

**Police Benevolent Assn. of the City of N.Y. v City of  
New York**

2022 NY Slip Op 33185(U)

September 23, 2022

Supreme Court, New York County

Docket Number: Index No. 151531/2022

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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POLICE BENEVOLENT ASSOCIATION OF THE CITY OF NEW YORK, INC., ON BEHALF OF ITS MEMBERS, PATRICK J. LYNCH,

Petitioner,

INDEX NO. 151531/2022

MOTION DATE 03/07/2022

MOTION SEQ. NO. 001

- v -

CITY OF NEW YORK, ASHWIN VASAN, KEECHANT SEWELL, NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, NEW YORK CITY BOARD OF HEALTH, NEW YORK CITY POLICE DEPARTMENT, NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES, DAWN PINNOCK

Respondent.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 14, 15, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85

were read on this motion to/for JUDGMENT – DECLARATORY

Petitioners, the Police Benevolent Association of the City of New York (“PBA”) and Patrick J. Lynch, its President, seek an order from this Court to (1) permanently enjoin respondents from enforcing the vaccine mandate (mandate); (2) declaring that the mandate exceeded respondents’ authority; (3) vacating the vaccine mandate as applied to petitioners’ members; and (4) ordering reinstatement of employment backpay, benefits and damages to the PBA members. Respondents oppose the instant petition. The petition is granted to the extent indicated below.

Petitioners allege that the mandate violates the New York City Charter and the New York City Administrative Code, the Department of Mental Health and Hygiene (DOH) Commissioner exceeded his authority when ordering the mandate, the mandate violates administrative

rulemaking requirements, and that the mandate lacks a rational basis. In the light most favorable to the non-moving party, the Court will adopt respondents' position that the mandate is not subject to rulemaking requirements as it was implemented as a new condition of employment. Accordingly, the Court need only address petitioners' contentions of the DOH Commissioners authority to enforce the mandate.

While petitioners do not concede that the specific mandate, as issued in October 2021, was appropriate, it is undisputed that the DOH has the authority to issue vaccine mandates, that is not before this Court. The issues before this Court are narrow and are whether the DOH can impose adverse employment actions to enforce those mandates and even taking it a step further, whether it is lawful for the DOH to implement conditions of employment to members of the PBA.

Petitioners contend, that within its lawful authority to mandate vaccinations, its enforcement measure is limited to monetary fines. Health Code §3.01(d); §3.11(a). Respondents contend, without any citations to relevant legislative history, case law or even DOH internal memorandum, that the statute does not in fact limit enforcement to monetary penalties, thus DOH's conduct of unilaterally creating a condition of employment is improper. Respondents do not point to any instance where the DOH sought enforcement of a lawfully ordered mandate by creating a new condition of employment as to all City employees. To say that this Court should read into the statute that enforcement of a vaccine mandate is enforceable by exclusion from the workplace, suspension, leave without pay and ultimate termination would be a gross overstatement of the DOH Commissioner's powers.

In support of its contention that the DOH Commissioner can unilaterally create employment conditions, respondents cite to holdings of recently decided federal cases and trial

court decisions. This argument too is unpersuasive. Respondents cite a multitude of cases where this Court, as well as others, have denied petitions based on vaccination being a condition of employment, however in those instances the City and the respective union collectively bargained to include the vaccination mandate as a new condition of employment, that is not the case here.<sup>1</sup>

As it is clear by the conduct of the City in its dealings with other municipal unions, namely the United Federation of Teachers, Local 237, Teamsters, among others, it is obvious to this Court that the unilateral imposition of a condition of employment is not something that either the DOH or the Mayor can do without collective bargaining. Should this Court give any credence to the City's argument that it can impose whatever conditions of employment it deems necessary pursuant to a DOH issued mandate that position is in clear contrast to its practice on the same issue.

To be unequivocally clear, this Court does not deny that at the time it was issued the vaccine mandate was appropriate and lawful, the Court however does not see, nor have respondents established a legal basis or lawful authority for the DOH to exclude employees from the workplace and impose any other adverse employment action as an appropriate enforcement mechanism of the vaccine mandate.

Respondents contend that the DOH Commissioners order that created a new condition of employment is "similar to the residency requirement for all non-uniformed civil service employees found in NYC Administrative Code 12-120 or in New York Public Officers Law § 3(1), the Vaccine Mandate is another example of a lawfully created condition of employment." This Court disagrees. What is missing from respondents' recitation of that legal argument is

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<sup>1</sup> What is also not before the Court is whether disciplinary hearings are required pursuant to applicable law. The Court agrees with the other Courts that have addressed this issue that such hearings are not required. As noted, the Court finds the vaccine mandate a condition of employment, not a disciplinary issue.

statutory authority, unlike the residency requirements that are codified in the Administrative Code, the authority to impose a condition of employment by the DOH is not supported by any statute, rule or regulation cited by respondents. Accordingly, it is hereby

ORDERED that the vaccine mandate is invalid to the extent it has been used to impose a new condition of employment to current PBA members; and it is further

ORDERED that the mandate is invalid to the extent that it seeks an enforcement in any other manner than proscribed by law, namely monetary sanctions; and it is further

ORDERED that members of the PBA that were caused to be wrongfully terminated and/or put on leave without pay as a result of non-compliance with the unlawful new condition of employment discussed above are directed to be reinstated to the status they were as of the date of the wrongful action.

  
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9/23/2022  
DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: