

JOHN PRICE,

Appellant

v.

SOMERSET COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-65

## OPINION

### INTRODUCTION

Appellant has filed an appeal challenging the nonrenewal of his bus contract and his decertification as a bus driver. The Somerset County Board of Education has filed a Motion to Dismiss or, Alternatively, a Motion for Summary Affirmance.

### FACTUAL BACKGROUND

Appellant has been a school bus driver for Somerset County Public Schools since 1979, and a school bus contractor since 1997.

On the afternoon of March 6, 2013, Appellant was involved in an incident on his bus involving a 10<sup>th</sup> grade student at Washington High School.<sup>1</sup> The student was seated directly behind the Appellant because he had a history of behavioral problems. The student got out of his seat, stood in the aisle, and blocked other students from getting to their seats during the boarding process. Appellant told the student, "Come on son; be smarter than your glasses and return to your seat." The student began to argue as he moved toward his seat. Appellant replied to the student, "All you need to say is, Mr. Price I'm sorry. It won't happen again." He then told the student, "We cannot have this same conversation every day. There is no reason to ever walk past seat number 2," which was the student's assigned seat. (Appeal, p.3, Ex.2; Ex.3).

As Appellant drove the bus away from the school, the student told the Appellant to "shut the f - - k up" and then he stabbed Appellant in his arm, causing the Appellant to bleed from three different puncture wounds. At the time, Appellant was driving in first gear at less than ten miles per hour. He stopped the bus, turned in his seat, and asked the student loudly, "What did you say to me?" Appellant looked for the weapon that the student had used to stab him but did not find it. He learned days later that the student had inserted sewing needles into the soles of his shoes and kicked the Appellant with them. (Appeal, p.3, Ex.2).

Appellant returned to the school, placed the bus in neutral and engaged the emergency brake in a harder than normal manner, causing the students' heads to jerk forward. (Appeal, p.3, Ex.2; Ex.3). When Appellant opened the door to motion the vice principal for help, the student

---

<sup>1</sup> The incident was recorded on the AngelTrax Bus Video and on the bus ramp/front entrance cameras at Washington High School. (Appeal, Ex.3). The video was not submitted as part of the record in the State Board appeal.

jumped off the bus. (Appeal, p.3, Ex.2). Appellant exited the bus with the students inside and the engine running. (Appeal, Ex.3). Once Appellant caught up with the student, he escorted him over to the vice principal by putting his hand on the inside shoulder strap of the student's book bag. (Appeal, pp.3-4, Ex.2). The student resisted by grabbing Appellant's arm and yelling, "Get the f - - k off of me!" Appellant informed the vice principal that the student had cursed and accosted him. *Id.* When the vice principal told the Appellant to come into the school, Appellant explained that he could not because he had students on the bus. The vice principal took the student inside. The Appellant returned to his bus and completed his afternoon run without further incident. Appellant was no more than twenty feet away from his bus during the exchange at school.<sup>2</sup> *Id.* at 4.

The following day, on March 7, 2013, Appellant met with the Chief Operating Officer (CEO), Paul D. Jefferson, and the school system's Driver Instructor to discuss what happened. The Appellant agreed that he could have handled the situation differently. (Appeal, Ex.3).

By letter that same day, the CEO notified the Appellant that he was being decertified as a Somerset County school bus driver based on his inappropriate conduct arising from the March 6 incident. The CEO stated that the decertified status would be lifted once Appellant completed a training program to take place on March 14, 2013. The CEO also stated five observations based on his review of the security camera footage. They are as follows:

1. Appellant stated to the student "Are you smarter than your glasses?"
2. Appellant told the student to say "I'm sorry Mr. Price. I will not do it again Mr. Price."
3. After the student responded by cursing, Appellant applied the bus braking system in a harder than normal manner causing students' heads to jerk forward.
4. After the student exited the bus, Appellant exited after him, leaving the bus running and unattended with students aboard.
5. Appellant grabbed the student's backpack and/or jacket and led him toward the school entrance where the assistant principal took control of the student.

The letter further advised that Appellant could be permanently decertified as a bus driver in the State and lose his contract with the school system "[i]f any unsafe actions are observed, reported and investigated against [him]."<sup>3</sup> (Appeal, Ex.3).

---

<sup>2</sup> The local board states in its Motion that it reserves the right to contest Appellant's version of the facts in this case. The Appellant, however, submitted with his appeal an affidavit attesting to the facts he put forth in the case. The local board has not submitted any evidence to rebut those facts.

<sup>3</sup> The school system also reported the incident to the Somerset County Child Protective Services. *Id.* Child Protective Services decided not to initiate an investigation. (Appeal, Ex.4).

On March 14, 2013, Appellant completed the Driver Improvement Program, which was the training program referenced in the CEO's letter. (Appeal, Ex.5). On that same day, the local Superintendent issued a memorandum to Appellant stating as follows:

I take no pleasure in writing this letter to inform you of [your] continued suspension pending Board review. After investigating the matter I am of the opinion that the Board must be informed of the incident that took place on your bus on March 6, 2013 at approximately 2:35 p.m. It is not my job to judge. However, it is my job to keep the Board informed. This matter (and all prior incidents) is being referred to the Board along with consequences that have been rendered. Neither I, nor Mr. Jefferson will make recommendations to the Board; however we will ask the Board how they would like to proceed with your services as a bus contractor.

The Board will meet in closed session on Tuesday, March 19, 2013. You will be informed of their decision no later than Wednesday, March 20, 2013. You will remain on suspension until after a decision has been rendered.

(Motion, Ex. 6). Appellant asked to attend the meeting to participate in the case, but the CEO told him he could not attend. (Appeal, p.5, Ex.2).

In a decision issued March 20, 2013, the local board elected not to renew Appellant's school bus contract. According to the board, it was asked to resolve the matter of possible termination or nonrenewal of the bus contract after the March 6 incident. In its decision, the local board reviewed the Appellant's "inappropriate conduct" as it related to the incident, and stated that its decision was solidified by Appellant's "ongoing egregious behavior within a 10 year period" based on conduct in 2000, 2001, 2004, 2010, and 2012.<sup>4</sup> The local board did not terminate the Appellant's bus contract, but rather opted not to renew it when it expired on June 30, 2013. The board noted that while Appellant retained the bus contract through June 30, 2012, a substitute had to run the bus and Appellant was not allowed on the bus while occupied by students. (Appeal, Ex.1).

Appellant filed this appeal with the State Board asserting that the nonrenewal of his school bus contract and his decertification were arbitrary, unreasonable and illegal. (Appeal). The local board filed a Motion to Dismiss Appellant's claims regarding decertification and a Motion for Summary Affirmance maintaining that its decision not to renew the Appellant's bus contract should be upheld. Confused by information in the local board's Motion, Appellant requested that the local board clarify the Appellant's status as a school bus driver and explain whether the Appellant has been decertified or suspended. The local board responded that Appellant was decertified as a bus driver and that the Superintendent's letter inadvertently substituted the word suspended for decertified.

---

<sup>4</sup> The local board did not specify the behaviors at issue during those times.

## STANDARD OF REVIEW

Because this appeal involves a decision of a local board concerning a local policy, the local board's decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

## LEGAL ANALYSIS

There are three types of actions at issue in this case - - decertification, suspension, and the non-renewal of the bus contract. Each is governed by distinct and separate rules. In this case, however, the decision makers used the three terms somewhat interchangeably, thus muddying the waters, particularly around the Appellant's decertification status. We explain.

### *Decertification/Suspension*

The local board has filed a Motion to Dismiss the decertification part of this case, maintaining that the Appellant failed to appeal his decertification as a school bus driver to the local board. According to the local board, Appellant was required to note his appeal to the local board of the decertification within 30 days of the Superintendent's March 14, 2013 memorandum. That position is not supported by the facts.

First, the Superintendent's March 14 memorandum did not state that Appellant's decertified status was still at issue. The letter does not reference decertification at all. Rather, the letter refers to Appellant's "continued suspension." Suspension and decertification connote two different concepts. A school bus driver can be suspended from driving a bus for a period of time without being decertified as a bus driver. Bus driver certification is regulated by COMAR 13A.06.07 (Student Transportation) and provides for recertification as well as permanent decertification. Although counsel for the local board has explained in the current appeal that the Superintendent intended to use the term "decertification" instead of "suspension" in that memorandum, that intent is not clear.

Second, the Superintendent referred the matter to the local board on his own. He denied the Appellant an opportunity to present his case to the board. In order to appeal the decertification to the local board within 30 days of the March 14 memorandum, Appellant would have had to understand at that time that he was decertified as a school bus driver. The CEO's March 7 letter, however, advised the Appellant that his "decertified status" would be lifted after successful completion of the training scheduled for March 14. (Appeal, Ex.3). Appellant successfully completed that course. He had every reason to believe that his certification was not at issue.

To further confuse matters, the Superintendent stated that he was asking the local board how it wanted to proceed with Appellant's services as a bus contractor. If the Superintendent's intent was to deal with the issue of Appellant's decertification in the March 14 memorandum, that issue should have been a part of the local board's review. It clearly was not.

Thus, as to the Appellant's certification status as a school bus driver in Somerset County, we believe that the local board, Superintendent and CEO created confusion by the way they handled the case below. This deprived the Appellant of the opportunity to address the decertification issue before the local board. In addition, the local board made no decision about Appellant's decertification, thus there is no local board decision on the matter for the State Board to review. Accordingly, we will remand the issue of Appellant's decertification to the local board.

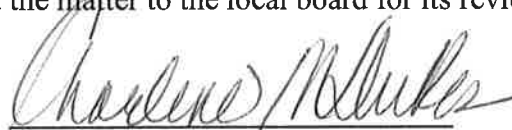
*Nonrenewal of Bus Contract*

The Appellant maintains that the local board's decision not to renew his bus contract was arbitrary, unreasonable and illegal. The School Vehicle/Water Vessel Contract between the Appellant and the local board specifies that the contract is for a period of one year, from July 1 through June 30, and that it is "renewable thereafter from year-to-year without notice, unless the Board, in its sole discretion, provides notice of non-renewal during any term hereof. . . . (Appeal, Ex.7, ¶¶ 1 & 9). Thus, the local board had a unilateral right not to renew the contract at the end of the school year.

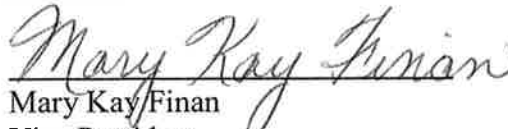
Appellant argues that the local board's review and decision were disciplinary in nature, akin to a termination of the contract, for which he was entitled to the opportunity to be heard at a hearing before the local board. The contract does provide the Appellant "the opportunity to be heard by the Board" if the board decides to terminate the contract for inadequate performance. (Appeal, Ex.7, ¶ 9). Here, despite the local board's discussion of Appellant's behavior, the local board ultimately did not choose to terminate the contract during its term. Instead it chose not to renew the contract when it expired which was within its discretion according to the contract terms. Thus, Appellant had no right to be heard on the nonrenewal issue.

CONCLUSION

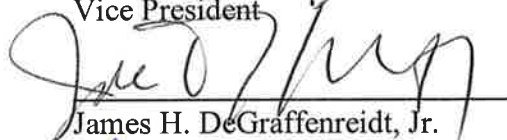
For these reasons, we uphold the local board's decision not to renew the Appellant's bus contract. As to the decertification issue, we remand the matter to the local board for its review and decision.



Charlene M. Dukes  
President



Mary Kay Finan  
Vice President



James H. DeGraffenreidt, Jr.



Linda Eberhart

*S. James Gates, Jr. - MIP*

S. James Gates, Jr.

*Luisa Montero-Diaz - MIP*

Luisa Montero-Diaz

*Absent*

Sayed M. Naved

*Madhu Sidhu*

Madhu Sidhu

*Donna Hill Staton*

Donna Hill Staton

*Guffie M. Smith, Jr.*

Guffie M. Smith, Jr.

December 16, 2013