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Board of Educ. of Hauppauge Union Free School Dist. v. Hogan

Supreme Court, Appellate Division, Second Department, New York - September 11, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 05816

Michael P. Hogan submitted an application to the Hauppauge Union Free School District seeking employment as a physical education teacher. In his application, which he certified to be true and complete, Hogan failed to disclose that he had previously held a probationary teaching position with another school district. The District claims that Hogan resigned from this previous position after allegations were made that he used corporal punishment and he was told that he would not receive tenure.

The District preferred three disciplinary charges against Hogan pursuant to Education Law § 3020–a. Charge No. 1 alleged that Hogan was guilty of misconduct because he had presented an employment application to the District which was false because he knowingly omitted the fact that he had been a probationary teacher at another school district, and that Hogan presented the employment application with the knowledge or belief that it would be filed with the District. Charge No. 1 further alleged that this conduct was in violation of Penal Law § 175.30, which defines the crime of offering a false instrument for filing in the second degree.

Hogan subsequently moved to dismiss Charge No. 1, contending that it was time-barred by Education Law § 3020–a, which provides that no disciplinary charge may be brought more than three years after the occurrence of the alleged incompetency or misconduct, "except when the charge is of misconduct constituting a crime when committed" (Education Law § 3020–a[1]). The hearing officer designated as arbitrator granted Hogan's motion, concluding that the District had failed to plead sufficient facts to establish that Hogan committed a violation of Penal Law § 175.30 by knowingly omitting his prior position as a probationary teacher from his employment application, and that the District could therefore not invoke the exception to the three-year limitations period that applies when the charged misconduct constitutes a crime. The District thereafter commenced this proceeding pursuant to CPLR article 75 and Education Law § 3020–a seeking to vacate the award dismissing Charge No. 1 on the ground that it was arbitrary and capricious, and lacked a rational basis. The Supreme Court granted the District's petition and reinstated Charge No. 1.

The Supreme Court, Appellate Division, held that:

- Arbitration award dismissing one of three charges against applicant was a final determination subject to judicial review, and
- Arbitrator's determination was arbitrary and capricious.

Arbitrator's determination was arbitrary and capricious, where the charge contained allegations that applicant presented an employment application to school district which was false because he knowingly omitted fact that he had been a probationary teacher at another school district, and that he presented the employment application with knowledge or belief that it would be filed with the

district.

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