

# Dist. Council 37 v. City of New York

Supreme Court of New York, New York County

March 27, 2026, Decided; April 2, 2026, Published

157552/2025

## Reporter

2026 NYLJ LEXIS 533 \*; 2026 LX 125047

District Council 37 v. City of New York

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(District Council 37 v. City of New York, NYLJ, Apr. 2, 2026 at p.17, col.2)

**Judges:** [\*1] Judge: Justice Gerald Lebovits

## Opinion

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Petitioners, District Council 37 et al., brought a CPLR article 78 proceeding against New York City and the New York City Fire Department. Petitioners argued that FDNY made illegal temporary appointments of fire cadets to Emergency Medical Technician (EMT) or Emergency Medical Services (EMS) trainee class titles, even though the cadets were not candidates on the eligible civil-service lists for EMT appointments. The court agreed with petitioners and ordered that the last six cadets who remained in the EMS trainee/EMT class titles be removed from those positions. The court held although respondents represented that the FDNY has had trouble recruiting EMTs, it did not dispute that lists of eligible EMT candidates exist. Nor did respondents identify a narrow circumstance permitting them to appoint the cadets to EMT roles for longer than three months. The court further explained even assuming that the length of the cadets' appointment was permissible, the individuals appointed must come from an eligible list. Respondents failed to explain why they were not required to look at the next list of eligible EMS candidates.

Full Case Digest Text

The following e-filed documents, listed [\*2] by NYSCEF document number (Motion 001) 2, 9, 11, 12, 13, 14, 15 were read on this motion for INJUNCTION.

The following e-filed documents, listed by NYSCEF

document number (Motion 002) 16, 17, 20, 21, 29, 30, 32 were read on this motion for INJUNCTION.

## DECISION + ORDER ON

MOTION This proceeding arises from the temporary appointment of fire cadets to Emergency Medical Technician (EMT) or Emergency Medical Services (EMS) trainee class titles. Petitioners are District Council 37; American Federation of State, County, and Municipal Employees; AFL-CIO; Local 2507 (an AFL-CIO affiliate); Henry Garrido (executive director of petitioners), and Oren Barzilay (president of Local 2507). Respondents are The City of New York; the Mayor of the City of New York; New York City Fire Department (FDNY); the NYC Fire Commissioner; the New York City Department of Citywide Administrative Services (DCAS); and the commissioner of DCAS.<sup>1</sup> Respondents appointed 82 Fire Cadets to take an 18-week EMT training course set to begin on June 16, 2025. The 82 cadets were individuals who finished the Fire Cadet program and awaited the start of their Probationary Firefighter class scheduled to begin in October 2025. Respondents' [\*3] goal in making the appointments was to ensure that the cadets (1) "could meet their minimum and maximum time-in-title requirements; (2) "would be continuously employed up until the time of their entry into the Fire Academy as a Probationary Firefighter (i.e., that the FDNY would not be required to terminate their employment)"; and (3) "would serve in a capacity that met the needs of the FDNY in the interim." (NYSCEF No. 19 at 12.)

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<sup>1</sup> Petitioners initially filed this action against former Mayor Eric Adams, former NYC Fire Commissioner Robert S. Tucker, and former DCAS commissioner Louis Molina in their official capacities. Those individuals no longer occupy those respective positions. Regardless, the court "deem[s] that a motion to allow the action to be carried on against the '[Mayor of the City of New York, NYC Fire Commissioner, and DCAS Commissioner]' and to omit the name[s] of [Adams, Tucker, and Molina] was made and granted." (Travel House of Buffalo, Inc. v Grzechowiak, 31 AD2d 74, 83 [4th Dept 1968], affd 24 NY2d 1034 [1969]; see CPLR 1019, 1023.)

Petitioners have brought this article 78 proceeding (1) for a judgment and declaration that the FDNY, by temporarily employing 82 ineligible individuals as EMS Trainees and EMTs for a planned period of more than three months despite the existence of civil service examination lists for both titles, violated Civil Service Law §§64 and 65, DCAS Personnel Rules & Regulations 5.4.1, 5.5.1, and 5.5.3, as well as Article V, §6, of the New York Constitution; (2) to enjoin respondents and their agents, employees, and representatives from temporarily employing the Fire Cadets as EMS Trainees and EMTs; (3) to enjoin respondents from conducting the EMT training for the 82 Fire Cadets scheduled to commence June 16, 2025; and (4) for an order requiring respondents to make appointments to EMT and EMS trainee lines from the appropriate [\*4] eligibility lists.

In addition to the petition, petitioners sought a temporary restraining order (TRO) to enjoin respondents from appointing the cadets and assigning them to undergo the 18-week course pending resolution of the petition (mot seq 001). On June 17, 2025, this court denied the TRO, because petitioners did not represent that they provided advance notice to respondents of their intent to bring the TRO and the affidavit of service on the initiating papers in this action did not reflect proper service under CPLR 311. (NYSCEF No. 11.)

On June 18, 2025, petitioner filed another TRO request for the same relief (mot seq 002). In a written order dated June 24, 2025, this court denied the request "for lack of a showing of irreparable harm," as required to show entitlement to a TRO. (NYSCEF No. 21 at 4 [pdf pagination].)

After this court denied the TRO requests, the EMS course went forward. Most of the cadets started firefighting classes in mid-late 2025 or early 2026. To this date, six cadets remain in provisional EMT positions.

The court now considers the petition on its merits. The petition is granted in part and denied in part.

#### DISCUSSION

Petitioners argue that the fire cadets' temporary appointments [\*5] to EMS/EMT positions violate the Civil Service Law, DCAS Personnel Rules, and the New York State Constitution. According to petitioners, respondents appointed the fire cadets even though they were not candidates on the eligible civil-service lists for EMT appointments. Petitioners contend that

respondents bypassed EMT eligible candidates in favor of the cadets. Petitioners thus seek a writ of mandamus to compel respondents to remove the fire cadets from the provisional EMT roles. (See NYSCEF No. 37 at 14 [oral-argument transcript]; *D'Arata v. New York City Dept. of Health & Mental Hygiene*, 226 AD3d 561, 562 [1st Dept 2024] ["[M]andamus does not lie to enforce the performance of a duty that is discretionary, as opposed to ministerial."] [internal quotation marks omitted].)

Respondents assert that because the EMS course was already held, the petition is academic. They also argue that FDNY received approval from the Office of Management and Budget for an additional 85 spots in the EMS trainee program and therefore that appointment of the cadets did not take away spots otherwise reserved for candidates on the eligibility lists. (NYSCEF No. 19 at 1 [pdf pagination].) Respondents further contend that they are permitted to appoint the cadets on a temporary basis, although they were [\*6] not on eligible lists, because New York City needs additional EMTs. (NYSCEF No. 28 at 6.)

1. The court first concludes that most of this petition is not academic. Although the EMS course ended, and most of the fire cadets in the EMS positions have since been incorporated into firefighting classes, six cadets still remain in provisional EMT roles, at least until the next firefighting class begins in fall 2026. (See NYSCEF No. 38 [respondents' March 25, 2026 letter to court].) Because the alleged violation is ongoing, the petition is not academic.<sup>2</sup> The only part of the petition that is academic is petitioners' request to enjoin respondents from conducting the EMS training for the Fire Cadets that was scheduled to commence on June 16, 2025. That course has already taken place.

2. The court next concludes that respondents' appointment of the fire cadets as EMTs/EMS trainees was unlawful. The New York State Constitution provides that "[a]ppointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, [\*7] shall be competitive. (NY Const, art V, §6.) Accordingly, Civil Service Law §61 (1) provides that "[a]ppointment or promotion from an eligible list to a position in the

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<sup>2</sup> At the time of oral argument, only 18 fire cadets remained in EMS/EMT positions. Twelve of those cadets have since joined a firefighting class, which commenced on March 2, 2026. (NYSCEF No. 38.)

competitive class shall be made by the selection of one of the three persons certified by the appropriate civil service commission as standing highest on such eligible list who are willing to accept such appointment or promotion." If "there is no appropriate eligible list available for filling a vacancy in the competitive class, the appointing officer may nominate a person to the state civil service department or municipal commission for non-competitive examination." (Civil Service Law §65 [1]; accord DCAS Personnel Rule & Regulations 5.5.1, available at Rule V --- Appointments And Promotions, Personnel Rules and Regulations of the City of New York, <https://www.nyc.gov/site/dcas/reports/personnel-rules-regulations-rule-5.page> [last accessed Mar. 26, 2026] and Rule 5.5.3 ["A provisional appointment to any position shall be terminated within two months following the establishment of an appropriate eligible list for filling vacancies in such positions."].)

Additionally, Civil Service Law §64 (2) provides that "[a] temporary appointment for a period not exceeding three months may be made without regard to existing eligible lists." (Accord DCAS Personnel Rules 5.4.1.) A temporary employee may be appointed for more than three months only in "narrowly defined situations" [\*8] as defined in Civil Service Law §64 (1). (Matter of *Montero v. Lum*, 68 NY2d 253, 258-259 [1986].) If one of those situations applies, "[a] temporary appointment for a period exceeding three months but not exceeding six months may be by the selection of a person from an appropriate eligible list, if available, without regard to the relative standing of such person on such list." (Id.)

Although respondents represent that the FDNY has had trouble recruiting EMTs, it does not dispute that lists of eligible EMT candidates exist. (Cf. Civil Service Law §65 [1] [noting when no list appropriate eligible list is available]; DCAS Personnel Rule & Regulation 5.5.3 [noting that provisional appointments must be terminated within two of establishment of appropriate eligible list].) Nor do respondents identify a narrow circumstance here permitting them to appoint the cadets to EMT roles for longer than three months. (See Civil Service Law 64 [1].) And even assuming that the length of the cadets' appointment is permissible, the individuals appointed must come from an eligible list. (See Civil Service Law §64 [2].) Respondents do not explain why --- even in light of an asserted EMT shortage --- they are not required to look at the next list of eligible EMS candidates to fill open spots in the EMS training program.

The petition is therefore granted [\*9] to the extent set

forth above.

Accordingly, it is

ORDERED that the caption in this proceeding shall bear the following caption:

District Council 37, American Federation of State, County, And Municipal Employees, AFL-CIO, Henry Garrido, and Oren Barzilay, Petitioners v. The City of New York, the Mayor of the City of New York, New York City Fire Department; the New York City Fire Commissioner, the New York City Department of Citywide Administrative Services; and the commissioner of DCAS, Respondents;

and it is further

ORDERED that the branch of petitioner's petition to enjoin respondents from conducting the EMT training for the fire cadets that was scheduled to commence June 16, 2025, is denied as academic; and it is further

ORDERED, ADJUDGED, and DECLARED that by temporarily employing six ineligible individuals as EMS Trainees and EMTs for a period of more than three months despite the existence of civil-service examination lists for both titles, FDNY violated Civil Service Law §§64 and 65, DCAS Personnel Rules & Regulations §§5.4.1, 5.5.1, and 5.5.3, as well as art V, §6 of the New York Constitution; and it is further

ORDERED that respondents and their agents, employees, and representatives are enjoined from temporarily employing the remaining six [\*10] fire cadets as provisional EMTs; and it is further

ORDERED that respondents substitute the six fire cadets in provisional EMT roles with six individuals from the appropriate eligibility list; and it is further

ORDERED that petitioners serve a copy of this order with notice of its entry on respondents; and on the office of the County Clerk (using the NYSCEF document type "Notice to the County Clerk --- CPLR §8019 (c)"), which shall enter judgment accordingly; and it is further

ORDERED that petitioners serve a copy of this order with notice of its entry on respondents and on the office of the General Clerk (using the NYSCEF filing even "Service on Supreme Court Clerk (Genl. Clerk) w/Copy of Order."), which shall amend the caption and update its records accordingly.

CHECK ONE: X CASE DISPOSED NON-FINAL

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DISPOSITION GRANTED DENIED X GRANTED IN  
PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES  
TRANSFER/REASSIGN FIDUCIARY APPOINTMENT  
REFERENCE

Dated: March 27, 2026

**New York Law Journal**

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