

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

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In the Matter of the Application of

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, operating as the New York City Department of Education, and DAVID C. BANKS, as Chancellor of the New York City Department of Education,

AFFIRMATION OF EMERGENCY AND GOOD FAITH

Petitioners, Index No.

For an Order and Judgment Pursuant to Article 75 of the Civil Practice Law and Rules,

- against -

UNITED FEDERATION OF TEACHERS, LOCAL 2, AFT, AFL-CIO, and MICHAEL MULGREW, as President of the United Federation of Teachers,

Respondents.

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ZACHARY T. ELLIS, an attorney duly admitted to practice before the Courts of the State of New York, affirms, pursuant to Rule 2106 of the Civil Practice Law and Rules, and under penalty of perjury, that the following is true and correct:

1. I am an Assistant Corporation Counsel in the Office of the Honorable Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, representing Petitioners, the Board of Education of the City School District of the City of New York, operating as the New York City Department of Education (“DOE”), and DOE Chancellor David C. Banks (collectively, “Petitioners”), in the above-referenced matter.

2. I submit this emergency affirmation in support of Petitioners’ motion, brought by order to show cause, for a temporary restraining order to temporarily stay and preliminarily enjoin any further proceedings by Respondents, United Federation of Teachers, Local 2, AFT, AFL-CIO, and President of the United Federation of Teachers Michael Mulgrew (collectively, “Respondents”), in connection with the Opinion and Award issued by the Arbitrator Martin F.

Scheinman on June 27, 2022, in the arbitration captioned “In the Matter of the Arbitration between Board of Education of the City School District of the City of New York and United Federation of Teachers, Local 2, AFT, AFL-CIO, re: Proof of Vaccination.”

3. I make this affirmation in support of Petitioners’ request that the accompanying Order to Show Cause be promptly presented to a Justice of the Court for immediate consideration on an expedited basis.

4. The applicable law and facts are set forth more extensively in the accompanying Verified Petition, verified on July 5, 2022.

5. On July 1, 2022, pursuant to Rule 202.7(f) of the Uniform Civil Rules for the Supreme Court and the County Court, I notified counsel for Respondents via e-mail that Petitioners would be e-filing the accompanying Order to Show Cause by the end of the day on July 5, 2022, and that, by virtue of the Order to Show Cause, would make an application for a temporary restraining order seeking emergency injunctive relief. See Exhibit “A.”

6. I further informed counsel for Respondents that I would advise them of the date, time, and manner of any argument or hearing scheduled by the Court in connection with Petitioners’ application for a temporary restraining order. See id.

7. If this emergency relief is not granted by July 5, 2022, not only would Petitioners be significantly prejudiced and irreparably harmed because they could be deemed to have waived their right to challenge whether Arbitrator Scheinman exceeded his jurisdiction in issuing the June 27, 2022, Opinion and Award, but the DOE’s implementation of its COVID-19 vaccination policy would be undermined, thereby jeopardizing the health and safety of students and their families, DOE staff, and the broader community.

8. Accordingly, for all of the reasons set forth above and in the accompanying Verified Petition, Petitioners' Order to Show Cause should be promptly presented to a Justice of this Court for immediate consideration on an expedited basis.

9. No prior request for this relief has been sought.

10. I affirm that this request is being made in good faith.

Dated: New York, New York
July 5, 2022

Respectfully submitted,

/s/
Zachary T. Ellis
Assistant Corporation Counsel