

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANIL C. SINGH
SUPREME COURT JUSTICE
Justice

PART 61

Index Number : 103414/2012
BOWEN, BARBARA
vs
CITY UNIVERSITY OF NEW YORK
Sequence Number : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 3, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1</u>
Answering Affidavits — Exhibits _____	No(s). <u>2</u>
Replying Affidavits _____	No(s). <u>7</u>

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the annexed memorandum opinion.*

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: Feb 21, 2014

becz
HON. ANIL C. SINGH, J.S.C.
SUPREME COURT JUSTICE

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

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
PROFESSIONAL STAFF CONGRESS/CUNY,
LOCAL 2334, AFT, AFL-CIO, BARBARA
BOWEN as President of the Professional Staff
Congress/CUNY, TERRENCE MARTELL
as Chair of the University Faculty Senate
and Chair of the Baruch College Faculty Senate,

DECISION AND
ORDER

Index No.
103414/12

Petitioners,

-against-

CITY UNIVERSITY OF NEW YORK, and
the BOARD OF TRUSTEES of the City
University of New York, et al.,

Respondents.

-----X
HON. ANIL C. SINGH, J.:

Petitioners in the instant Article 78 proceeding seek an order and judgment declaring that the defendant colleges in the development, approval and submission of curricula and Pathways implementation plans to the Chancellor violated the Open Meetings Law; an order declaring that defendant colleges' development, approval and submission of curricula and Pathways implementation plan is void; an order requiring members of the defendant colleges and defendant college presidents to participate in a training session conducted by the staff of the committee on open government concerning the obligations imposed by the Open Meetings Law; an

order awarding petitioners costs and reasonable attorneys' fees; and an order enjoining defendants from further implementation of Pathways to the extent such implementation is based, in whole or in part, on the actions of public bodies in violation of the Open Meetings Law. Respondents, the City University of New York (CUNY) and the Board of Trustees of the City University of New York (Board) cross-move for an order pursuant to CPLR 217(1); 3211(a)(1), (5) and (7); 7803; and 7804, dismissing this proceeding in its entirety, on the grounds that (1) petitioners' claims against the individual colleges do not lie as they are not separate legally cognizable entities from CUNY; (2) petitioners have not stated claims under New York's Open Meetings Law; (3) petitioners have failed to show the requisite "good cause" for any of the relief they seek; (4) many of petitioners' claims are time-barred; and (5) an award of costs and disbursements. Petitioners oppose the cross-motion.

Background

This is an Article 78 proceeding commenced by petitioners, the Professional Staff Congress/CUNY, Local 2334, AFT, AFL-CIO (PSC), the bargaining unit representative for CUNY's faculty and professional staff at over 20 campuses; Barbara Bowen, PSC's president; and Terrence Martell, the Faculty Senate's vice-chair and the chair of Baruch College's own faculty senate, against CUNY and its

Board. CUNY is a public university comprising eleven senior and six junior colleges and several graduate schools, and serving more than 240,000 students.

Pursuant to the legislature's intent, CUNY is required to "remain responsive to the needs of its urban setting and maintain its close articulation between senior and community college units." Education Law § 6201 (2). In light of the proximity of the various CUNY entities, each year a large number of its students transfers between those entities. Because each CUNY institution had reserved the right to create its own general education and major requirements, and to evaluate whether courses taken at other CUNY institutions were deemed equivalent, transfer students were often denied credit for courses and had to take additional classes. This situation was further complicated by the fact that the colleges had varying requirements as to the number of necessary general education credits. All this led to increased costs to students, longer times to obtain degrees and enter the workforce, and to students leaving CUNY without obtaining their degrees.

According to CUNY websites, these problems were longstanding, and although recognized for many years, remained unresolved. *See* Board's minutes of June 27, 2011 meeting contained on CUNY's website. In an effort to remedy the situation, the Board proposed a transfer structure, the Pathways to Degree Completion Initiative (Pathways Initiative), which involved the creation of a set

number of general education credits which would be required of all CUNY undergraduate colleges and which would be transferable among those entities.

While it is not exactly clear when this initiative was commenced, it apparently began at least by October 2010, when meetings, ultimately numbering about 70, were held between CUNY's central administration and the campus community, including the Faculty Senate. CUNY created a public Pathways Initiative website and kept the university community updated and informed through it, newsletter articles, and a webinar open to all. Also, there were numerous consultations and discussions with members of the CUNY community. The foregoing resulted in some modifications of the initial proposal and the drafting of a proposed resolution, which was discussed at a public hearing on June 20, 2011.

The Board then held its regular meeting with respect to the proposed resolution on June 27, 2011. Public notice of that meeting and its agenda were required to be given in advance, including to the colleges, any educational organization which requested notice, and to any collective negotiation representative. Bylaw § 1.1 (c). CUNY's website contains a June 8, 2011 notice of that board meeting, which notice attached a copy of the agenda, and indicated that the meeting would be telecast live on-line, on cable television, and on the CUNY channel. The Board passed the resolution at its meeting, after Cooper presented the

Faculty Senate's opposition to it. *See* Minutes of June 27, 2011 meeting on CUNY's website. The resolution was characterized by CUNY's Executive Vice Chancellor and Provost, Alexandra Logue (Logue), as "historic" and by the Board's Chairman, Benno Schmidt, as a "momentous resolution," which would create "a coherent unified University in which students c[ould] navigate across campuses." Minutes of June 27, 2011 Meeting. Under the Board's bylaws (§ 1.1 [d]), a summary of any resolution and the board's action at a regular meeting had to be posted on CUNY's website within seven days of the meeting and remain there for at least 10 years.

The resolution's preamble affirmed CUNY's commitment to academic excellence and indicated that the faculty's responsibility for curriculum and courses was integral to the resolution. The resolution set forth the timeline and means for creating an efficient transfer system, which was to be operational in the Fall 2013. That resolution provided for a general education framework, which included the set number of core general education credits common to all CUNY colleges and of college option general education credits specific to the baccalaureate colleges, which credits would be required of all CUNY students and which would be transferable among the CUNY undergraduate campuses. It was further resolved that CUNY's chancellor, in consultation with various groups, including the Faculty Senate, would create a task force, predominantly of faculty, to recommend, by December 1, 2011, a

structure for the common core. The task force was to develop the areas making up the common core as defined by learning outcomes. The task force was also to indicate how many of the set number of credits would be allocated to each area. Additionally, the task force could make more specific recommendations as to technical degree programs, such as in science and math. After the task force made its recommendations, and the chancellor approved the common core's structure, each college was to specify the courses for that core which would meet the specified learning outcomes. Then a CUNY-wide committee, appointed by the chancellor, would review the courses proposed and, if appropriate, approve them. Each college was, by April 1, 2012, to provide the chancellor with its plan for the general education framework. It was also resolved that, after implementation, all of the policies and processes would be evaluated, at first yearly, starting in 2013, so as to make any needed modifications.

Following the 2011 resolution's passage, the chancellor created the task force, seeking nominations from the Faculty Senate, among others. *See* Pathways Initiative website, August 25, 2011 "Dear Colleagues" letter from Logue. By letter dated September 6, 2011 to the CUNY Faculty, the task force's chair, Michelle Anderson (Anderson), updated the faculty on the progress of the Pathways Initiative and advised that the task force was working to complete, by November 1, 2011, its draft

of its recommendations and that, on that date, the draft would be posted on the Pathways Initiative website to get feedback from any individual or group, so that the task force could make any needed revisions in time to submit the report to the chancellor by the December 1, 2011 deadline. *Id.*, Anderson letter of September 6, 2011. The task force, on November 1, 2011, issued common core guidelines and sought comments from the CUNY college presidents by November 15, 2011. After receiving those comments, the task force, on about December 1, 2011, issued a final set of common core guidelines, which were adopted by the chancellor on December 12, 2011.

On July 31, 2012, the plaintiffs commenced this Article 78 proceeding.

Discussion

“In a proceeding to enforce the provisions of the Open Meetings Law brought against a public body, the court has the power, in its discretion and upon good cause shown, to declare void, either in whole or in part, any action or any part of an action taken in violation of the statute” (2 N.Y.Jur.2d Administrative Law section 91).

“Although courts are empowered ‘in their discretion and upon good cause shown, to declare void any action taken by a public body in violation of the mandate’ of the Open Meeting Law, it is the challenger’s burden to show good cause warranting judicial relief” (*Id.*). “In the absence of a showing that the procedure followed by the

public body was designed to circumvent the law, there is an absence of good cause necessary to grant the requested relief" (Id.).

On the record before the Court in the instant proceeding, there is no evidence whatsoever that the procedures followed by CUNY to develop, approve and implement the Pathways Initiative were designed to circumvent the law. On the contrary, it appears that respondents disseminated information widely and sought input from any interested parties through meetings, websites, webinars, consultations, discussions with members of the CUNY community, and telecasts on-line, on cable television and on the CUNY channel. In other words, the record clearly reflects that the Pathways Initiative was not drafted behind closed doors. The Court finds, therefore, that petitioners have not met their burden to show good cause warranting judicial relief.

Accordingly it is

ADJUDGED that the petition is denied, and the proceeding is dismissed.

Dated 2/21/2014

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

ANIL C. SINGH
CLERK OF COURT JUSTICE

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