

Loiacono v Board of Educ. of the City of N.Y.

2022 NY Slip Op 32948(U)

September 2, 2022

Supreme Court, New York County

Docket Number: Index No. 154875/2022

Judge: Arlene P. Bluth

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

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

Justice

-----X

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

Respondents.

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INDEX NO. 154875/2022

MOTION DATE 08/30/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 67, 68, 69, 71, 72, 73

were read on this motion to/for REARGUMENT.

The motion to reargue is granted, and upon reargument, the Court adheres to its previous decision.

Background

Petitioner is a tenured teacher for respondent Board of Education of the City of New York and she refused to get the Covid-19 vaccine. Instead, she applied for a religious exemption from the vaccine mandate, a process afforded to her after a dispute between her union and respondents. This Court previously found that respondent’s denial of her requested exemption was irrational because the decision did not explain the basis for the denial. It merely stated that petitioner’s application was denied because she did not meet the criteria.

Now respondents move to reargue on the ground that the Court erred in granting petitioner a religious exemption instead of remanding the proceeding back to the Department of

Education. They also argue that the Court misapprehended the “contemporaneous documentation” submitted by respondents. Respondents also argue that anti-discrimination statutes do not require an employer to provide an employee with a contemporaneous decision explaining the reasons for denying an accommodation. They assert they need not provide any reason at all.

In opposition, petitioner emphasizes that she is a faithful Christian and that her faith instructed her not to get the vaccine. She points to an administrative code section that purportedly requires respondents to provide reasoning for the denial of an accommodation. She also insists that this Court need not remand the proceeding.

In reply, respondents focus on the position statement offered by respondents during petitioner’s appeal before the Citywide Panel considering her religious exemption.

Discussion

As an initial matter, the Court declines to remand this proceeding to respondents. A review of the papers submitted by respondents in connection with the petition reveals that respondents never asked for a remand. To grant a remand now, only after the Court has identified the ways in which the final determination at issue is sorely lacking, would be wholly inappropriate and deeply unfair.

The purpose of remanding an Article 78 proceeding, in this Court’s view, is to ensure that parties receive due process and that all the relevant evidence is considered. The undersigned has remanded special proceedings to agencies on numerous occasions and almost always when the agency specifically requests it. These situations usually involve a commitment by an agency to consider newly discovered evidence or, sometimes, to consider a claim on the merits that was previously denied solely on procedural grounds. It is not, as respondents essentially argue here, a

chance to craft a better determination that can withstand judicial scrutiny. While respondents are correct that the Court could have, theoretically, remanded the proceeding *sua sponte* when considering the petition, this Court prefers not to make arguments for the parties.

The Court adheres to its decision because respondents did not sufficiently justify their position that they need not provide any reason at all for denying petitioner's requested exemption. "Notably, a fundamental principle of administrative law long accepted limits judicial review of an administrative determination solely to the grounds invoked by the respondent, and if those grounds are insufficient or improper, the court is powerless to sanction the determination by substituting what it deems a more appropriate or proper basis. Consequently, neither Supreme Court nor this Court may search the record for a rational basis to support respondent's determination, or substitute its judgment for that of respondent" (*Matter of Figel v Dwyer*, 75 AD3d 802, 804-05, 907 NYS2d 75 [3d Dept 2010] [internal quotations and citations omitted]).

These principles apply directly to this proceeding. The Citywide Panel's denial, the final determination challenged here, did not include any reasoning whatsoever for denying petitioner's claim. The Court has no idea whether or not respondents found that petitioner has sincerely held religious beliefs that could justify an exemption or whether they decided that she has sincerely held religious beliefs but they could not accommodate her request. Without a reason, the Court cannot evaluate whether the decision was rational.

And although respondents point to the position statement purportedly submitted in connection with the Citywide Panel determination, that does not compel the Court to grant the motion. First, the determination does not cite this document at all. The Court does not know whether the final determination accepted the position statement as a whole, in part, or not at all.

The determination could have, but did not, included a single sentence that it adopted the reasoning in the position statement.

Second, the position statement contains no individualized assessment of why the requested exemption cannot be granted; it mentions nothing about petitioner's religious beliefs and instead talks in broad terms about teachers. There is nothing included about petitioner's specific tasks and why she should not be afforded a religious exemption. This issue is particularly important here, where petitioner asserts that she is a home instruction teacher and so does not ever appear in person in any of respondents' buildings. The position statement largely focuses on in-school teachers and only makes a cursory statement in passing about home instruction teachers, further demonstrating that it was not individualized to petitioner's application.

Moreover, the position statement appears to take the view that no exemptions should be granted at all as the requested exemption would impose an undue burden. The problem for this Court is that this position contravenes the entire process agreed to by petitioner's union and respondents.

The process, as described in a federal case, is as follows:

“On September 10, 2021, following arbitration, the City, the BOE, and the UFT reached an agreement (the “UFT Award”) that provided for, as an alternative to any statutory reasonable accommodation process, a procedure and criteria for religious exemptions. With respect to religious exemptions, the UFT Award stated that: Religious exemptions for an employee to not adhere to the mandatory vaccination policy must be documented in writing by a religious official (e.g., clergy). Requests shall be denied where the leader of the religious organization has spoken publicly in favor of the vaccine, where the documentation is readily available (e.g., from an on line source), or where the objection is personal, political, or philosophical in nature. Exemption requests shall be considered for recognized and established religious organizations (e.g., Christian Scientists). Employees who wished to submit applications for this exemption were required to submit their requests via an online system, SOLAS, by September 20, 2021 at 5 p.m. Staff in the Division of Human Capital in the Office of Medical, Leaves and Benefits; the Office of

Equal Opportunity; and Office of Employee Relations were to issue decisions in writing by September 23, 2021, and, if the request was denied, *set forth a reason for a denial*" (*Kane v de Blasio*, 21 CIV. 7863 (NRB), 2022 WL 3701183, at *2 [SD NY 2022] [emphasis added]).

The fact is that petitioner's union and respondent agreed to a process for considering religious exemptions. The position statement offered by respondents, taken to its extreme, seems to say it did not have to provide any exemptions whatsoever. To be sure, respondents could have established that providing an exemption to petitioner was an undue burden by simply exploring her specific situation. It could be that many of the reasons cited in the position statement applied to her, but this Court cannot assume or search the record to make its own conclusions. It was respondents' obligation to provide reasoning and respondents failed to do so.

Respondents' assertion that it need not provide any reason at all is baffling, to say the least. If that were the law, then what is the point of making petitioner file an application for a religious exemption at all? How could anyone, including this Court, assess whether the denial was rational and free from discrimination? This is not a situation, such as where an agency fires a probationary employee, where a governmental agency need not provide any reason for its decision (*e.g.*, *Soto v Koehler*, 171 AD2d 567, 567 NYS2d 652 [1st Dept 1991]). Instead, this proceeding involves a tenured teacher who chose to apply for a religious exemption from a vaccine mandate. And this Court has no clue why her application was denied; this Court cannot just assume respondents had a rational basis.

Providing petitioner with the religious exemption is the only fair result. Respondents did not deny in the proceedings below nor do they assert here that petitioner lacks a sincerely held religious belief. And, as stated above, it is not this Court's role to make that determination. It was the obligation of respondents to make findings to justify their determination. Such a determination need not evaluate every conceivable claim, but it did have to cite some

justification. The decision merely had to consider 1) whether petitioner had a sincerely held religious belief and if she did, 2) whether an accommodation could be afforded to her, given her specific role.

Summary


The Court recognizes that respondents received thousands of requests for religious exemptions (according to the position statement) and providing all of those exemptions would have required respondents to incur significant costs. New assignments would undoubtedly have to be created along with the requisite supervision and evaluation. The instant decision should not be viewed as a blanket dismissal of those purported undue burdens as potential justifications for the denial of an accommodation request. Nor should this proceeding be seen as a basis to challenge the vaccine mandate itself as many courts have upheld the mandate (*see e.g., Broecker v New York City Dept. of Educ.*, 21-CV-6387(KAM)(LRM), 2022 WL 426113 [ED NY 2022]; *Garland v New York City Fire Dept.*, 574 F Supp 3d 120 [ED NY 2021]).

The issue for this Court is simply about due process and the process *respondents* were required to follow. There are many hypothetical reasons for why respondents may have decided not to do an individualized assessment of petitioner's request for a religious exemption. But those reasons, whether due to a lack of resources or something else, do not justify a conclusory denial without any justification given for such a determination. While "Because I said so" may be a sufficient rationale for the parent of an inquisitive toddler, it is not an adequate justification for an Article 78 proceeding. Petitioner utilized an option provided to her and sent in numerous documents in support of her request (including sending in additional documents as requested by the Citywide Panel [*see* NYSCEF Doc. Nos. 16, 17]). And after fulfilling her obligations,

respondents denied her request without citing a single specific reason. That renders the decision wholly irrational.

Accordingly, it is hereby

ORDERED that the motion to reargue by respondents is granted, and upon reargument, the Court adheres to its initial determination.

<u>9/2/2022</u> DATE			 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE