination in the absence of a finding, not supported by this record, that the determination had no rational basis." **In the Matter of Mid-State Mgt. Corp. v. New York City Conciliation and Appeals Bd., 112 A.D.2d 72, 76 (1st Dept. 1985).** Therefore, this court's role is limited to whether or not respondents' final determination was made without a rational basis.

It must be noted that the DOE did not order the layoffs of the more than six hundred employees. Instead, the DOE reduced its budget after careful consideration and each school's principal made adjustments to their respective schools as a result. Although petitioners maintain that they have better ideas on how to save money, that is not enough to render an agency's determination as arbitrary and capricious. In addition, petitioners have failed to establish that the layoffs were done in bad faith and that respondents have failed to comply with Education Law § 2590-r(g).

Accordingly, it is hereby,

ADJUDGED that the petition is denied, with costs and disbursements to respondents; and it is further;

ADJUDGED that respondents, having and address at _____, do recover from petitioners, having an address at

_____,

costs and disbursements in the amount of $_____, as taxed by the Clerk, and that respondents have execution therefor.

Dated: April 11, 2012

ENTER:

_____
J.S.C.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).