

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: GEOFFREY D.S. WRIGHT
Justice

PART 62

KAREN BRAITHWAITE, GWENDOLYN BASLERVILLE,
et al,
Platintlff/Petitioner(s)

105174/11
INDEX NO. ~~1000774~~
MOTION DATE _____

- v -

DAVID F. FRANKEL, As Commissioner, New York
City Department Of Finance, THE CITY OF NEW YORK,
MICHAEL F. BLOOMBERG, Mayor,
Defendants

MOTION SEQ. NO. 001
MOTION CAL. NO. _____

The following papers, numbered 1 to 2 were read on this motion to grant prelliminary injunctlon

	PAPERS NUMBERED
Notice of Motlon/ Order to Show Cause — Affidavits — Exhibits ...	1
Answerlng Affidavits — Exhibits _____	2
Replying Affidavits _____	

Cross-Motion: Yes No

Upon the foregolng papers, it is ordered that this motion by Plaintiffs for a preliminary injunction to enjoin the Department of Finance from laying off Office Machine Assistants is denied a/p/o.

FILED

JUL 07 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: May 6, 2011

GEOFFREY D. WRIGHT
GEOFFREY D. WRIGHT
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: Part IA-1

-----X
KAREN BRAITHWAITE, GWENDOLYN
BASKERVILLE, ROZINA BROWN, et al,
Plaintiff/Petitioner(s),

Index #111051/11
Motion Cal. #
Motion Seq. #
DECISION/ORDER
Present:
Hon. Geoffrey Wright
Judge, Supreme Court

-against-

DAVID F. FRANKEL, As Commissioner, New
York City Department Of Finance, THE
CITY OF NEW YORK, MICHAEL R. BLOOMBERG,
As Mayor,

Defendant/Respondents(s).

FILED

JUL 07 2011

-----X
Recitation, as required by CPLR 2219(a), of the papers considered ^{NEW YORK} by the review of
this Motion to: grant preliminary injunction COUNTY CLERK'S OFFICE

PAPERS	NUMBERED
Notice of Motion, Affidavits & Exhibits Annexed	
Order to Show Cause, Affidavits & Exhibits	1
Answering Affidavits & Exhibits Annex	2
Replying Affidavits & Exhibits Annexed	
Other (Cross-motion & Exhibits Annexed)	

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

The Plaintiffs in the above matter all occupy the job title of Office Machine Assistant (OMA) with the Defendant Department of Finance. As a component to the countrywide financial crisis of the last few years, the City as a whole, and the Department of Finance in particular, was tasked with trimming its budget. This required a triage of job titles in order to determine which employees could be laid off in order to save the money required to meet immediate goals. In the case of the Department of Finance, this meant reducing its budget by \$13, 400,000.00 in fiscal year 2011 and \$19,000,000.00 in fiscal year 2012.

The thirty-seven or thirty-eight Plaintiffs in the caption, are all Office Machine Assistants, and all suffer from a recognized disability of one kind or another. All of the

Plaintiffs were hired pursuant to section 55-a of the Civil Service Law. As such they hold jobs in competitive positions, notwithstanding the fact that they were not hired from a competitive list.

Looked at another way, the Plaintiffs are in their current jobs at the expense of those who took and passed competitive exams, since they are doing the work of the competitive class, even though they are from a noncompetitive group. In addition, as the defense argues, the job line of the Plaintiffs, Office Machine Operator, is by operation of time, and the advancement of technology, is slowly but surely being rendered vestigial. This is evidenced by the fact that the Plaintiffs, in large part, were doing out of title, or nearly out of title work. Each of the Office Machine Assistants testified, was doing work that could easily fit the job description of Clerical Aids or even Clerical Associates. On the one hand this supports the usefulness of the Plaintiffs, on the other hand it supports the argument of the defense, that their job line had outlived in usefulness.

At the hearing held before me, a defense witness testified that in order to retain the Plaintiffs beyond today, May 6, their last scheduled day of work, the budget in some other department, and perhaps some other employees would lose their jobs, thus there is here, a Hobson's choice, or rather, Sophie's choice. Whose head gets lopped off?

The Dept. Of Finance chose to delete the title of Office Machine Assistant That mean the loss of 78 jobs. Of those 78, one died, one was able to qualify for a new title and remain at the Department, one retired and the fate of one is unclear, although an attempt at explanation was made. That left 74 Office Machine Assistants. Twenty, because of their seniority, were able to transfer to other City agencies. Fourteen were able to become Clerical Associates. That left 40 Office Machine Assistants. Twelve of these had permanent Civil Service status, but are being laid off. The remaining Office Machine Assistants (28) were hired under Civil Service Law 55-a, which allows the hiring of people with disabilities who would not otherwise be employed. The record is clear that attempts were made to transfer members of Plaintiffs' class to other positions. The record is also clear, even from the Plaintiffs' own testimony, that the jobs traditionally done by Office Machine Assistants were diminishing, and therefore the need for the job title was also diminishing, and would soon be absorbed. The work of an Office Machine Assistant can now be done by the holders of other job titles while sitting at their desks and using computers. Copying demands are less because computers can direct a printer to make as many copies of a document as are needed. The binding of certain books, once the domain of the Office Machine Assistant is now an obsolete task because the information that was once in books is now available on-line.

At the conclusion of the hearing, I find that the Plaintiffs have not satisfied the requirements of Art 63 of the Civil Practice Law and Rules, in that they have not been able demonstrate a likelihood of ultimate success. The Defendants have expressed a nondiscriminatory and legitimate business reason for the layoffs that are to take place this afternoon, May 6, 2011 [*FORREST v. JEWISH GUILD FOR THE BLIND*, 3 N.Y.3d 295, 819 N.E.2d 998, 786 N.Y.S.2d 382, 2004 N.Y. Slip Op. 07620, " In order to nevertheless succeed

on her claim, the plaintiff must prove that the legitimate reasons proffered by the defendant were merely a pretext for discrimination by demonstrating both that the stated reasons were false and that discrimination was the real reason.” McKinney’s Executive Law § 296.; *FERRANTE v. AMERICAN LUNG ASS’N*, 90 N.Y.2d 623, 687 N.E.2d 1308, 665 N.Y.S.2d 25, 78 Fair Empl.Prac.Cas. (BNA) 1539, 1997 N.Y. Slip Op. 08773]. In this case, the Plaintiffs do not gainsay the current economic downturn, or the very public announcements of both municipal and State leaders confirming the same. The legitimate business reason here is a matter of public. Part of the burden has had to be borne by those least able or likely to be able to replace the jobs that they are about to lose. But in this case, I see nothing that the courts can do. The motion for a preliminary injunction staying the layoff of the Plaintiffs is denied. This constitutes the decision and order of the Court.

Dated: May 6, 2011


GEOFFREY D. WRIGHT

AJSC
FILED

JUL 07 2011

NEW YORK
COUNTY CLERK'S OFFICE