Loiacono v Board of Educ. of the City of N.Y.
2022 NY Slip Op 32202(U)
July 11, 2022
Supreme Court, New York County
Docket Number: Index No. 154875/2022
Judge: Arlene Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE BLUTH** **PART** **14**

Justice

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ELIZABETH LOIACONO,

Petitioner,

- v -

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, COMMUNITY SCHOOL DISTRICT 75 OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, UNITED FEDERATION OF TEACHERS

Respondent.

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INDEX NO. 154875/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 27, 29, 30, 31, 32, 33- 44, 45

were read on this motion to/for ARTICLE 78.

The petition to annul respondents' determination denying her a religious exemption and grant her back pay from October 6, 2021 is granted.

Background

Petitioner works as a tenured teacher for respondent Board of Education of the City of New York ("Board of Ed"). She claims that after an arbitrator issued a decision concerning a COVID-19 vaccine mandate, she applied (as provided for in the arbitration decision) for a religious exemption. Petitioner explains that she "was christened as a Catholic, raised in the Catholic faith and is now a Bible base Christian who attends virtual Mass every Sunday" (NYSCEF Doc. No. 5 at 2). She insists that she did not take the COVID-19 vaccine because the vaccine was brought to market by experimenting with cells that she contends violate her religious beliefs concerning abortion.

Petitioner's first request for a religious accommodation was denied on September 22, 2021 (NYSCEF Doc. No. 11). This decision stated that:

> "We have reviewed your application and supporting documentation for a religious exemption from the DOE COVID-19 vaccine mandate. Your application has failed to meet the criteria for a religious based accommodation. Per the Order of the Commissioner of Health, unvaccinated employees cannot work in a Department of Education (DOE) building or other site with contact with DOE students, employees, or families without posing a direct threat to health and safety. We cannot offer another worksite as an accommodation as that would impose an undue hardship (i.e., more than a minimal burden) on the DOE and its operations" (*id.*).

Petitioner then appealed that decision and, again her request was denied on October 2, 2021 (NYSCEF Doc. No. 13). Next, petitioner received an email about another option to appeal the denial of her religious exemption request on November 19, 2021 (NYSCEF Doc. No. 14). This email detailed a process by which petitioner could seek a review from a central Citywide Panel. Petitioner then filed an appeal under this process on December 2, 2021 (NYSCEF Doc. No. 15).

On March 28, 2022, the Citywide Appeals panel denied her request for a religious accommodation (NYSCEF Doc. No. 18). This denial stated:

> "The City of New York Reasonable Accommodation Appeals Panel has carefully reviewed your Agency's determination, all of the documentation submitted to the agency and the additional information you submitted in connection with the appeal. Based on this review, the Appeals Panel has decided to deny your appeal. This determination represents the final decision with respect to your reasonable accommodation request. The decision classification for your appeal is as follows: The employee has failed to establish a sincerely held religious belief that precludes vaccination. DOE has demonstrated that an accommodation to the employee would be an undue hardship given the need for a safe environment for in-person learning" (*id.*).

Petitioner argues that this decision should be annulled because petitioner is an at home instructor so the claim about undue hardship is without merit and respondents were not entitled to question the sincerity of petitioner's religious beliefs.

Respondent the United Federation of Teachers ("UFT") submits an answer in which it explains the religious exemption process but insists it does not oppose the relief sought by petitioner. The UFT points out that it is the exclusive bargaining representative of teachers and is a party to a collective bargaining agreement with the Board of Ed. It explains that when it was bargaining with the Board of Ed about a vaccine mandate for teachers, the Public Employment Relations Board appointed an arbitrator to resolve an impasse.

The UFT points out that petitioner utilized the appeal process for a religious exemption detailed in the arbitration award and then sought out an exemption apart from that process by submitting her request to the Citywide Panel.

The remaining respondents, (collectively, the "Board of Ed") oppose the petition and claim that petitioner's claims are partially barred by the applicable statute of limitations. The Board of Ed makes a distinction between the October 2, 2021 denial of petitioner's religious accommodation request and the March 28, 2022 denial and insists petitioner cannot appeal the October 2, 2021 denial.

The Board of Ed claims that the March 28, 2022 denial was neither arbitrary nor capricious and that the denial of petitioner's request for an accommodation was permissible because it would cause undue hardship. It cites to exhibit H (NYSCEF Doc. No. 42), a position statement about petitioner. The Board of Ed also claims that it fulfilled its responsibility to provide reasoning for the denial.

In reply, petitioner maintains that the instant petition is timely and not barred by the statute of limitations. She also argues that she did not have to prove her religious beliefs were sincere in order to receive an accommodation.

Discussion

In an article 78 proceeding, "the issue is whether the action taken had a rational basis and was not arbitrary and capricious" (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*id.*). "If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable" (*id.*). "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

As an initial matter, the Court finds that the instant petition is not barred by the statute of limitations. Although it appears that there were two different appeals of petitioner's denial of her request for a religious accommodation, the Court fails to see the distinction in this difference. This Court rejects the Board of Ed's argument that the October 2021 appeal was the final appeal for Article 78 purposes because petitioner could go another level up, and did. The undisputed facts are that petitioner's initial accommodation request appeal was denied in October 2021, she was notified about another appeal route to a Citywide Panel, she appealed to that panel and that request was denied in March 2022. That makes the instant petition timely.

Turning to the merits, the Court finds that the March 28, 2022 denial of petitioner's request was arbitrary and capricious because the reasons for the denial were vague and conclusory. That denial simply states that the panel reviewed her request and denied it without explaining why it did so.[1] That compels the Court to grant the petition (*see e.g., Matter of Koch v Sheehan*, 21 NY3d 697, 976 NYS2d 4 [2013] [annulling determination by the Office of

[1] The September 2021 and October 2021 denials are similar; they provided no specific reasoning for the denial of petitioner's request.

Medicaid Inspector General to exclude petitioner on the ground that the decision was arbitrary and capricious because no adequate reasoning was provided]).

This Court is well aware of the emotionally charged nature of vaccine mandates and related requests for religious or medical accommodations. This petition does not ask this Court to opine about the validity of the mandates or the process by which accommodations are considered. This Court is only concerned with the reasoning provided in the March 28, 2022 denial. And the reasoning provided was underwhelming at best.

The Board of Ed's determination simply disregarded petitioner's assertions about her faith. And it offered, in conclusory fashion, a claim that it would cause an undue hardship on the Board of Ed to offer an accommodation without explaining the nature of that hardship. The Court observes that the Board of Ed attached a position statement as an exhibit to its answer that purports to explain the nature of the undue hardship. However, the Court finds that this document does not suddenly transform the denial into one that contains logical reasoning.

The document itself is undated, no author is included, and the Board of Ed's answer does not provide any information about how (and when) this document was created. The Court has no idea whether or not it was created exclusively for the instant proceeding. Of course, submitting after-the-fact reasoning to justify a decision is not proper as it is not a part of the administrative record.

And the position statement itself appears, on its face, to be a general policy statement that lacks any individualized reasoning for the denial of petitioner's request. For instance, the final sentence declares that "there may be a small number of special cases warranting a different approach, but as a general matter this is an undue hardship that has been shown on the ground and will only grow with each exemption granted" (NYSCEF Doc. No. 42). To be clear, the

statement lists petitioner's name at the top and states "the employee requests a religious exemption" (*id.*). But it does not mention petitioner's individualized duties and how that would be an undue hardship to allow the exemption in her particular case.

Summary

The Court's decision should not be misunderstood. This Court does not offer its own evaluation about petitioner's request for a religious accommodation. Rather, the Court finds that petitioner availed herself of that option and the reasoning provided by the Board of Ed for its denial was completely lacking.

It is axiomatic that in an Article 78 proceeding, the Court must not substitute its judgment in place of a governmental agency. The Court's role is limited to considering whether the agency's decision was arbitrary or capricious. Applying that standard, the Court finds that the Board of Ed's denial is not sufficient because it did not bother to address petitioner's individual circumstances. This decision does not stand for the proposition that the Board of Ed must publish a treatise justifying its denial of a request for a religious accommodation. But it cannot simply deny petitioner's request without providing an explanation that actually addresses petitioner's circumstances, including her specific job responsibilities. The Court cannot evaluate the reasoning for a denial if the Board of Ed does not offer any justification.

The Court also observes that to the extent petitioner seeks declaratory relief about the underlying arbitration between the UFT and the Board of Ed, that relief is denied. Petitioner acknowledges she already sought similar relief (albeit unsuccessfully) before a different Justice of the Supreme Court under index number 161076/2021. And, as the UFT pointed out, it is the exclusive bargaining representative for teachers such as petitioner.

Accordingly, it is hereby

ORDERED that the petition is granted to the extent that petitioner is entitled to a religious exemption from the vaccine mandate and she is entitled to back pay from October 6, 2021 (as requested in the order to show cause), along with costs and disbursements upon presentation of a bill of costs; and it is further

ORDERED that petitioner is directed to submit a proposed order and judgment consistent with this decision on or before July 29, 2022.

7/11/2022
DATE

ARLENE BLUTH, J.S.C.

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION		
		GRANTED		DENIED	X	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			X	SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE