Goaring-Thomas v City of New York
2018 NY Slip Op 33278(U)
December 18, 2018
Supreme Court, New York County
Docket Number: 153394/2018
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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REMA GOARING-THOMAS,

Petitioner,

- against -

CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF EDUCATION; CARMEN FARINA, CHANCELLOR OF NEW YORK CITY DEPARTMENT OF EDUCATION

Respondents,

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

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Index No. 153394/2018

DECISION and ORDER

Mot. Seq. #001

HON. EILEEN A. RAKOWER, J.S.C.

Petitioner Rema Goaring-Thomas ("Petitioner") brings this action, pursuant to Article 78 of the New York Civil Practice Laws and Rules ("Article 78"), to challenge, reverse, and annul Respondent New York City Department of Education's ("DOE") issuance of an "Unsatisfactory" Annual Professional Performance Review ("APPR" or "U-rating") to Petitioner for the 2016-2017 school year. The U-rating was sustained by Phillip Weinberg, the Deputy Chancellor for Teaching and Learning (Designee of Carmen Farina, Chancellor) of the DOE, on December 19, 2017. Petitioner also seeks to restore any benefits and emoluments lost since the date of issuance, as well as grant attorney's fees, and costs.

Background/Factual Allegations

Petitioner has been employed by Respondent DOE since 2003 as a common branches teacher and in December 2015 she was assigned to the Absent Teacher Reserve ("ATR") pool. On or about December 19, 2016, Petitioner was assigned to P.S. 375 to cover Ms. S.A.'s second-grade class. Petitioner states that on January 30, 2017, Principal Schwanna Ellman ("Principal Ellman") of P.S. 375 notified her that the ATR Unit said Petitioner would remain in her assignment until June 2017.

Petitioner contends that on April 20, 2017, Assistant Principal Jelani Miller ("AP") asked her for her lesson plan. Petitioner states that she provided AP with her reading lesson plan but informed her that she was still working on a writing lesson plan that was associated with the reading lesson. Petitioner contends that at the end of the day Principal Ellman gave Petitioner a letter that stated that Petitioner failed to have a lesson plan. Petitioner argues that nowhere in the letter does it state that further disciplinary action or a U-rating could follow.

Petitioner further contends that Principal Ellman issued a letter on June 28, 2017, wherein Principal Ellman concluded that Petitioner violated "Chancellor's Regulation A-421 because she told A.R. in front of [T.W.] and the rest of the class that her grades were dropping because of all the talking she was doing with [T.W.]." (Petitioner's Petition at 6). Petitioner contends that Principal Ellman did not provide witness statements or show that she did an investigation to support her conclusion that Petitioner violated Chancellor's Regulation A-421. Furthermore, Petitioner contends that on June 28, 2017 she received a U-rating for the school year 2016-2017, which referenced the April 20 and June 28 letters.

Petitioner argues that Respondents' issuance of the U-rating for the 2016-2017 school year, and the denial of appeal was arbitrary and capricious, in violation of lawful procedure, and in bad faith. Petitioner contends that she did not receive notice that she was in danger of receiving a U-rating, and she did not receive support or remediation to help avoid receiving a U-rating. Petitioner contends that she only received one observation during the school and she was rated satisfactory. Petitioner further contends that the April 20, 2017 letter is not considered disciplinary and did not provide her notice that it could lead to future disciplinary action. Petitioner argues that the June 28, 2017 letter from Principal Ellman improperly concluded that Petitioner violated Chancellor's Regulation A-421 because it was not supported by an investigation and there were no witness statements to support the conclusion.

Respondents argue that Petitioner failed to state a cause of action upon which relief may be granted. Respondents contend that Petitioner failed to demonstrate how the U-rating was arbitrary, capricious, and made in bad faith or in violation of lawful procedure. Respondents further contend that Petitioner's U-rating was rationally based on evidence that was presented at the Chancellor's Committee hearing. Respondents argue that Petitioner was made aware of two parent complaints, Petitioner received two letters to file regarding her performance, and Petitioner had a disciplinary meeting with Principal Ellman and her union representative. Respondents also contend that they acted reasonably, lawfully, and in good faith, without malice in accordance with the "Constitution and laws of the United States

and the State and City of New York, the New York City Charter, and all applicable laws, by-laws, rules and regulations." (Respondent's Answer at 16). Respondents further argue that Respondent, the City of New York ("the City") is not a proper party because the DOE is a distinct legal and entity and the City is not responsible for employment decisions by the DOE.

Petitioner commenced this action on April 13, 2018 by filing a Petition as an Article 78 special proceeding. Respondents filed an Answer on July 6, 2018. Petitioner filed a Reply in opposition to Respondents' Answer on October 29, 2018.

Legal Standard

It is well settled that the "[j]udicial review of an administrative determination is confined to the 'facts and record adduced before the agency'." *Matter of Yarborough v. Franco*, 95 N.Y.2d 342, 347 [2000] (quoting *Matter of Fanelli v. New York City Conciliation & Appeals Board,* 90 A.D.2d 756 [1st Dept. 1982]). The reviewing court may not substitute its judgment for that of the agency's determination but must decide if the agency's decision is supported on any reasonable basis. *Matter of Clancy-Cullen Storage Co. v. Board of Elections of the City of New York*, 98 A.D.2d 635, 636 [1st Dept. 1983]. Once the Court finds a rational basis exists for the agency's determination, its review is ended. *Matter of Sullivan County Harness Racing Association, Inc. v. Glasser*, 30 N.Y.2d 269, 277-278 [1972]. The court may only declare an agency's determination "arbitrary and capricious" if it finds that there is no rational basis for the determination. *Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974].

Courts will look for a showing of deficiencies in the performance review process that "were not merely technical, but undermined the integrity and fairness of the process". *Joyce v. City of New York*, 161 A.D.3d 488, 488–89 [1st Dept. 2018] (citations omitted). The unsatisfactory rating can be annulled where there is a showing that the teacher was not placed on notice that he was in danger of receiving an unsatisfactory rating and the procedures were not upheld by the school. *Id.*

Discussion

Petitioner has failed to demonstrate that Respondents' issuance of the U-rating for the 2016-2017 school year was arbitrary, capricious and in bad faith. *Matter of Pell*, 34 N.Y.2d at 231. A review of Respondents issuance of the U-rating to Petitioner demonstrates no indication that the decision rendered was arbitrary, capricious, or in bad faith. Petitioner had two parent complaints, received two letters

to file regarding her performance issues, had a disciplinary meeting with the Principal and her union representative, and had documented performance issues during her six months she was assigned to P.S. 375. It is uncontested that Petitioner was given an opportunity to appeal her U-rating through the Office of Appeals and Review and was also given the opportunity to personally appear on December 4, 2017 at the Chancellor's Committee hearing with an advocate from her union.

Courts will look for a showing of deficiencies in the performance review process that "were not merely technical, but undermined the integrity and fairness of the process". *Joyce*, 161 A.D.3d at 488–89. Petitioner was aware of her poor performance and was given the opportunity to respond before she was issued her U-rating. Furthermore, at no time did Petitioner grieve either of the two letters from Principal Ellman. Petitioner fails to meet her burden of demonstrating that the U-rating should be disturbed by the Court.

Wherefore, it is hereby

ORDERED and **ADJUDGED** that the Petition is denied and the proceeding is dismissed and the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: December 18, 2018

Eileen A. Rakower, J.S.C.