

WAYNE FIELDS,

Appellant

v.

BALTIMORE COUNTY BOARD  
OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-05

## OPINION

### INTRODUCTION

The Appellant, Wayne Fields, a preventive maintenance technician, customer service representative, appeals the decision of the Baltimore County Board of Education (local board) to terminate him from his employment. The local board filed a Motion to Dismiss. The Appellant responded and the local board replied.

### FACTUAL BACKGROUND

Wayne Fields was employed as a non-certificated employee by Baltimore County Public Schools (BCPS) for 27 years. (Tr. 17-18). Prior to his termination, he had served seven years as a PMT/Customer Service Representative (PMT being the initials for preventive maintenance technician). *Id.* He was assigned to 25 to 30 schools in a geographic area. (Tr. 19). He would go to different schools each day, working off a checklist and schedule, but varying from that schedule if emergencies with fire alarms, cameras, or other safety issues arose. (Tr. 18-19). He had been recently assigned to the southeast area of Baltimore County and had worked there for about a month before when he was involved in a motor vehicle accident on November 25, 2013, which gave rise to his termination. Prior to that, he had been assigned to work in the southwest area for more than 20 years. (Tr. 20-22). He would drive a County vehicle for work from a depot at Pulaski Park. (Tr. 22).

On November 25, 2013, Mr. Fields visited several schools. He recalled that after he left Sollers Point Middle School he intended to visit Vincent Farm School. After Vincent Farm, his plan was to go back to Pulaski Park to swipe the time clock and end his work day. Mr. Fields travelled from Sollers Point to I-95. He entered at the Eastern Avenue exit, however, he became lost and confused looking for Route 40, which he knew was Pulaski Highway. He exited I-95 at Keith Avenue. He eventually found Route 40 and stopped to have a quick fast food lunch. As he proceeded on, he was sideswiped by another vehicle on Orleans Street near the intersection with Washington Street in Baltimore City. (Tr. 23-33).

According to Eric Bethke, BCPS Supervisor of Customer Service, the Appellant, on the day after the accident, reported to him that the accident had occurred in Baltimore County at the intersection of Interstate 95 and Route 40. The distance between Interstate 95 and Route 40 - -

the scene of the accident as reported by the Appellant - - and the intersection of Orleans Street and Washington Street (the actual accident scene), is 3.5 miles. (T. 158).

Following the November 25, 2013 accident, the Appellant filed a workers' compensation claim. A hearing regarding this claim was held on April 1, 2014. (Record 3, at App. Ex. 1; S.8). Appellant submitted a map with hand-marked notations that depicted the accident's location (Motion, Ex. 2). In addition to using the map as evidence, the Appellant testified regarding the accident location. He testified that the accident had occurred close to Interstate 95 and Route 40 (Motion, Ex. 1, p. 29). A police report placing the accident at Orleans and Washington Streets was also introduced at the hearing. The Appellant testified that the police report must be wrong.

The workers' compensation claim was denied. The Commission determined "that the claimant deviated from the course of employment so that the injury occurred at a place where his employment did not require him to be." (Motion, Ex. 8).

Mr. Kevin Foy, BCPS Workers' Compensation Specialist, attended the Workers' Compensation hearing. Upon review of the documents submitted and the testimony provided by the Appellant, Mr. Foy contacted his supervisor, Mr. Patrick Hancock, Manager, Office of Risk Management, to discuss the appropriate action. On April 8, 2014, as a result of the report from Foy, Hancock recommended immediate termination of the Appellant. (Motion, Ex.1).

Based on the recommendation, Mr. John Ander, Administrator, Office of Maintenance and Grounds, scheduled a meeting with the Appellant to advise him of Risk Management's recommendation. (T. 57-63). During the meeting, Appellant explained to Mr. Ander that the accident had occurred in Baltimore City on Route 40, but he failed to explain why he was at that location when he should have been at schools in Baltimore County. (T. 61-62). As a result, Mr. Ander adopted Risk Management's recommendation. (Motion, Ex. 2).

As a result of Ander's recommendation, Mr. Pradeep Dixit, Executive Director, Department of Physical Facilities, acting as the Superintendent's designee, convened a meeting to provide Appellant the opportunity to respond to the recommendation. (Motion, Ex. 5). Mr. Dixit concluded that Appellant did not adequately explain contradictory testimony and documentation submitted to the Workers' Compensation Commission, and that the Appellant failed to justify why he had been in Baltimore City during the work day (Motion, Ex. 5). Mr. Dixit, acting as the Superintendent's designee, terminated the Appellant's employment.

AFSCME, on behalf of the Appellant, noted an appeal of Dixit's decision. The matter was heard by one of the local board's hearing examiners on May 27, 2015. Appellant was represented by his Association.

Hearing Examiner, Jeffrey Griffith, Esq., recommended to the board that the decision to terminate the Appellant's employment be upheld. Griffith concluded that "the weight of the evidence supports Mr. Dixit's inference that Appellant intentionally misstated the accident site and the misstatement was intended to mislead." He further noted that Superintendent's Rule 4204 authorizes "disciplinary action up to and including termination of employment."

Following oral argument before the local board, the board was not able to agree on whether to accept or reject the Superintendent's decision to terminate the Appellant. Thus, the Superintendent's decision was allowed to stand. (Motion, Ex. 8).

The instant appeal followed.

### STANDARD OF REVIEW

Local board decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board will not substitute its judgement for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

### LEGAL ANALYSIS

The Appellant raises two legal issues arguing to reverse and remand the local board's decision. He contends that the decision is illegal because the Hearing Examiner applied the incorrect standard of review and burden of proof. He also asserts that the local board's decision was illegal because it failed to come to a decision by a majority vote.

#### A. Burden of Proof

The Appellant correctly asserts that under the Collective Bargaining Agreement, the Superintendent can terminate him only for "just cause." We agree with the Appellant that in "just cause" cases the burden of proof is on the Superintendent. *See, e.g., Tricat Industry, Inc. v. Harper*, 131 Md. App. 89, 119 (2000).

The Appellant focuses all his attention on how the burden of proof was assigned in the Hearing Examiner's Recommended Decision, rather than how the burden of proof was assigned in the Superintendent's decision. It is the legality of the Superintendent's decision that must be the focus of our inquiry, not the Hearing Examiner's Recommended Decision, because it is the Superintendent's decision that the Board allowed to stand when it could not come to agreement.

We have reviewed the Superintendent's decision issued by his designee, Pradeep Dixit, on July 21, 2014. (Motion, Ex. 5). Although the decision itself does not address burden of proof, it is clear that the Superintendent understood that it was his burden to establish just cause for the termination. He heard from four BCPS employees, all of whom had investigated the facts and circumstances of the accident and who explained the conflicting statements the Appellant made as to the location of the accident site. He added up all that evidence and found that the Appellant falsified information to cover up that the accident occurred outside his expected travel area in order to avoid discipline and obtain workers' compensation benefits. Thus, he concluded that there was sufficient cause to terminate the Appellant. (*Id.*). In our view, the burden of proof remained on the Superintendent.

## B. Standard of Review

The Collective Bargaining Agreement provides that the employee may “take up the termination through the administrative appeal process culminating in a hearing before the Board of Education’s hearing officer....” (See Appeal at 2). In the context of appellate review, the issue becomes what is appropriate standard of review.

In education appeals, the standard of review is either one that is highly deferential to the decision being appealed (*prima facie* correct unless determined to be arbitrary, unreasonable or illegal) or one that allows the reviewer to substitute his independent judgment for that of the decision maker below (*de novo* review). In appeals, like this one arising under Ed. Art. §4-205, the standard of review is the deferential one. Thus, the Superintendent’s decision is presumed correct unless the Appellant shows that the decision is arbitrary, unreasonable, or illegal. Board of Education Policy 8340 reflects that standard of review by assigning to the Appellant, when he appeals the Superintendent’s decision the “burden of proof by a preponderance of the evidence.” (Reply at 4).

Thus, to the extent that it is relevant, the Hearing Office correctly assigned the burden of proof to the Appellant under a deferential standard of appellate review.

## C. Local Board Decision

The Appellant assails the fact that the local board was not able to come to a decision supported by seven votes and thus left the Superintendent’s decision to stand. He argues that this “no decision” outcome is illegal and violates his due process rights. We do not agree.

Courts, when faced with a lack of majority, recognize that “a conscious non-decision is a form, albeit a rare one, of deciding.” *Lee v. State*, 69 Md. App. 302, 312 (1986), *aff’d* 311 Md. 642 (1988). The court in *Lee v. State* explained the effect of the failure to obtain sufficient votes for reversal:

“In cases of appeal or writ of error in this court, the appellant or plaintiff in error is always the moving party. It is affirmative action which he asks. The question presented is, shall the judgment, or decree, be reversed? If the judges are divided, the reversal cannot be had, for no order can be made. The judgment of the court below, therefore stands in full force....”

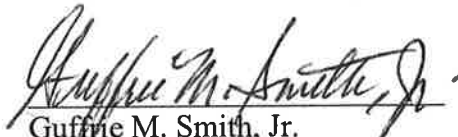
The decision is that the trial’s court’s judgment will not be reversed because the appellant has failed to persuade a majority of the reviewing court that it merits reversal. There is no lack of decisive impact on the case at hand. What is lacking is an agreed *ration decidendi* which can serve as binding precedential authority for future decisions.

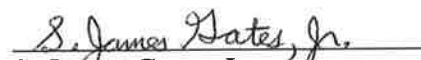
*Id.* at 313-314 (citing *Durant v. Essex Co.*, 74 U.S. (7 Wall.) 107, 112 (1868)).

Likewise, the Appellant was the moving party before the local board. It was his burden to show that the Superintendent's decision was arbitrary, unreasonable, or illegal. By failing to convince a majority of the board that such was the case, the Superintendent's decision rightly stands.


CONCLUSION

For all these reasons, we find that the local board's decision is not illegal.


  
Guffie M. Smith, Jr.  
President

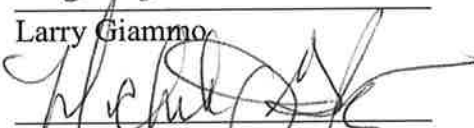
  
S. James Gates, Jr.  
Vice-President


  
James H. DeGraffenreidt, Jr.

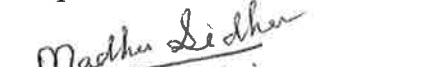
  
Linda Eberhant  


Chester E. Finn, Jr.

  
Larry Giammo

  
Michele Jenkins Guyton

  
Stephanie R. Iszard

  
Madhu Sidhu

  
Andrew R. Smarick

Absent  
Laura Weeldreyer

February 23, 2016