

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY
Present:

HON. ANTHONY L. PARGA
Justice

-----X PART 6
In the Matter of the Application of
CYNTHIA MORROW,

Petitioner,
For a Judgment Pursuant to
CPLR Article 78,

INDEX NO.: 15790/11
XXX

-against-

MOTION DATE: 01/25/12
MOTION SEQ.: 001

THE COUNTY OF NASSAU,

Respondent.

-----X
Notice of Petition, Petition, & Exs..... 1
Verified Amended Answer and Objections in Points of Law & Exs..... 2
Verified Amended Answer and Objections in Points of Law..... 3
Verified Reply..... 4

Upon the foregoing papers, it is ordered that the application by Petitioner seeking an order pursuant to Article 78, reinstating Petitioner to her position as a full time Real Property Appraiser-Assessor I in the Nassau County Department of Assessment with full back pay is denied.

Petitioner Cynthia Morrow was an employee of Nassau County as a Real Property Appraiser-Assessor I in the County Department of Assessment. In June 2011, the County proposed an ordinance that would amend the 2011 County Budget to abolish certain positions comprising the Nassau County workforce. The ordinance was approved by the Nassau County legislature and took effect on July 1, 2011. Annexed to the ordinance, as Appendix A, were the positions that were deemed abolished. The ordinance also included language which stated that "Appendix A, may only be modified to allow for the correction of any mathematical and/or typographical errors subsequent to any approval and adoption of said ordinance without the

necessity for a vote to be taken by the County Legislature....”

On July 1, 2011, non-party County employee, Katie Pupovich’s position, whose title was Real Property Tax Specialist, was abolished. On July 7, 2011, the Nassau County Civil Service Commission (hereinafter “Commission”) notified Ms. Pupovich that her title had been eliminated and that pursuant to Civil Service Law §80, she was entitled to “retreat” rights - that is, that she might be able to return to her previously held permanent position of Real Property Appraiser-Assessor I. On or about July 7, 2011, petitioner Cynthia Morrow was notified that her position of Real Property Appraiser-Assessor I was eliminated. The Court notes that the letter sent to petitioner, Cynthia Morrow, stated that Katie Popovich, who was being laid off in the title Real Property Tax Specialist had the right to retreat to Real Property Appraiser-Assessor I and that Katie Popovich displaced Cynthia Morrow in that title.

Petitioner contends that when the Nassau County approved the ordinance at issue, it approved a specific list of positions to be abolished. Petitioner contends that her position was not presented to the Legislature for a vote, rather Ms. Pupovich’s position was presented to the Legislature and the elimination of that position was approved. Accordingly, Ms. Morrow contends that the County’s actions were a violation of the law and that the County acted in an arbitrary and capricious manner when it terminated her from her full time position. As such, the petitioner seeks an order which declares, *inter alia*, that she is still a full time Real Property Appraiser-Assessor I in the Nassau County Department of Assessment and ordering the County to reinstate her to her position with full back pay.

In opposition, the County contends that on July 7, 2011, the Commission notified Ms. Pupovich that her title had been eliminated and that pursuant to Civil Service Law §80, she was entitled to “retreat” rights. On July 7, 2011, Ms. Popovich informed the County that she would exercise her right to retreat to her former position of Real Property Appraiser-Assessor I. Ms. Morrow was the only employee in the position of Real Property Appraiser-Assessor I who had less seniority than Ms. Popovich. As such, Ms. Popovich displaced Ms. Morrow, and Ms. Morrow was laid off by the County. Additionally, as Ms. Morrow had never held another position with the County, the County contends that Ms. Morrow did not have any right to displace another employee.

The County points to Civil Service Law §80(6) which states that “if a permanent incumbent position in a civil division is suspended or displaced from a position in a title for which there are no lower level occupied positions in direct line of promotion, he shall displace the incumbent with the least retention right...who is serving in a position in the title in which the incumbent last served on a permanent basis prior to service in one or more positions in the title from which he is suspended or displaced if: (1) the service of the displacing incumbent while in such former title was satisfactory and (2) the position of the junior incumbent is in (a) the competitive class, (b) the layoff unit from which the displacing incumbent was suspended or displaced, and (c) a lower salary grade than the position from which the displacing incumbent is suspended or displaced; provided, however, that no incumbent shall displace any other incumbent having greater retention standing.” It is undisputed that Ms. Morrow had less seniority than Ms. Popovich.

Petitioner contends that she is not challenging Ms. Popovich’s right to “bump and retreat,” but instead challenges the County’s actions in failing to follow the law in that positions of employment established by an ordinance adopting a budget may only be abolished by an act that is legislatively equivalent to such ordinance.

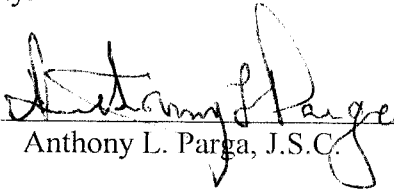
The petitioner’s title was not abolished and she was not terminated on said basis. Ms. Morrow was terminated due to her displacement by Ms. Popovich in accordance with Civil Service Law §80(6).

It is well settled that in a proceeding brought under Article 78 of the CPLR, the function of the Court is only to see that a determination of an administrative body or officer was made in the manner prescribed by law. (*See, Laureano v. Kuhlmann*, 75 N.Y.2d 141; *Voelckers v. Guelli*, 58 N.Y.2d 170). In an Article 78 proceeding, the Court’s inquiry is limited strictly to a determination whether a rational basis exists for the agency’s actions. (*Jennings v. New York State Office of Mental Health*, 90 N.Y.2d 227, 682 N.E.2d 953 (1997)). The standard of review in an Article 78 proceeding is “whether the agency determination was arbitrary and capricious or affected by an error of law.” (*See, Scherbryn v. Wayne Finder Lakes Bd. of Coop. Educ. Services*, 77 N.Y.2d 753 (1991)). A reviewing court may not substitute its own judgment for that of the agency nor may a court overturn a final determination made by an administrative agency unless

there is no rational basis for the agency's decision or the act complained of is illegal, arbitrary, capricious or without any legal basis. (*Jennings v. New York State Office of Mental Health*, 90 N.Y.2d 227, 682 N.E.2d 953 (1997); *Hughes v. Doherty*, 5 N.Y.3d 100, 833 N.E.2d 228 (2005); *Pell v. Bd. of Education*, 34 N.Y.2d 222 313 N.E.2d 321 (1974)).

The County did not eliminate or abolish Ms. Morrow's position in violation of the Appendix A to the ordinance amending the 2011 County Budget. Instead, Ms. Popovich's position was eliminated by the Legislature, and, thereafter, in accordance with Civil Service Law §80(6), Ms. Morrow was displaced in her position by Ms. Popovich, due to Ms. Popovich's seniority. Accordingly, there is no evidence that the County's actions herein were made in violation of lawful procedure, or without rational basis, or were illegal, arbitrary, or capricious. Accordingly, Petitioner's application is denied in its entirety.

Dated: March 16, 2012


Anthony L. Parga, J.S.C.

Cc: Law Offices of Louis Stober, Jr., LLC
Attn: Alyssa F. Bomze, Esq.
350 Old Country Road, Suite 205
Garden City, NY 11530

John Ciampoli, Esq.
Nassau County Attorney
Attn: Daniel Feldman, Esq.
One West Street
Mineola, NY 11501

ENTERED
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NASSAU COUNTY
COUNTY CLERK'S OFFICE