STATE OF NEW YORK
SUPREME COURT ALBANY COUNTY

GUI ZHU CHEN, YA YUN LI, MARIA RODRIGUEZ, GUIA HUA SONG, and CHUN FENG ZHUANG

Petitioners,

- against -

ROBERTA REARDON, as Commissioner of the New York State Department of Labor,

Respondent.

DECISION AND ORDER
Index No.: 908146-23

(Supreme Court, Albany County, Special Term)

Appearances: The Legal Aid Society
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CONNOLLY, J:

Gui Zhu Chen, Ya Yun Li, Maria Rodriguez, Gui Hua Song, and Chung Zeng Zhuang (collectively "Petitioners") commenced this Article 78 proceeding seeking an order directing the New York State Department of Labor ("NYSDOL") to reopen to and investigate complaints that Petitioners previously filed with NYSDOL. In lieu of answering the petition, NYSDOL moved to dismiss it for failure to state a claim. Petitioners oppose NYSDOL's motion to dismiss.

BACKGROUND

Petitioners allege that that they are home care aids who provided live-in services to elderly patients. Petitioners typically worked 24-hour shifts, during which they never received five hours of uninterrupted sleep or three hours of meal breaks. Petitioners were never paid for more than 13 hours of work for any of these shifts. After working in these conditions for some time, Petitioners filed individual complaints with NYSDOL, alleging that their compensation violated the Minimum Wage Act's "13-hour rule."

Initially, NYSDOL accepted Petitioners' complaints and began investigating them. Later, NYSDOL determined that Petitioners were all subject to a mandatory arbitration agreement through collective bargaining agreements and that their respective unions had filed grievances on Petitioners' behalfs. NYSDOL terminated each of the investigations and closed all of Petitioners' complaints.

NYSDOL sent Petitions closing letters that stated: "We understand other means are available for a resolution of your claim." In an email sent to one of the Petitioners, a NYSDOL employee further explained the rational for terminating the investigations: "Following the advice of our counsel's office we have closed the case. The [collective bargaining agreement] supersedes our authority in this case. There is no getting around it. The same is true in each case we have closed on this basis." Around the same time, NYSDOL issued a press release stating that it "may accept . . . cases [involving alleged violations of the 13-hour rule] if an employee is not covered by an arbitration clause."

On August 24, 2023, Petitioners filed the instant Article 78 petition against NYSDOL. Petitioners seek an order directing NYSDOL to re-open and investigate Petitioners' closed complaints. The petition alleges four causes of action. The first and fourth causes of action allege

that NYSDOL's policy of closing investigations was a "rule" within the meaning of the State Administrative Procedures Act ("SAPA") and that NYSDOL failed to submit a notice of proposed rulemaking before adopting that rule. The first cause of action alleges that NYSDOL's reliance on that rule when closing Petitioners' complaints was an error of law, and the fourth cause of action alleges that the adoption of the rule was in violation of SAPA. The second cause of action alleges that NYSDOL's jurisdiction is not limited by private arbitration agreements and that its determination to close Petitioners' investigations on that basis was an error of law. The third cause of action alleges that NYSDOL's decision to terminate Petitioners' investigations was arbitrary and capricious and an abuse of discretion.

On November 3, 2023, NYSDOL moved to dismiss the petition. NYSDOL argues that the petition must be dismissed because "(1) it fails to establish a right to mandamus relief and (2) Petitioners fail to state a claim under SAPA." Petitioners filed an opposition to that motion on November 22, 2023.

I. DISCUSSION

Before answering an Article 78 petition, "[t]he respondent may raise an objection in point of law . . . by a motion to dismiss the petition" (see CPLR § 7804[f]). When a respondent moves to dismiss an Article 78 petition for failure to state a cause of action, "the 'court may not look beyond the petition and must accept all' its allegations as true" (*see Green Harbour Homeowners' Ass'n v. Town of Lake George Plan. Bd.*, 1 A.D.3d 744, 745 [3d Dept. 2003], quoting *Scott v. Commissioner of Correctional Servs.*, 194 A.D.2d 1042, 1043[3d Dept. 1993]; *see also Bronx-Lebanon Hosp. Center v. Daines*, 101 A.D.3d 1431, 1432 n.1 [3d Dept. 2012]). The court may consider any "factual affidavits submitted by petitioners to remedy defects in the pleading," but it

cannot consider any factual submissions submitted by respondents in support of dismissal (*see Lally v. Johnson City Cent. Sch. Dist.*, 105 A.D.3d 1129, 1131 [3d Dept. 2013]).

When considering a motion to dismiss for failure to state a claim, an Article 78 petition must be given a liberal construction and the petitioners must be afforded every possible favorable inference (*see Levy v. SUNY Stony Brook*, 185 A.D.3d 689, 690 [2d Dept.. 2020]; *Graven v. Children's Home R.T.F., Inc.*, 152 A.D.3d 1152, 1153 [3d Dept. 2017]). A motion to dismiss should only be granted if the alleged facts do not "fit within any cognizable theory" (*see Leon v. Martinez*, 84 N.Y.2d 83, 87–88 [1994]), and there is no "reasonable view of the facts" under which petitioners could be entitled to relief (*see Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307, 318 [1995]).

NYSDOL asserts that, under Labor Law § 196(2), its "authority to investigate controversies between employees and employers . . . is discretionary." NYSDOL acknowledges that the Article 78 petition "alleges claims pursuant to CPLR § 7803(3)," but it argues that the petition "seeks only mandamus relief pursuant to CPLR § 7803(1)." The Article 78 petition must be dismissed, NYSDOL argues, "because a writ of mandamus cannot compel a government entity or officer to perform a discretionary act." Essentially, the NYSDOL argument is that, because the petition asks an order directing NYSDOL to act (that is, an order "compelling" them to act), the only available remedy is a mandamus to compel under CPLR § 7803(1), which cannot be used to compel a discretionary act.

Article 78 proceedings exist 'primarily to afford relief to parties personally aggrieved by governmental action,' and the CPLR article 78 proceeding effectively supersedes the 'common law writs of mandamus, prohibition, and certiorari to review'" (*see Horvath v. Eagan*, 188 A.D.3d 1616, 1617 [4th Dept. 2020], quoting 6 N.Y. Jur. 2d, Article 78 § 1 and Siegel & Connors, N.Y.

Prac. § 557 [6th ed 2018]). A proceeding in the nature of a mandamus to compel under CPLR § 7803(1) allows courts to determine "whether the body or officer failed to perform a duty enjoined upon it by law" (*see* CPLR § 7803[1]; *see also Schmitt v. Skovira*, 53 A.D.3d 918, 920 [3d Dept. 2008]). To obtain relief through a mandamus to compel, a petitioner "must have a clear legal right to the relief demanded and there must exist a corresponding nondiscretionary duty on the part of the administrative agency to grant that relief" (*see Scherbyn v. Wayne-Finger Lakes Bd. of Coop. Educ. Servs.*, 77 N.Y.2d 753, 757 [1991]). A mandamus to compel cannot be used to compel a discretionary act (*see Alliance to End Chickens as Kaporos v. New York City Police Dept.*, 32 N.Y.3d 1091, 1093 [2018]; *Klostermann v. Cuomo,* 61 N.Y.2d 525, 539 [1984]).

A proceeding in the nature of a mandamus to review under CPLR § 7803(3) allows courts to determine "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed" (*see* CPLR § 7803[3]; *see also Martinez v. SUNY Oswego*, 13 A.D.3d 749, 750 [3d Dept. 2004]). "In mandamus to review, the court examines an administrative action involving the exercise of discretion for which no quasi-judicial hearing is required" (*Van Aken v. Town of Roxbury*, 211 A.D.2d 863, 864 [3d Dept. 1995]).

If a petitioner prevails under either a mandamus to compel (CPLR § 7803[1]) or a mandamus to review (CPLR § 7803[3]), the court "may grant the petitioner the relief to which he is entitled" (*see* CPLR § 7806). Under appropriate circumstances, this may include an order that "direct[s] specified action by the respondent" (*see id.*). This is true regardless of whether the petitioner sought a mandamus to compel or a mandamus to review (*see Scherbyn*, 77 N.Y.2d at 759 [holding that petition seeking mandamus to review should have been granted and respondent must be "directed to reinstate petitioner to the position of typist"]; *Destiny USA Dev., LLC v. New*

York State Dep't of Env't Conservation, 63 A.D.3d 1568, 1573 [4th Dept. 2009] [affirming trial court holding that DEC's denial of application was arbitrary and capricious and rejecting respondent's argument that trial court "erred in directing it to grant the application in its entirety" because trial court had authority to enter judgment that "direct[s] or prohibit[s] specified action by the respondent"]; *Anonymous v. Com'r of Health*, 21 A.D.3d 841, 843 [1st Dept. 2005] [explaining that "compel[ling] respondents to execute [a consent] agreement" if "respondents refused to perform [that] discretionary act for improper reasons" is "completely consistent with a mandamus to review pursuant to CPLR 7803(3)"]).

Here, Petitioners assert various causes of action under CPLR § 7803(3) and allege that NYSDOL's decisions to close Petitioners' complaints were arbitrary and capricious, affected by errors of law, and abuses of discretion. A judgment in favor of Petitioners could appropriately annul NYSDOL's cancelations and order NYSDOL to revisit Petitioners' complaints (*see* CPLR § 7806; *Scherbyn*, 77 N.Y.2d at 759). Petitioners' Article 78 petition is therefore not deficient for seeking such relief.

With respect to Petitioners' causes of action relying on SAPA, NYSDOL argues that its "determination to decline to investigate the individual petitioners' claims was specific to the facts and circumstances of the complaints and subsequent investigations, and not of 'general applicability that implements or applies law.'"

SAPA was enacted to "provid[e] the public with simple, uniform administrative procedures" (*see Home Care Ass'n of New York State v. Dowling*, 218 A.D.2d 126, 129 [3d Dept. 1996]; *see also* State Administrative Procedure Act § 100). The that end, SAPA requires that, before adopting any "rule," administrative agencies must comply with certain procedural requirements (*see* State Administrative Procedure Act § 202). "When an agency engages in a

course of regulatory action that amounts to formal rulemaking but does not comply with the procedural requirements of [SAPA], that regulatory action must be annulled" (*Entergy Nuclear Indian Point 2, LLC v. New York State Dep't of State*, 130 A.D.3d 1190, 1195 [3d Dept. 2015]).

NYSDOL concedes that it did not follow the rulemaking procedures laid out in SAPA. The only question before the Court is whether Petitioners have adequately pled that NYSDOL's decision to terminate its investigations was pursuant to a "rule" within the meaning of SAPA.

In relevant part, SAPA defines a "rule" as "the whole or part of each agency statement, regulation or code of general applicability that implements or applies law, or prescribes a fee charged by or paid to any agency or the procedure or practice requirements of any agency, including the amendment, suspension or repeal thereof"[1] (State Administrative Procedure Act § 102[2][a][i]). A "rule" under this definition must be "'a fixed, general principle'" that is "'applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme of the statute it administers'" (*Cubas v. Martinez*, 8 N.Y.3d 611, 621 [2007], quoting *Roman Catholic Diocese v New York State Dept. of Health,* 66 NY2d 948, 951); *see also Schwartfigure v. Hartnett*, 83 N.Y.2d 296, 301–02 [1994] [holding that "rigid, numerical policy invariably applied across-the-board to all claimants without regard to individualized circumstances or mitigating factors . . . falls plainly within the definition of a 'rule'"]).

Rules must be distinguished from "ad hoc decision making based on individual facts and circumstances" (*see Alca Indus. v. Delaney*, 92 N.Y.2d 775, 778 [1999]). Policies, guidelines, or established practices that provide direction to agencies but still permit "significant discretion" and "flexibility" in determining a course of action are not "rules" under SAPA (*see New York City Transit Auth. v. New York State Dep't of Labor*, 88 N.Y.2d 225, 229 [1996]; *see also Pharmacists*

[1] SAPA lists several categories of rules or agency action that are explicitly not included in this definition (*see* State Administrative Procedure Act § 102[2][b]). NYSDOL does not argue that any of these exceptions apply in this case.

Soc. of State of New York, Inc. v. Pataki, 58 A.D.3d 924, 926–27 [3d Dept. 2009] [holding that agency policy of "denying all pharmacy claims for reimbursement submitted with only a facility certification number but without the medical practitioner's license or MMIS number" was not a rule where policy permitted use of only a facility certification "as a 'last resort'*"]; Pallette Stone Corp. v. State of New York Off. of Gen. Servs.*, 245 A.D.2d 756, 758 [3d Dept. 1997] [holding that standards for awarding contracts that allowed for deviation based on "the best interests of the state" and "the most practical and economical alternative" were not rules]).

Rules, on the other hand, "direct[] what action should be taken regardless of individual circumstances" and "'establish a pattern of course of conduct for the future'" (*see Alca Indus.*, 92 N.Y.2d at 778, quoting *People v. Cull,* 10 N.Y.2d 123, 126 [1961]). Thus, when an "ostensible 'policy' dictates a specific result in particular circumstances without regard to other circumstances relevant to the regulatory scheme," it is subject to SAPA's procedural requirements (*439 E. 88 Owners Corp. v. Tax Commission*, 307 A.D.2d 203, 203[1st Dept 2003]; *see also Schwartfigure,* 83 N.Y.2d at 301-02 [holding that uniformly applied procedure requiring prior overpayments of unemployment insurance benefits to be recovered by a portion of future payments was rule]; *HD Servs., LLC v. New York State Comptroller*, 51 A.D.3d 1236, 1236-38 [3d Dept. 2008] [holding that nondiscretionary "long established requirement" that document be notarized to be recognized by agency was a rule]).

Relevant to Petitioners' SAPA causes of action, they have alleged that NYSDOL dismissed each of Petitioners' complaints because Petitioners' unions had entered into collective bargaining agreements with their employers that called for mandatory arbitration of Petitioners' claims. Petitioners alleged NYSDOL's practice or policy of dismissing complaints on this basis was "rigidly applied . . . without regard to aides' individualized circumstances or any mitigating

factors." Petitioners further alleged that a Supervising Labor Standards Investigator with NYSDOL informed at least one of Petitioners that NYSDOL was required to terminate all investigations involving complainants that were subject to collective bargaining agreements and that "[t]here is no getting around it." Finally, Petitioners alleged that a NYSDOL press release issued sometime after NYSDOL canceled Petitioners' investigations stated that "NYSDOL may accept [complaints of violations of the 13-Hour Rule] if an employee is not covered by an arbitration clause."

In determining whether Petitioners have stated a claim under SAPA, the Court must give their petition a liberal construction, accept its pleaded facts as true, and give Petitioners the benefit of every possible inference (*see Leon*, 84 N.Y.2d at 87–88; *MVM Const., LLC v. Westchester Cnty.*, 112 A.D.3d 635, 636 [2d Dept. 2013]). Having given Petitioners' these benefits, the Court holds that a "reasonable view of the facts stated" (*see Aristy-Farer v. State*, 29 N.Y.3d 501, 509 [2017]) describes the application of a "'a fixed, general principle'" of dismissing every complaint that was subject to a mandatory arbitration agreement (*see Cubas*, 8 N.Y.3d at 621) as opposed to an "ad hoc decision[s] . . . based on individual facts and circumstances" (*see Alca Indus.*, 92 N.Y.2d at 778).

Therefore, it is hereby

ORDERED that the New York State Department of Labor's motion to dismiss is DENIED; and it is further

ORDERED that the New York State Department of Labor shall file an answer to Petitioner's Article 78 petition no later than 30 days from the date of this Decision and Order; and Petitioner may reply to such Answer if filed no later than 14 days after such Answer is filed.

This shall constitute the Decision and Order of the Court. The original Decision and Order is being filed with the Albany County Clerk via NYSCEF. The signing of this Decision and Order shall not constitute entry or filing under CPLR § 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED.

ENTER.

Dated: January 23, 2024
Albany, New York

Gerald W. Connolly
Acting Justice of the Supreme Court

01/23/2024

Papers considered:

1. Verified Article 78 Petition, dated August 24, 2023;
2. Notice of Petition, dated August 24, 2023;
3. Affirmation of Carmella Huang in support of Article 78 Petition, dated August 24, 2023, with exhibits 1-57
4. Memorandum of Law in Support of Article 78 Petition dated September 8, 2023;
5. Respondent's Notice of Motion to Dismiss, dated November 3, 2023;
6. Affirmation of Matthew J. Gallagher in Support of Motion to Dismiss, dated October 30, 2023;
7. Memorandum of Law in Support of Motion to Dismiss, dated November 3, 2023; and
8. Memorandum of Law in Opposition to Motion to Dismiss, dated November 22, 2023.