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

PRESENT: BARBARA JAFFE J.S.C. Jaffe Justice

PART 5

Index Number : 400321/2011
CITY OF NEW YORK
VS.
ORGANIZATION OF STAFF ANALYSTS
SEQUENCE NUMBER : 001
VACATE OR MODIFY AWARD
CAL #27

INDEX NO. 400321/11
MOTION DATE 7/12/11
MOTION SEQ. NO. 001
MOTION CAL. NO. 27

this motion to/for vacate arbitration award

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1,
Answering Affidavits — Exhibits	2
Replying Affidavits	3, 4

Cross-Motion: ☑ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

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: 9/30/11 SEP 30 2011

BARBARA JAFFE J.S.C.

Check one: ☑ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

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In the Matter of:

THE CITY OF NEW YORK; THE NEW YORK CITY MAYOR'S OFFICE OF LABOR RELATIONS; and JAMES F. HANLEY, as Commissioner of the New York City Mayor's Office of Labor Relations; THE HUMAN RESOURCES ADMINISTRATION OF THE CITY OF NEW YORK, and ROBERT DOAR, as Commissioner of the Human Resources Administration of the City of New York,

Petitioners,

For an Order and Judgment Pursuant to Article 75 of the Civil Practice Law and Rules,

-against-

ORGANIZATION OF STAFF ANALYSTS and AUDREY COOPER,

Respondents.

----------x

Index No. 400321/11

Argued: 7/12/11
Motion Seq. No.: 001
Motion Cal. No.: 27

DECISION & JUDGMENT

BARBARA JAFFE, JSC:

For petitioners:
Jessica Waters, ACC
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Corporation Counsel
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New York, NY 10007
212-788-8285

For respondents:
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By notice of petition dated February 7, 2011, petitioners move pursuant to CPLR 7511 for an order vacating the arbitration award in the grievance brought by respondent Audrey Cooper (grievant). Respondents oppose, and by notice of cross-motion dated April 25, 2011, they move pursuant to CPLR 7510 for a judgment confirming the award, ordering petitioners to reinstate

grievant, and awarding her back pay and benefits from November 16, 2010, the date of the award, to the date of her reinstatement. Petitioners oppose.

I. BACKGROUND

In 2005, grievant began working for the New York City Human Resources Administration (HRA) as an Associate Staff Analyst Step I Hearing Officer in the Employee Disciplinary Unit. (Verified Petition [Pet.]). In this position, she investigated HRA employees' violations of rules and regulations, prepared disciplinary charges, conducted hearings pursuant to the New York State Civil Service Law, and had access to confidential information regarding those employees. (*Id.*).

The collective bargaining agreement (CBA) between grievant's union and HRA sets forth a four-step grievance procedure that culminates in impartial arbitration. (Affidavit of Timothy Collins, dated Apr. 25, 2011 [Collins Affid.], Exh. B).

In August of 2009, grievant was charged with violations of HRA's Code of Conduct, which requires that agency employees safeguard confidential information regarding public assistance and agency employees, and the Conflict of Interest Law, New York City Charter §§ 2604(b)(3) and (4), which prohibit public servants from using their positions to obtain personal gain and from disclosing confidential information or using it for their benefit, specifications as follows:

> SPECIFICATION I: On or about July 8, 2009, [grievant] inappropriately access[ed] and/or obtained the personnel Michrofiche (sic) records of [her] coworker[s]. This is a serious violation of confidentiality for which [she] had neither the authority nor any official work-related reasons to access [their] personnel records.
>
> SPECIFICATION II: On or about July 8, 2009, [she] inappropriately obtained the social security number of [her coworkers]. This is a serious violation of confidentiality for

> which [she] had neither the authority nor any official work-related reasons to access [their] social security number[s].

(Pet., Exh. 4).

After the charges were preferred, grievant was suspended for 30 days without pay. (*Id.*, Exh. 1). On August 19, 2009, a Step I conference regarding the charges was held, and on September 2, 2009, the conference leader recommended that grievant be terminated. (*Id.*, Exh. 5).

Grievant appealed this determination, and on October 21, 2009 a Step II hearing was held. (*Id.*, Exh. 6). By decision of the same date, the hearing officer upheld grievant's termination. (*Id.*). Grievant's termination became effective on October 23, 2009 (*id.*, Exh. 1), and on October 28, 2009, she requested arbitration (*id.*, Exh. 7).

The issue to be decided by the arbitrator was stipulated as follows:

> Was the suspension for a period of thirty days and the subsequent discharge, effective October 23, 2009, of the grievant, Audrey Cooper, from her position as an Associate Staff Analyst by the New York City Human Resources Administration, a wrongful disciplinary action under Article VI, Section 1e of the Collective Bargaining Agreement between the Organization of Staff Analysts and the City of New York? If so, what shall be the remedy?

(*Id.*, Exh. 1). Hearings were held on May 6 and 13 and August 19, 2010. (*Id.*). HRA presented five witnesses and introduced 13 exhibits, one of which was an email from Paul Ligresti, Esq., Assistant General Counsel for HRA, to grievant, wherein he discussed certain disciplinary charges she had preferred, advised her that HRA's Payroll Management System may only be accessed for official purposes, and cautioned her to refrain from accessing it for personal purposes. (*Id.*, Exh. 9). HRA argued that grievant's termination must be upheld, as she violated the public trust, and reinstating her employment would enable her to do so again. (*Id.*, Exhs. 1,

8).

Grievant, who was represented by counsel, presented three witnesses, introduced three exhibits, and testified in pertinent part that she accessed the records because she was being discriminated against on the basis of her race and sex and believed that the records would assist her in filing a discrimination law suit. (*Id.*, Exh. 8). She also testified that she accessed the records because she thought her coworkers had an inappropriate relationship with one another. (*Id.*, Exh. 8). Grievant argued that her termination should not be upheld, as she merely accessed the information and did not use or disclose it to anyone, and given her unblemished employment history. (*Id.*, Exhs. 1, 8).

On November 16, 2010, the arbitrator issued her 13-page opinion and award, sustaining the charges against grievant, determining that termination was an inappropriate penalty, and ordering that HRA reinstate her as an Associate Staff Analyst in a unit other than the Employee Discipline Unit. (*Id.*, Exh. 1). In support of her determination, the arbitrator distinguished grievant's offense from those of employees whose reinstatement was irrational, particularly an employee who "pled guilty to grand larceny in the fourth degree for filing false income tax returns" using confidential agency information, noting that although grievant "made a very serious mistake in judgment, . . . and should have known better," she only accessed the information on one "proven" occasion, and she neither disclosed or used the information nor was charged with or convicted of a crime. (*Id.*). The arbitrator also acknowledged that although grievant had accessed confidential information in the past and had been warned not to do so again, she determined that grievant's record remained unblemished, as "such admonishment came as part of an e-mail on another topic and no charges resulted[, and] [t]he form and

substance could not be viewed as formal [ ] notice of the dire consequences to be extracted should a repetition occur in the future." (*Id.*). She concluded that as grievant had 24 years of "unblemished government service[,] . . . [s]he deserve[d] another chance to prove she can again be a worthy employee." (*Id.*).

By affirmation dated February 3, 2011, Ligresti stated that he directed and supervised HRA employees in conducting a search of Associate Staff Analyst positions to determine whether any such positions do not have access to confidential information and that this search revealed a "handful" of positions, none of which are vacant. (*Id.*, Exh. 11).

By affidavit dated April 25, 2011, Timothy Collins, Chief Negotiator and Chief Grievance Officer for respondent Organization of Staff Analysts, stated in pertinent part that as of February 23, 2009 there were 121 provisional Associate Staff Analysts at HRA, that there have been no significant layoffs in that title since then, and that there are 121 vacant Associate Staff Analyst positions. (Collins Affid.).

II. CONTENTIONS

In support of their petition, petitioners claim that the arbitrator exceeded her authority, as the award violates public policy and is irrational. (Petitioners' Memorandum of Law). Specifically, they assert that it violates New York City Charter § 2604, which provides that a public servant shall neither use her position for personal gain nor disclose confidential information obtained through her employment, as the arbitrator reinstated grievant's employment even though she admitted to doing so. (*Id.*). They also claim that reinstating grievant's employment to a position affording her access to confidential information after she admitted to improperly accessing same is contrary to the State's interest in honesty in government and is

irrational, relying on *Matter of Social Service Employees Union, Local 371 obo Opuoru v City of New York Administration of Children's Services*, 56 AD3d 322 (1st Dept 2008), and *City School District of the City of New York v Campbell*, 20 AD3d 313 (1st Dept 2005). (*Id.*). And petitioners assert that the arbitrator exceeded her power insofar as the CBA does not expressly permit an arbitrator to transfer a grievant to a different unit within the agency. (*Id.*).

In opposition, and in support of their cross-motion to confirm the award, respondents deny that the award violates section 2604, as section 2606 provides that an individual who violates section 2604 may be fined, suspended, or terminated, and the Conflicts of Interest Board (COIB) has settled cases where an employee impermissibly accessed confidential information by ordering that the employee be suspended. (Respondents' Memorandum of Law). Additionally, they claim that *Opuoru* and *Campbell* are distinguishable from the instant case, as the grievants in those cases were convicted of crimes. (*Id.*). And they also deny that the arbitrator exceeded her authority in ordering HRA to transfer petitioner to another unit, as the CBA does not restrict an arbitrator's ability to do so, and there are vacancies that grievant could fill, as she has "bumping rights" over provisional Associate Staff Analysts and thus could fill one of their slots. (*Id.*).

In reply, and in opposition to respondents' cross-motion, petitioners maintain that *Opuoru* and *Campbell* are on point, as the grievants there violated the public trust just as grievant did here. (Petitioners' Reply Memorandum of Law). Moreover, they assert that ordering grievant transferred to a different unit is irrational, as respondents provide no evidence that she would not have access to confidential information in another unit, that an innocent provisional employee should not be fired in order to accommodate grievant's transfer, and that bumping rights exist

only in the context of layoffs. (*Id.*). Petitioners also claim that the award violates public policy, as New York City Charter § 2606 requires that employees who violate New York City Charter § 2604 and are convicted of a crime as a result must forfeit their employment, and they contend that COIB settlements should not be considered, as they are inadmissible, and in any event, often result in less stringent penalties than do grievance proceedings. (*Id.*).

In reply, and in sur reply to petitioners' opposition to their cross-motion, respondents further distinguish *Opuoru* and *Campbell* from the instant case, noting that the grievant in *Opuoru* used confidential information to commit a crime, whereas grievant here merely accessed it, and the grievant in *Campbell*, a teacher responsible for enforcing school rules prohibiting drug use who pleaded guilty to same, committed a far more serious offense than did grievant here. (Respondents' Reply Memorandum of Law). They also argue that the arbitrator rationally considered grievant's long, unblemished employment history in determining that termination was an inappropriate penalty and that COIB settlements are public and thus admissible. (*Id.*).

III. ANALYSIS

A. Applicable law

The scope of judicial review of an arbitration proceeding is extremely limited (*Matter of Campbell v New York City Tr. Auth.*, 32 AD3d 350 [1st Dept 2006]), and the court must give deference to the arbitrator's decision (*Matter of New York City Tr. Auth. v Transp. Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332 [2005]). In reviewing an award, the court is bound by the arbitrator's factual findings and interpretations of the agreement at issue (*Matter of Brown & Williamson Tobacco Corp. v Chesley*, 7 AD3d 368 [1st Dept 2004]), and may not "examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one." (*Matter of New York State*

Correctional Officers & Police Benevolent Assn., Inc. v State of New York, 94 NY2d 321, 326 [1999]).

Pursuant to CPLR 7511(b)(iii), an arbitration award may be vacated if, as pertinent here, the arbitrator "exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made." An award will not be vacated on this ground unless it violates a strong public policy, is totally irrational, or exceeds a specifically enumerated limitation on the arbitrator's power. (*Matter of New York City Tr. Auth. v Transp. Workers Union of Am., Inc., Local 100, et al.*, 14 NY3d 119 [2010]; *Matter of Silverman v Cooper*, 61 NY2d 299 [1984]). Even if the arbitrator, in interpreting the agreement, "misconstrues or disregards its plain meaning or misapplies substantive rules of law," the award may not be vacated. (*Matter of Silverman*, 61 NY2d at 308). "In short, an arbitration award cannot be vacated if there exists any plausible basis for it." (*Matter of Brown & Williamson Tobacco Corp.*, 7 AD3d at 372).

If a motion to vacate an arbitration award is denied, the court must confirm it. (CPLR 7511[e]).

B. Does the award violate public policy?

When a dispute has been submitted to binding arbitration, "an award that is not clearly in violation of public policy should be given effect." (*Hackett v Milbank, Tweed, Hadley & McCloy*, 86 NY2d 146, 157 [1995]). While an award may be vacated if it violates public policy, the public policy at issue must be strong, well-defined, and embodied in constitutional, statutory or common law, and must prohibit a particular matter from being decided or certain relief from being granted by an arbitrator. (5 NY Jur 2d, Arbitration and Award § 226). The focus is on the award itself, and an award may be found to violate public policy only if: (1) the arbitration agreement itself violates public policy; (2) the award interferes in areas reserved for others to

resolve; or (3) the award violates an explicit law because of its reach. (*Matter of New York State Correctional Officers & Police Benevolent Assn., Inc.*, 94 NY2d at 327).

In addition, an award may not be vacated on public policy grounds unless it is clear on its face that public policy precludes its enforcement. (5 NY Jur 2d, Arbitration and Award § 226). In other words, the court must be able to examine an award on its face, without engaging in extensive fact-finding or legal analysis, and determine that it may not be enforced on the ground that it violates public policy. (*Matter of Sprinzen v Nomberg*, 46 NY2d 623 [1979]).

1. New York City Charter

New York City Charter § 2604(b)(3) and (4) provides that

> [n]o public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege, or other private or personal advantage, direct, or indirect, for the public servant or any person or firm associated with the public servant[; and that]
>
> no public servant shall disclose any confidential information concerning the property, affairs, or government of the city which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public, or use any such information to advance any direct or indirect financial or other private interest of the public servant or of any other person or firm associated with the public servant; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity, or conflict of interest.

New York City Charter § 2606(b) provides that a person who violates section 2604 may be fined, suspended, or removed from office, and section 2606(c) provides in pertinent part that a person who violates section 2604 "shall be guilty of a misdemeanor, and on conviction thereof, shall forfeit his or her public office or employment."

Here, although the arbitrator found that grievant violated New York City Charter § 2604(b)(3) and (4), grievant was not convicted of a crime. As section 2606(b) does not require that a person who violates section 2604 be fined, suspended, or removed, but merely provides for

such penalties, and as section 2606(c) requires only that a person forfeit his employment upon being convicted of a misdemeanor, the award does not, on its face, violate these sections.

In light of this determination, the import of prior Conflict of Interest Board settlements need not be considered.

2. Honesty in government

In support of their claim that New York public policy favors honesty in government, petitioners cite *Matter of City of New York v Uniformed Fire Officers Association, Local 854, IAFF, AFL-CIO*, 95 NY2d 273 (2000), *Matter of Mahoney v McGuire*, 107 AD2d 363 (1st Dept 1985), *affd* 66 NY2d 622 (1985), and *Watkins v New York State Ethics Commission*, 147 Misc 2d 350 (Sup Ct, Albany County 1990).

At issue in *Uniformed Fire Officers Association* was the arbitrability of a firefighter's grievance relating to the way in which the New York City Department of Investigation (DOI) was conducting a criminal investigation. (95 NY2d 273). The Court there held that "[t]he City (and its residents) has a significant interest in ensuring that the inner workings of the machinery of public service are honest and free from corruption . . . . [and] that this public policy restricts the freedom to arbitrate under the circumstances presented [there]." (*Id.* at 282).

In *Mahoney*, the Court held that a police officer who retired just before he was charged with fraud was not entitled to his pension, as "[i]t is the public policy of this State not to pension employees who have betrayed the faith reposed in them by virtue of their position." (107 AD2d at 366).

And in *Watkins*, the constitutionality of the Ethics in Government Act, which requires that high-salaried public officials make certain financial disclosures, was at issue, and the court held that the Act is constitutional, as it furthers the State's compelling interest in honesty and

integrity in government. (147 Misc 2d at 361-62).

Here, grievant neither committed fraud with the information she accessed nor lied about her actions. The instant case is thus distinguishable from *Watkins* and *Mahoney*, as those cases recognize the public policy of ensuring honesty in government within the context of fraud. Moreover, as there is no question as to the arbitrability of the grievance, the instant case is also distinguishable from *Uniformed Fire Officers*. As an arbitration award will be only be vacated on public policy grounds when the policy is well-defined, and as petitioners provide no authority for the proposition that an arbitration award reinstating an employee who admitted to improperly accessing confidential information violates the public policy interest in honesty in government, I decline to vacate the award on this ground.

C. Is the award irrational?

An award is "rational" if "any basis for [its] conclusion is apparent to the court" (*Caso v Coffey*, 41 NY2d 153, 158 [1976]), and may be found irrational only if there is no proof to justify it (*Matter of Jadhav v Ackerman*, 62 AD3d 797 [2d Dept 2009]). An award is irrational if the arbitrator construes the parties' agreement to the extent of effectively rewriting it, or rewriting a collective bargaining agreement by adding a provision not negotiated by the parties. (5 NY Jur 2d, Arbitration and Award § 227 [2010]). The party moving to vacate an arbitrator's award as irrational has the burden of establishing its irrationality by clear and convincing evidence. (*Id.*; *Muriel Siebert & Co., Inc. v Ponmany*, 190 AD2d 544 [1st Dept 1993]).

In *Opuoru*, the grievant was a supervisor who "pleaded guilty to grand larceny in the fourth degree for filing false income tax returns using confidential [agency] client information to fraudulently claim entitlement to state and local tax credits," and the Appellate Division held that the arbitrator's decision ordering that he be reinstated to his old position was irrational, as he

again "would have access to the [agency] database from which he extracted the information he used to perpetrate his crime." (56 AD3d 322). And in *Campbell*, the grievant, a dean of students at a public middle school responsible for enforcing rules prohibiting student drug use and administering a program that provided counsel to substance-abusing students, pleaded guilty to multiple counts of drug possession and agreed to participate in treatment program, on completion of which his plea would be vacated. (20 AD3d 313). Like in *Opuoru*, the Appellate Division held that the arbitrator's determination that he should "'be returned to his former or similar position in the District if he successfully complete[d] the [treatment] program'" was irrational, as he would "be placed back into a position where he would administer a program designed to discourage drug use among students." (*Id.* at 314).

Here, in contrast to *Opuoru*, grievant neither used the confidential information she accessed to perpetrate a crime nor was charged with or convicted of a crime, and in contrast to *Campbell*, there is no evidence that, as an Associate Staff Analyst in another unit, she will enforce or counsel others against violating the same rules that she broke. Moreover, the arbitrator concluded that although grievant had been warned against accessing confidential information before, disciplinary charges were never preferred against her, and thus, she was never formally notified of the consequences of doing so, and she distinguished the instant case from *Opuoru*, noting that grievant only accessed the confidential information on one proven occasion and did not use it to commit a crime. Additionally, the arbitrator accounted for the possibility that grievant may have access to confidential information upon reinstatement insofar as she concluded that grievant's offense constituted a "mistake in judgment" in light of her unblemished record and that she "deserves another chance to prove she again be a worthy employee." As the arbitrator considered the record and provided reasoning to support her

determination, the award is not irrational. (*Cf. City School Dist. of the City of New York v Lorber*, 50 AD3d 301 [1st Dept 2008] [where teacher pleaded guilty to drug possession, and arbitrator determined that she should be reinstated, as teacher had 23 year employment history, completed treatment program, and was found "fit to teach," court distinguished *Campbell* and held that teacher's reinstatement was not irrational]).

D. Does the award exceed a specifically enumerated limitation on the arbitrator's power?

Article VI, Section 2 of the CBA provides in pertinent part that

> [t]he arbitrator's decision or award (if any) shall be limited to the application and interpretation of the Agreement, and the arbitrator shall not add to, subtract from of modify the Agreement or any rule, regulation, or written policy mentioned in Section I of this article[, which defines "grievance"]. . . . The arbitrator may provide for and direct such relief as the arbitrator deems necessary and proper, subject to the limitations set forth above and any applicable limitation of law.

(Collins Affid., Exh. B).

Article VII, Section 1 sets forth the following procedures by which employees may be transferred:

> a. Mayoral agencies shall maintain a Transfer and Reassignment Request File. Qualified employees wishing to transfer within an agency shall submit a written request identifying the position to which they seek to transfer. Employees shall receive receipts for voluntary transfer requests on a form prepared by the Union and approved by the City.
>
> b. Prior to filling vacant positions through promotion, appointment or reassignment, the agency shall consult its Transfer and Reassignment Request File and give due consideration for transfer or reassignment to all qualified applicants, including consideration of their seniority, whose requests are contained in the File. To the extent practicable, the agency agrees that workers to be involuntarily transferred shall receive five (5) days advance notice.
>
> c. Notwithstanding any other provisions, the agency may limit the number of voluntary transfers for any employee to no more than one in any twelve (12) month period.
>
> d. The reporting date of an employee selected for voluntary transfer shall not be unreasonably delayed.

(*Id.*). Section 2 of this Article specifies that "[r]eassignment of employees returning from unpaid leave of more than twenty-three (23) days" are not considered transfers. (*Id.*)

Here, petitioners assert that the arbitrator exceeded her power in ordering that petitioner be reinstated in a different unit because this constitutes a transfer, and the CBA does not provide that arbitrators may order transfers. However, as grievant was suspended without pay for more than 23 days, her reassignment does not constitute a transfer, and even if it did, Article VII only specifies the process by which employees may voluntarily seek transfer and process by which HRA may fill vacancies through promotion, appointment, or involuntary transfer; it contains no express limitation on an arbitrator's power to order that an employee be reinstated or transferred. Moreover, petitioners have not demonstrated that the award precludes HRA from considering the Transfer and Reassignment Request File in reassigning grievant, as the award does not require that she be placed in a particular position at the exclusion of other candidates. Accordingly, as the arbitrator did not add to, subtract from, or modify the CBA or violate any of its express provisions, the award does not exceed a specifically enumerated limitation on her power.

Moreover, as the CBA contains no provision limiting an arbitrator's ability to order that an employee be reinstated or transferred based on the personnel consequences thereof, petitioners' contention that the arbitrator exceeded her power insofar as there are no available Associate Staff Analyst positions is without merit. In any event, even if the arbitrator were only permitted to order reinstatement to an available position, petitioners provide no evidence demonstrating that there are no available Associate Staff Analyst positions, as Ligresti states only that there are no available positions that do not have access to confidential information, and the arbitrator did not order that grievant be precluded from having such access upon reinstatement.

IV. CONCLUSION

Accordingly, it is hereby

ADJUDGED, that the petition for an order vacating the award is denied; and it is further

ADJUDGED, that respondents' cross-motion for an order confirming the award, ordering petitioners to reinstate respondent Audrey Cooper, and awarding her back pay and benefits from November 16, 2010 to the date of her reinstatement is granted; and it is further

ADJUDGED, that petitioner The Human Resources Administration of the City of New York is hereby ordered to immediately reinstate respondent Audrey Cooper and award her back pay and benefits from November 16, 2010 to the date of her reinstatement; and it is further

ADJUDGED, that respondents, having an address at 220 East 23rd Street, New York, New York 10010, do recover from petitioners, having an address at 100 Church Street, New York, New York 10007, costs and disbursements in the amount of $ ____, as taxed by the Clerk, and that respondents have execution therefor; and it is further

ENTER:

Barbara Jaffe, JSC

BARBARA JAFFE

DATED: September 30, 2011
New York, New York

SEP 30 2011

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).