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Judicial Review of Education Law § 3020–a Pre-Hearing Conferences

A tenured teacher brought up on charges pursuant to New York Education Law § 3020–a may only be disciplined or removed from his or her position if there exists "just cause" for the charges. The teacher has the right to a hearing on the charges (a "Section 3020–a hearing"). Before the Section 3020–a hearing, the hearing officer must conduct a pre-hearing conference at which various issues will be addressed, including any motions (such as motions to dismiss)[1] and discovery.

The hearing officer's decisions on these issues may impact the teacher for the remainder of the Section 3020–a hearing, most significantly if a motion to dismiss the charges is denied, or if crucial discovery is not allowed. Are the decisions of a hearing officer on issues raised during a pre-hearing conference in a Section 3020–a hearing subject to judicial review? The short answer is yes, but generally only after the conclusion of the hearing.

Debra L. Wabnik

It is axiomatic that only final awards are subject to review under CPLR Article 75. A final award is considered the arbitrator's decision and final determination on all matters submitted.[2] Interlocutory or interim orders or awards which are not final awards may not be appealed during the course of an ongoing arbitration proceeding.

In *Mobil Oil Indonesia v. Asamera Oil*, the petitioners sought review of the arbitrators' decision regarding which of two sets of arbitration rules applied to the proceeding. The Court of Appeals held that it was without authority to review the decision because a final award had to be made before a court may intervene. The arbitrators' decision regarding which set of rules applied was an interlocutory order, "involving only a limited procedural question ... [which] in no way constitutes a final determination on the matters submitted…"[3]

This concept of finality has been applied in the context of Section 3020–a hearings. For example, the Fourth Department has held that the court had no authority to intervene when the Department of Education appealed a hearing officer's interim award granting a teacher's motion for summary judgment on 11 of 16 charges preferred in a Section 3020–a proceeding. The court denied the Department of Education's petition to vacate the hearing officer's decision on the grounds that it was an interim award and "not 'a final and definite award' resolving the matter submitted for arbitration."[4]

In a subsequent case, the Appellate Division, Second Department permitted review of a hearing officer's decision granting a teacher's motion to dismiss one of three charges preferred against him as time barred. The court again examined the finality issue, although it differed with the Fourth Department and characterized the award as "final as to that charge," rather than the type of "very limited procedural question" contemplated by *Mobil Oil*.[5]

Thus, despite a bad ruling by a hearing officer at a prehearing conference, in most cases there is no interim judicial recourse and the 3020–a hearing must go forward. A teacher forced to defend charges improperly brought, or forced to defend charges without important discovery, will have no recourse if there is ultimately a final award in his or her favor. However, where there is an adverse final award, a pre-hearing conference determination may be appealed after the conclusion of the Section 3020–a process.

In denying review of an interlocutory order in *Mobil Oil*, the court did not state that an interlocutory order may never be appealed; merely that an interlocutory order presents no authority for a court to intervene "at this stage of the progression of the arbitration proceeding."[6] Similarly, in *Jordan-Elbridge Cent. Sch. Dist.*, the court denied interlocutory review of the hearing officer's decision regarding discovery production in a Section 3020–a hearing but stated, "petitioners are correct that they may ultimately be entitled to a review of the arbitrator's final award ... However, the petitioners are not entitled to such relief prior to a final determination and award."[7]

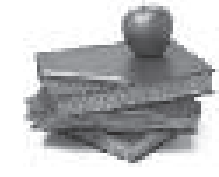
Indeed, in at least two cases issues raised during a pre-hearing conference were later addressed in the context of a review of the final award. In *Matter of Morrell v. New York City Department of Education*, a teacher challenged the final award of the arbitrator on several grounds, including that the hearing officer erred when he denied the teacher's discovery request during the pre-hearing conference.[8] And in *Cruz v. New York City Department of Education*, a teacher sought to vacate the arbitration award in an Article 75 proceeding, arguing in part that the hearing officer improperly denied her request for an adjournment during her pre-conference hearing.[9] Although no abuse of discretion by the hearing officer was found in either case, the hearing officer's rulings made at the pre-hearing conference were reviewed by the court.

It should be noted that courts provide great deference to the decisions of hearing officers, and findings of facts in particular. Combined with the high standard that must be met to vacate or modify an award in an Article 75 proceeding,[10] this creates a fairly difficult case for overturning the decision of a hearing officer made during a pre-conference.

For the tenured teacher, this means proper steps must be taken to insure that objections to a hearing officer's decisions throughout the Section 3020–a hearing, including the pre-hearing conference, are preserved for review. The pre-hearing conference in a Section 3020–a hearing is recorded and then transcribed. Hearing officers will, however, hold telephone conferences with the parties to arrange the pre-hearing conference, or to address other issues both before and after the pre-hearing conference. These telephone conferences are not recorded and do not become part of the printed record. Where possible, the parties should await the pre-hearing conference itself to address issues, and should ask the hearing officer to hold off on rendering any decisions of substance until the pre-hearing conference. This also ensures an accurate record of the request, the determination, and the objections thereto.[11]

Debra L. Wabnik is a partner at Stagg, Terenzi, Confusione & Wabnik, LLP, located in Garden City. She heads the firm's Labor & Employment department, where she concentrates on Education Law matters, including representing teachers at Section 3020–a hearings and appeals. Questions can be directed to dwabnik@stcwlaw.com.

1. Motions must be submitted at least 5 days prior to the pre-hearing conference.
2. *See Michaels v. Mariforum Shipping*, 642 F.2d 411, 413 (2d Cir. 1980) ("In order to be final, an arbitration award must be intended by the arbitrators to be their complete determination of all claims submitted to them."); accord Kalyanaram v. American Ass'n of Univ. Professors at the N.Y. Inst. of Tech., 742 F.3d 42 (2d Cir. 2014).
3. 43 N.Y.2d 276, 281 (1977).
4. *Matter of Geneva City Sch. Dist. v. Anonymous*, 77 A.D.3d 1365 (4th Dept. 2010). *See also Matter of Jordan-Elbridge Cent. Sch. Dist. v. Anonymous*, 37 Misc. 3d 1217(A) (Sup. Ct., Onondaga Co. 2012) (finding no authority for judicial intervention in a hearing officer's interlocutory order which required petitioner to produce certain emails, characterizing the order as a "decision on a discovery issue which involves only a limited procedural question and in no way constitutes a final determination made at the conclusion of the arbitration proceedings.").
5. *Matter of Board of Ed. of Hauppage Union Free Sch. Dist. v. Hogan*, 971 N.Y.S.2d 147, 149 (2d Dept. 2013).
6. 43 N.Y.2d 276, 281 (1977).
7. 37 Misc. 3d at 1217(A) at *2 (internal quotations and citations omitted).
8. 30 Misc. 3d 1212(A) (Sup. Ct., N.Y. Co. 2010) (unreported).
9. 26 Misc. 3d 1208(A) (Sup. Ct., N.Y. Co. 2010) (unreported).
10. Judicial review of arbitration awards is authorized by CPLR 7510 and 7511. However, under Education Law § 3020–a(5), there is only a 10-day statute of limitations for commencing an Article 75 special proceeding. Moreover, because a Section 3020–a hearing is compulsory, judicial scrutiny is somewhat stricter and a final award must inter alia, comport with due process and be supported by adequate evidence.
11. The parties have an opportunity to request changes to the transcription of the recording.



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