

Richards v Board of Educ. of the City School Dist. of the City of NY
2012 NY Slip Op 31539(U)
May 31, 2012
Sup Ct, New York County
Docket Number: 104257/11
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: LUCY BILLINGS
J.S.C.
Justice

PART 46

KAMEISA RICHARDS

INDEX NO. 104257/11

-v-

MOTION DATE _____

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF
THE CITY OF NEW YORK and CATHLEEN BLACK

MOTION SEQ. NO. 1

The following papers, numbered 1 to 3, were read on this ^{petition} motion to/for dismiss respondents' determinations

Notice of ^{Petition} Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s) 1-2

Answering Affidavits — Exhibits _____ No(s) 3

Replying Affidavits _____ No(s) _____

Upon the foregoing papers, it is ordered that this motion is and adjudged that:

The court grants respondents' motion to dismiss the petition in part and denies the petition in part, but denies the remainder of respondents' motion and grants the petition to the extent set forth, pursuant to the accompanying decision. C.P.L.R. §§ 7803(b), 7806.

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

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: 5/31/12

Lucy Billings, J.S.C.

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 46

-----x

KAMEISA RICHARDS,

Index No. 104257/2011

Petitioner

- against -

DECISION AND ORDER

BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK and
CATHLEEN BLACK, in her official
capacity as the Chancellor of the City
School District of the City of New York,

Respondents

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141B).

APPEARANCES:

For Petitioner

Richard Casagrande Esq.
By: Eric W. Chen Esq. and Kevin A. Sills Esq.
52 Broadway, New York, NY 10004

For Respondents

Corporation Counsel of the City of New York
By: Adam E. Collyer, Assistant Corporation Counsel
100 Church Street, New York, NY 10007

LUCY BILLINGS, J.S.C.:

Petitioner seeks to reverse respondents' termination of
petitioner's probationary employment and respondents'
unsatisfactory rating of petitioner's performance as a teacher
for the 2009-2010 school year. She claims that respondents'
determination violated procedures prescribed in their handbooks
and in the Collective Bargaining Agreement (CBA) between
respondent Board of Education and petitioner's labor union, the
United Federation of Teachers, and was arbitrary and capricious.
C.P.L.R. § 7803(3). Respondents move to dismiss the petition on

the grounds that reversal of the termination is barred by the applicable statute of limitations, and petitioner fails to state a claim for reversal of her unsatisfactory rating. C.P.L.R. §§ 217(1), 3211(a)(5) and (7), 7803(3), 7804(f).

I. THE PETITION TO REVIEW THE TERMINATION OF PROBATIONARY EMPLOYMENT IS TIME-BARRED.

This court may not review respondents' termination of petitioner's probationary employment because more than four months elapsed between her receipt of respondents' notice dated July 16, 2007, terminating that employment, and her commencement of this proceeding. C.P.L.R. § 217(1); Kahn v. New York City Dept. of Educ., 18 N.Y.3d 457, 462 (2012); Anderson v. Klein, 50 A.D.3d 296 (1st Dep't 2008); Friedland v. New York City Dept. of Educ., 39 A.D.3d 395, 396 (1st Dep't 2007); Lipton v. New York City Bd. of Educ., 284 A.D.2d 140, 141 (1st Dep't 2001).

Therefore the court proceeds to review respondents' further action that petitioner challenges: an unsatisfactory rating (U-rating) for the 2009-2010 school year. Kahn v. New York City Dept. of Educ., 18 N.Y.3d at 470.

II. RESPONDENTS' U-RATING AND AFFIRMANCE OF THE U-RATING WERE ARBITRARY AND CAPRICIOUS.

Although respondents' failure to establish binding procedures for evaluating teachers may violate lawful procedure, C.P.L.R. § 7803(3); 8 N.Y.C.R.R. 100.2(o)(1)(iii)(a)(2), the court may not vacate respondents' evaluation of petitioner based on their violation of the Board of Education's Division of Human Resources Handbook, "Rating Pedagogical Staff Members." Brown v.

Board of Educ. of the City School Dist. of the City of N.Y., 89 A.D.3d 486, 488 (1st Dep't 2011). Cf. Blaize v. Klein, 32 A.D.3d 363 (2d Dep't 2009). Nonetheless, petitioner presents admissible evidence of respondents' contractual obligation to provide pre-observation discussions or conferences as part of the evaluation process. This evidence consists of authenticated copies of the CBA and of the guidebook, "Teaching for the 21st Century," which respondents do not controvert. V. Pet. Ex. E, at 50-51, CBA art. 8, § 8J; Ex. G, at 29.

Respondents affirmed petitioner's U-Rating, not only without substantial evidence, but without any evidence whatsoever contradicting the testimony by petitioner that she never received a pre-observation discussion or conference. Id. Ex. C, at 59-60, 66. Although petitioner's principal testified regarding the standard procedure at their school, neither he nor anyone else testified whether that procedure was followed in petitioner's case, nor did respondents produce any other evidence that petitioner received pre-observation discussions or conferences. Id. at 23-24. Because respondents affirmed her U-rating without any evidence contradicting her testimony that she did not receive the required pre-observation discussion or conference, respondents' determination is "without sound basis in reason," "without regard to the facts," and therefore arbitrary. Pell v. Board of Educ., 34 N.Y.2d 222, 231 (1974). See Goodwin v. Perales, 88 N.Y.2d 383, 392 (1996); Soho Alliance v. New York State Liq. Auth., 32 A.D.3d 363 (1st Dep't 2006).

III. CONCLUSION

For the foregoing reasons, the court grants respondents' motion to dismiss the petition insofar as it seeks review of petitioner's termination from probationary employment, but denies the motion insofar as the petition seeks review of her U-rating for the 2009-2010 school year, and remands the proceeding to respondents for a new determination of her rating for that year. Because the court does not disturb respondents' determination to terminate petitioner's probationary employment, and no party indicates any incompleteness in the administrative record already presented to support the petition and the motion, the court perceives no purpose in proceeding further in this forum with an answer to the petition. See C.P.L.R. §§ 409(b), 7804(f), 7806; Nassau BOCES Cent. Council of Teachers v. Board of Coop. Educational Servs. of Nassau County, 63 N.Y.2d 100, 102-103 (1984); Camacho v. Kelly, 57 A.D.3d 297, 299 (1st Dep't 2008). If any party seeks to show such a purpose, that party may move, by an order to show cause, to restore this proceeding. Otherwise this decision constitutes this court's judgment granting the petition to the extent set forth, denying the remainder of the petition, and dismissing the proceeding. C.P.L.R. §§ 7803(3), 7806.

DATED: May 31, 2012



 LUCY BILLINGS, J.S.C.

UNFILED JUDGMENT

LUCY BILLINGS
J.S.C.

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