Matter of Merenstein v Board of Educ. NYC Sch. Dist.
2012 NY Slip Op 32844(U)
October 18, 2012
Sup Ct, New York County
Docket Number: 111208/2011
Judge: Lucy Billings

[* 1]

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

PRESENT: LUCY BILLINGS J.S.C. PART 46

Justice

Index Number : 111208/2011
MERENSTEIN, JUDITH
vs.
BOARD OF EDUCATION
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to 3, were read on this motion to/for dismiss the petition

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits	2
Replying Affidavits	3

Cross-Motion: ☑ Yes ☐ No

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

The court denies respondents' motion to dismiss the petition, pursuant to the accompanying decision. C.P.L.R. §§ 3211(a)(7), 7803(3), 7804(f).

11-12-d

FILED

NOV 13 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 10/18/12

Lucy Billings

LUCY BILLINGS J.S.C.

Check one: ☐ FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 46
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In the Matter of the Application of JUDITH MERENSTEIN,

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

- against -

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, and DENNIS M. WALCOTT, in his official capacity as CHANCELLOR of the CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK,

Respondents

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Index No. 111208/2011

DECISION AND ORDER

APPEARANCES:

For Petitioner
Richard Casagrande Esq.
Pamela Patton Fynes Esq.
52 Broadway, New York, NY 10004

For Respondent
Mario Frangiose, Assistant Corporation Counsel
Benjamin Traverse, Assistant Corporation Counsel
100 Church Street, New York, NY 10007

LUCY BILLINGS, J.:

I. FACTUAL AND LEGAL BACKGROUND

Petitioner, a tenured teacher, claims her reassignment to Public School (P.S.) 121 from P.S. 177, both in the same Community School District in Kings County, after disciplinary charges against her were dismissed, was arbitrary and in violation of New York Education Law §§ 2590-j(8) and 3020-a(4)(b). C.P.L.R. § 7803(3). Respondents move to diismiss her

petition based on its failure to state a claim for relief. C.P.L.R. §§ 3211(a)(7), 7804(f).

Education Law § 2566(6) empowers respondent Chancellor to "transfer teachers from one school to another." This broad power, however, still must be exercised free of malice, bad faith, and prejudice. Alderstein v. Board of Educ. of City of N.Y. 64 N.Y.2d 90, 101 (1984).

Education Law § 2590-h(19) empowers respondent Chancellor to delegate any of his powers to subordinate officers. Nevertheless, insofar as a Community Superintendent is empowered to transfer a teacher involuntarily, Education Law § 2590-j(8) restricts the Superintendent's power. The Community Superintendent may transfer a tenured teacher without her consent due to disciplinary action only when she has been found guilty of charges. N.Y. Educ. Law § 2590-j(8).

The petition alleges that Children First Network (CFN) 409, a human resources management network within respondent Board of Education of the City School District of the City of New York, of which both P.S. 121 and P.S. 177 are members, informed petitioner that she was restored to a teaching position at P.S. 121, rather than P.S. 177, after her acquittal of disciplinary charges. Respondents contend that CFN 409 is an entity to which the Chancellor delegated his power to transfer teachers from one school to another. N.Y. Educ. Law §§ 2566(6), 2590-h(19). Yet nothing in the record at this point establishes that the Chancellor delegated that power to CFN 409 for the purpose of

assigning petitioner or even that CFN 409 in fact made the transfer determination. Nor do respondents establish that a CFN is not restricted, similarly to a Community Superintendent, to transferring a tenured teacher only following a determination upon charges unfavorable to the teacher.

The petition alleges, and respondents do not dispute, that when CFN 409 issued the decision reassigning petitioner the CFN 409 Leader was Neal Opromalla. Opromalla had been the Local Instructional Superintendent for P.S. 177, issued the unsatisfactory evaluation of petitioner that served as the grounds for the disciplinary charges against her, and testified at her administrative hearing in support of the evaluation and charges that were not sustained.

II. ARBITRARINESS BASED ON BIAS

Even assuming respondent Chancellor delegated his reassignment power to CFN 409, an assumption the petition does not adopt, these facts at minimum show that he delegated the authority to determine petitioner's fate after the disciplinary proceedings to the initiator of those proceedings and the witness who supported a determination against petitioner. This showing creates a perception undermining the fairness or impartiality of the determination to reassign petitioner and states a claim that the determination was arbitrary.

As the advocate in favor of the disciplinary charges against petitioner, Opromalla would be disqualified from adjudicating those charges. Beer Garden v. New York State Liq. Auth., 79

N.Y.2d 266, 278 (1992); Rosenblum-Wertheim v. New York State Div. of Human Rights, 213 A.D.2d 231, 232 (1st Dep't 1995); State Div. of Human Rights v. Dorik's Au Natural Rest., 203 A.D.2d 163, 164 (1st Dep't 1994). Serving as both prosecutor and adjudicator presents at minimum an appearance of unfairness, partiality, or bias that requires recusal. General Motors Corp.-Delco Prods. Div. v. Rosa, 82 N.Y.2d 183, 188 (1993); Beer Garden v. New York State Liq. Auth., 79 N.Y.2d at 279; State Div. of Human Rights v. Dorik's Au Natural Rest., 203 A.D.2d 163.

While Opromalla did not serve as the hearing officer who heard and determined the disciplinary proceedings against petitioner, the circumstances still show that, after the charges he prosecuted were dismissed, he then stepped in to achieve a result unfavorable to petitioner in any event. This dual participation states a claim of partiality that disqualified him from determining her assignment upon restoration to teaching service and rendered the determination biased and arbitrary, which would require a vacatur of that determination and a remand to respondent Chancellor to delegate the determination to an impartial decisionmaker. Corning Glass Works v. Ovsanik, 84 N.Y.2d 619, 626 (1994); General Motors Corp.-Delco Prods. Div. v. Rosa, 82 N.Y.2d at 190; Deluxe Homes of Pa. v. State of New York Div. of Human Rights, 205 A.D.2d 394 (1st Dep't 1994).

III. ARBITRARINESS BASED ON THE ABSENCE OF A REASON

Respondents' transfer decision is irrational, arbitrary, and therefore unsustainable if it is "without sound basis in reason"

or "without regard to the facts." 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). Respondents suggest that the transfer was based on a conflict between petitioner and administrators of P.S. 177 resulting from her acquittal of disciplinary charges. First, this potential reason is equally suggestive of a biased decision because Opromalla resented her acquittal and the hearing officer's rejection of Opromalla's charges and testimony urging otherwise. Second, and once again, nothing in the record at this point establishes that an objective determination of a conflict or any other reason formed the basis for the transfer. Moreover, the time that has elapsed since 2007, when the disciplinary charges first were instituted and petitioner immediately was reassigned from P.S. 177, and the likely personnel changes over that time undermine the plausibility that any prior conflict persists.

IV. CONCLUSION

Consequently, the court denies respondents' motion to dismiss the petition based on its failure to state a claim. C.P.L.R. §§ 3211(a)(7), 7803(3), 7804(f). Respondents shall serve any answer within 30 days after service of this order with notice of entry. See C.P.L.R. §§ 3012(a), 3211(f), 7804(c). Petitioner shall serve any reply within 20 days after service of an answer. See C.P.L.R. §§ 3012(a), 7804(c) and (d). After expiration of the reply period, petitioner may set a further

hearing on the petition by a new notice of the petition or by an order to show cause, in which event the parties are to deliver their answer and reply to the court at 71 Thomas Street, Room 204, and the court, after a further hearing, will determine the extent of relief to be granted. C.P.L.R. §§ 7803, 7806.

DATED: October 18, 2012

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.