

Sudnik v. City of New York

Supreme Court of New York, New York County

April 23, 2025, Decided

INDEX NO. 156388/2024

Reporter

2025 N.Y. Misc. LEXIS 2804 *; 2025 LX 31137

JOHN SUDNIK, THOMAS RICHARDSON Petitioner, -
v - CITY OF NEW YORK, Respondent.

Notice: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

Judges: [*1] PRESENT: HON. LYNN R. KOTLER, Justice.

Opinion by: LYNN R. KOTLER

Opinion

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 30, 31, 33, 34 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, this motion is decided as follows. In this special proceeding brought pursuant to CPLR Article 78, petitioners John Sudnik ("Sudnik") and Thomas Richardson ("Sudnik", "Richardson", or "petitioners") seek an order directing the Fire Department of the City of New York ("FDNY"), via respondent City of New York ("City") to retroactively increase their final salaries, recalculate their pensions based on those increased salaries, retroactively pay petitioners their increased yearly salaries and termination payment, and reimburse petitioners for their attorney's fees and costs. The City cross-moves to dismiss and argues that petitioners are not entitled to the increased salaries they claim, and therefore are not entitled to retroactive pay or increased termination benefits.

Facts

The relevant facts are as follows. Richardson began

employment with the FDNY on or about November 22, 1980, and retired on or [*2] about March 30, 2023. Sudnik began employment with the FDNY on or about October 7, 1985, and retired in July 2023. Petitioners held the position of Chief of Department at FDNY, an exempt civil service position, at the time of their retirement and claim that they held the underlying non-managerial permanent competitive civil service title of Deputy Chief.

The City has provided petitioners'"JOB/SALARY HISTORY" from the City of New York Payroll Management System which shows that from September 1, 2012, to February 26, 2019, Sudnik held the title of "ASST CHIEF DEP" with job code 7038B, and that on February 27, 2019 Sudnik was appointed the title of "CHF DEPT (FDNY)" as the Chief of Department at the FDNY with job code 70388. The JOB/SALARY HISTORY also shows that from June 3, 2017, to September 14, 2018, Richardson held the title of "DPTYAST CHF DP" with job code 7038A, from September 15, 2018, to June 25, 2021, the title of "ASST CHIEF DEP" with job code 7038B, and that on June 26, 2021, Richardson was appointed the title of "CHF DEPT (FDNY)" as the Chief of Department at the FDNY with job code 70388. The City also provided the DCAS Title Specifications information page which shows that [*3] Alternate Title Code 7038A corresponds to the title of "Deputy Assistant Chief of Department" and that 7038B corresponds to the title "Assistant Chief of Department".

The City of New York Office of the Comptroller, Internal Control and Accountability Directives, Directive #14 Leave Balance Payments ("Comptroller's Office Directive #14"), Section 4.6 provides the "Special Rules for Employees Serving in Exempt Positions". This section provides that:

Pursuant to P.O. 88/5, §7.6, as amended by P.O. 97/2, for employees serving in Exempt Positions, with an underlying non-managerial permanent competitive class civil service title, the City agency must calculate the Leave Balance Payment as though the employee had remained in the civil

service title, using the final (current) salary as the basis for calculation. The exempt employee retains the rights, privileges and status of his or her competitive class position, including salary increases receivable as a result of collective bargaining (see Chapter 35, §821 of the New York City Charter.)

The referenced section of Chapter 35 of the New York City Charter, regarding "Officers or employees designated to serve in exempt civil service position" states:

Notwithstanding any provision in this chapter to the [*4] contrary, the mayor or head of an agency may designate any officer or employee occupying a position in the competitive class of the civil service to serve in a position in the exempt class, and in such case, the officer or employee so designated shall thereupon enter upon and exercise all the powers and duties and receive the salary of such exempt position, and shall retain all the rights, privileges and status of such officer or employee's position in the competitive class.

Petitioners claim that they, along with the Uniformed Fire Officers Association ("UFOA"), were party to a collective bargaining agreement ("CBA") from the period of March 20, 2018 to July 30, 2021 which was entitled "Fire Officers 2018-2021 Agreement" ("2018-2021 CBA"). The 2018-2021 CBA bargaining unit consisted of "Lieutenants, Captains, Battalion Chiefs, Deputy Chiefs except those Deputy Chiefs designated as Deputy Assistant Chief of Department, Assistant Chief of Department and Chief in Charge... , and Fire Medical Officers, and Supervising Fire Marshals employed by the Employer in the Fire Department of the City of New York."

Petitioners further claim that the FDNY and UFOA were parties to another CBA, consisting [*5] of the same bargaining unit, entitled the "2022-2027 Uniformed Officers Coalition Economic Agreement" ("2022-2027 CBA").

On March 26, 2024, petitioners sent a joint letter, via counsel, to FDNY Commissioner Laura Kavanagh "regarding the final salaries, managerial lump sum payments, and terminal leave payments [petitioners] should have received from FDNY". Petitioners argued that they were entitled to salary increases of "3% effective March 20, 2020; plus 3.25% effective July 31, 2021; plus 3.25% effective July 31, 2022" in accordance with Comptroller's Office Directive #14. Petitioners

allege that the increases amounted to adjustments in their final salaries of \$23,783 each, and a total of \$266,375 each. Petitioners claim that they did not receive a response to their letter.

On April 15, 2024, petitioners sent a follow up letter to confirm receipt of the March 26, 2024 letter. On April 16, 2024, FDNY confirmed receipt via email. Petitioners claim FDNY did not provide any "substantive response" following confirmation of the letter.

The instant petition was filed on July 15, 2024.

Discussion

In an Article 78 proceeding, the applicable standard of review is whether the administrative decision [*6] was made in violation of lawful procedure; affected by an error of law; or arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion (CPLR § 7803 [3]). "[T]he proper test is whether there is a rational basis for the administrative orders, the review not being of determinations made after quasi-judicial hearings required by statute or law" (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck Westchester County*, 34 NY2d 222, 231, 313 N.E.2d 321, 356 N.Y.S.2d 833 [1974]) (emphasis removed); see also *Matter of Colton v. Berman*, 21 NY2d 322, 329, 234 N.E.2d 679, 287 N.Y.S.2d 647 (1967).

"Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell*, 34 NY2d at 231; see also *Matter of Wooley v New York State Dept. of Correctional Servs.*, 15 NY3d 275, 280, 934 N.E.2d 310, 907 N.Y.S.2d 741 [2010]; *Matter of Ferrelli v State of New York*, 226 AD3d 504, 504, 211 N.Y.S.3d 1 [1st Dept 2024]). If the agency determination is supported by a rational basis, it must be upheld even if a different conclusion could have been reached by the court (*Matter of Ferrelli*, 226 AD3d at 504; see also *Matter of Peckham v Calogero*, 12 NY3d 424, 431, 911 N.E.2d 813, 883 N.Y.S.2d 751 [2009]).

In their cross-motion to dismiss, the City argues that petitioners are expressly exempt from both the 2018-2021 CBA and the 2022-2027 CBA (collectively, "CBAs") as the bargaining unit excludes "**those Deputy Chiefs designated as Deputy Assistant Chief of Department, Assistant Chief of Department and Chief in Charge**". The Deputy Assistant Chief of Department and Assistant Chief of Department positions

are both excluded from the CBAs, and Chief of Department at the FDNY is an exempt civil service position. [*7]

LYNN R. KOTLER, J.S.C.

End of Document

Petitioners argue that their prior positions were non-exempted and that Comptroller's Office Directive #14 and New York City Charter Chapter 35, Section 821, taken together, "provide that Petitioners were entitled to receive the salary increases and related economic benefits of the [CBAs] during the period in which they held their exempt Fire Chief positions, as if they in fact continued to hold their non-exempt Assistant Chief positions, which positions are explicitly covered by the [CBAs]". Comptroller's Office Directive #14 provides that "The exempt employee retains the rights, privileges and status of his or her competitive class position, **including salary increases receivable as a result of collective bargaining**" (emphasis added). Petitioners' underlying service titles were specifically exempted from the CBAs and therefore petitioners are not entitled to receive the salary increase that was a benefit provided by the CBAs. The City was not arbitrary and capricious or without a rational basis when determining that the salary increases granted under the CBAs did not apply to petitioners.

Because petitioners are not entitled to the higher salary, they are not entitled to a recalculation of their pension benefit amounts based on [*8] those amounts, and the Leave Balance Payment was correctly calculated "using the final (current) salary as the basis for calculation."

Conclusion

Accordingly, it is hereby

ORDERED that respondent's cross-motion to dismiss is granted; and it is further

ORDERED that the petition is denied and this proceeding is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

4/11/2025

DATE

/s/ Lynn R. Kotler