

After 3020a;  
CPLR 7511 and beyond...

January 11, 2010

Dear Bronx TRC,

Recall the 3020a workshop. Hopefully, you have taken the initiative to look up the laws which have supported your visit to the Rubber Room. Education Law 3020 and the amended version 3020a; establishes due process for tenured teachers in New York State.

Once you have completed your 3020a hearings; be prepared to wait for a decision by the hearing officer. The 'finding may be anything from full exoneration to guilty on all counts. You may get an 'opinion and award' which suggests that you get a fine, be suspended for up to one year, or be terminated from your employment with the New York City Public School Teaching Force. In severe cases, the arbitrator might even suggest stripping you of your teaching license.

If you receive any negative outcome - especially if you receive a termination from employment letter; you have only 10 days to respond from the day of receipt of the hearing officers 'opinion and award'. You can 'fight it'; by contesting the hearing officer's decision in a New York State Supreme Court.

Your response to the hearing officer's findings should be to file a notice of petition with the Supreme Court in the county in which you were employed. ( The Bronx Supreme Court is located at 161 Street and the Grand Concourse. The clerk's office is in room 118). You can get some help from the office of the self represented. Be sure to pay \$210 for an index number (this establishes your case and identifies it) and \$95 for a request for judicial intervention (this assigns a judge to your case). You will have to submit your papers to the court and also serve it on the opposing parties.

[Another option is to file an order to show cause. This calls for more immediate response. I did not do this and do not know much about it]. You may opt to file motions for an additional \$45 each. Pick an answer date ( the date were you, the judge and the winning party from the 3020a hearings (NYCDOE) will come to court to present) that is about one month away or later.

You will have to serve your court papers to the other parties through someone else. They will have to sign an affidavit of service (notarized) and mail the documents for you. (You can prepare the packet). Free notarization of your papers can be obtained in room 118. When the packets are mailed, you can save costs by simply paying \$1.15 each for a certificate of mailing. (Blowing six bucks on certified mail return receipt requested is not necessary for the courts). Be sure to serve all parties and the NYC Law Department; Corporation Council at 100 Church St. 6 th floor NY NY 10007. Many cases are lost due to improper service.

Your argument will be to contest the findings based on CPLR 7511 ( Civil Practice Law Rules section 7511. ) You should look up all of these laws yourself ( the public library in the court has restricted times; university alumni access may allow you to search through Lexis-Nexis or Westlaw).

You will ask the court to reconsider the case based on flaws in the arbitrator's logic. Partiality, irrationality, violation of public policy and misconduct of the hearing officer are your main basis for argument. The details of your particular case are not important here. The Supreme Court is only interested in whether the arbitrator may have broken a procedural law. On the basis of CPLR 7511 you might ask the court to :

- 1) stay the order - put it on hold until the court decides whether the arbitrator made correct procedural decisions
- 2) vacate or modify the order - throw out the decision and 'un-terminate' you; restoring your salary and benefits; or at least provide a less severe 'punishment'
- 3) Change the venue - change the location of the court trail. Many principals, attorneys and arbitrators are 'well-connected'; the chances of a fair second trail might be poor within the confines of NYC.
- 4) remove the hearing officer - in cases where the arbitrator was especially bad; and you can prove it.

As you read through the law books, I recommend looking both ahead and behind that statute. CPLR 7510 allows you to oppose confirmation of the arbitration award within one year of the presentation of the findings to you. CPLR 7509 allows you to request directly to the hearing officer, for a modification of the decision. Searching around in other law books; I found Labor Law section 740; which prohibits retaliatory actions against employees by employers.

The Supreme Court judge will only be looking at three things as 'evidence'.

- 1) The hearing transcripts

2) any evidence which was admitted during the course of the 3020a hearing.

3) The arbitrator's opinion and award

You will have to search through these to find any inconsistencies in the arbitrator's reasoning. Major errors in judgment, breaking of other established laws, snide comments, fishy off the record breaks in the transcript, preclusions of defense witnesses or documents, and clear expressions of bias are among the reasons for the Court Judge to vacate the order or permit a re-trial.

This process can take months. All while ,you suddenly have no more salary and may be emotionally shocked. So, prepare for it. Save up some money for a rainy day; and start writing out what your arguments will be. Be sure to get a copy of your hearing transcripts and read through them carefully. Write out the hearing date, page and line for all contestable conversation and quote them directly when you bring your argument before the judge.

I can only report on what I have learned and done. I have chosen to go 'pro se' and am not a lawyer. If you chose to pay one, prepare to pay a lot for the appeal - I was quoted \$7500. You will also have to rely on your lawyer for information and depend on their ability to submit everything in time and be convincing to the Supreme Court Judge ( if you get one assigned to you who will take oral arguments).

One of the things that I have learned from this experience is that most professions guard information; so as to keep you dependent on them. Does a car mechanic offer to teach you about car repair; or does he prefer to keep you ignorant so that you will run back to him every time you car has a problem? Teaching is the only profession that I know of were the practitioners are not incentivized to withhold information from their customers. Perhaps that is part of the reason that we are so baffled when we become ensnared in the education legal system. We, as teachers, generally like to share information and communicate. We prefer honesty and logic to ignorance and trust in authorities beyond ourselves. - At least , I do; and that, with quick wit and a sharp tongue have brought me to spend four years in the Bronx Teachers Re-Assignment Center.

Understanding lawyers and how they operate; has been baffling for me. Their desire to make deals; attempts to convince you to settle, unwillingness to go to trial. .. Hey, Isn't this supposed to be about right and wrong? I'm not making any deals. And if I have a lawyer who is not going to fight for me; I will choose to fire him. So, far I've been spanked. But, I still have my integrity...

One of my TRC friends & mentors told me: ' You have to run the whole course. Do the whole marathon.' Another (FG) advised me that he has been to hell and back. The trick is to be willing go there - to hell- and then, to be willing to come back. My best advise is to work backwards. Go to the end point and then track backwards. Write out every step. It' a technique for outlining the details in any prediction. If you think that you will wind up with a school in the suburbs, what are the preceding steps? Do the same for your worst case scenario and see if you can't better predict how to respond.

Did your lawyer take the time to explain the entire process and your options? It is not 'over' after the 3020a hearing. NYSUT will drop you immediately after your 3020a is completed. But there are appeal options. There are even separate lawsuits which can be made in the Federal Courts. But who is going to tell you that - for free? Ms. Williams will. And she advises you to check the law references. Do you have what it takes to take some action on your own; or will you remain chained to a leeching lawyer whose first imperative is to suck you dry? How will you know that they are doing right by you? I've searched far and wide for lawyers. I haven't found one who would work as hard as I have on my case. You must also consider that the lawyers always want to keep their business relationships friendly; and therefore might not fight hard for you in your case if they think that it may end up costing them, socially or economically, later. Do you dare try to do it yourself?

Ask yourself some hard questions. Then get to work. It's drizzling now. But a storm from NYC DOE is coming. Prepare yourself.

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