BONNIE HARMON	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
CECIL COUNTY BOARD OF EDUCATION	OF EDUCATION
Appellee	Opinion No. 06-37

OPINION

In this appeal, Bonnie Harmon challenges the local board's decision to terminate her employment, to deny her request for a leave without pay and for paid leave from the Sick Leave Bank. The local board has submitted a motion for summary affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant has filed an opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant was a Secretary III noncertified employee in the Cecil County Public Schools for seven years starting in August, 1998. In the summer of 2005, Appellant suffered from lumbar disc disease which required a spinal fusion. On August 4, 2005 Appellant provided a disability certificate from her doctor which stated that she would be totally incapacitated from August 4 though October 4, 2005. By that time, Appellant had exhausted her sick leave so she applied to the sick leave bank for leave. The sick leave bank approved payment of leave for the period August 25 through October 4, 2005.

On September 26, 2005, Appellant reapplied to the sick leave bank, submitting her doctor's statement that she would be totally incapacitated from August 31, 2005 through December 31, 2005. The sick leave bank granted her paid leave through November 30, 2005.

On November 1, 2005, Mr. Robert L. Davis of Human Resources telephoned Appellant to confirm that she would return to work on January 3, 2006, the first day back after the Christmas break. After oral confirmation, Mr. Davis sent Appellant a letter confirming in writing her return and informing her that she had no further leave of any kind left and that any further medical leave would be at the discretion of the superintendent and might not be granted. (Letter of November 1, 2005).

On December 5, 2005, Appellant again applied to the sick leave bank for paid leave through February 1, 2006. The Sick Leave Bank Committee on December 21, 2005 granted her

paid leave from December 1 through December 22, 2005 but denied any further leave, commenting that the "employee has reached the maximum number of days for this illness." Appellant neither appealed the decision of the Sick Bank Committee nor filed any other request for extension of her leave.

On December 29, 2005, Appellant's physician completed a return to work form certifying that Appellant was able to return to work on January 3, 2006, with certain limitations. He noted that Appellant could not lift objects heavier than 20 pounds, could not perform repetitive bending and should be permitted to have 2-3 minutes of stretching every 50-60 minutes of sitting.

Appellant returned to work on January 3, 2006 and the CCPS accommodated her limitations. On January 12, 2006, Appellant was asked to make 1258 copies of a single page, two sided document. The documents were then to be placed in envelopes by school. Appellant was told that she could sit or stand while the copies were being made, she could stretch when necessary and could carry small batches of copies at a time as necessary. (Affidavit of Agatha Lanhan).

On January 13, 2006, Appellant failed to appear at work. On January 17, 2006 (the next work day after the King holiday), Appellant submitted a disability certificate from her doctor indicating she was totally incapacitated through February16, 2006. The certificate merely indicated that she was "continuing to rehab". It did not indicate any injury to Appellant or anything that indicated that she had not been properly accommodated.

On January 19, 2006, Mr. Davis wrote to Appellant advising her that her continued absence could no longer be accommodated, that she had been afforded all her rights and privileges from the school system and that her position needed to be filled to sustain the work of the office. He indicated that he was recommending her termination to the superintendent and noted that she could file for disability retirement from the State Retirement System.

On January 25, 2006, the Superintendent Carl Roberts wrote to Appellant, scheduling a meeting with his designees on February 2, 2006 to discuss Mr. Davis' recommendation. At that conference, Appellant requested that the superintendent grant her a six-month unpaid leave of absence until July 1, 2006. On February 9, 2006, the superintendent denied Appellant's request for a leave of absence and terminated Appellant's employment

On March 8, 2005, Appellant filed an appeal with the local board, requesting oral argument without testimony. The local board heard oral argument on May 24, 2006 and in Opinion No. 06-1, upheld the superintendent's decision's to deny the leave of absence and to terminate Appellant's employment. This appeal followed.

STANDARD OF REVIEW

Because this case involves a local policy or dispute regarding the rules and regulations of a local board, the standard of review is that the decision of the local board shall be 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.

ANALYSIS

Appellant does not allege that the actions of the local board were illegal. Rather, she alleges that the actions were arbitrary and unreasonable. She argues that she was always rated as an effective or exemplary employee and was rated "effective" in attendance for all seven years of employment. She asserts that she only took 197 hours of leave during her seven years of employment when the Negotiated Agreement provided a total of 200 days. We point out however, that while Appellant took 197 hours of paid leave in her seven years with the school system, she also took over 200 hours of leave without pay.

The Appellant makes two arguments. First, she alleges that it was arbitrary and unreasonable for the superintendent to deny her request for a 6 month leave of absence. Second, it was arbitrary and unreasonable for the Sick Leave Bank Committee to deny her additional paid leave.

To assess her arguments it is important to note how the State Board defines "arbitrary and unreasonable." Under COMAR 13A.01.05.05B, a decision is arbitrary or unreasonable if it is (1) contrary to sound educational policy, or (2) if a reasoning mind could not have reasonably reached the same conclusion.

It is our view that the superintendent's decision to deny the additional six months leave was not contrary to sound educational policy. Appellant started her leave in July of 2005, and her request would have extended that leave until July 1, 2006, just a few weeks short of a full year. The superintendent was aware of the demands on the Staff Development Office and the need for a regular, full time secretary to handle the duties of that office. (Affidavit of Agatha Lanhan).

Appellant argues that the superintendent could have filled her position while she was on leave as the Negotiated Agreement only requires that after such leave that she be put in the first available similar position. While that may be an option for the superintendent, it is not a mandate. The superintendent retains that discretion to decline to use that option.

Appellant also alleges that her supervisor was "forcing" her out. Appellant provided an e-mail exchange wherein her supervisor, Ms. Lanhan, expressed concern with the length of Appellant's absences and expressed her desire to hire a new secretary. We do not view this as "forcing" her out. Appellant was unable to return to work even with accommodations. The work

of the office needs to be done. It is not unreasonable to terminate Appellant when she could no longer perform her job. *See Kimble v. Montgomery County Board of Education,* MSBE Op. No. 2-27 (June 6, 2002) in which the State Board upheld the termination of a tenured teacher with a record of excessive absences on grounds of incompetence based upon her medical condition which prevented her from performing her duties. The superintendent's decision here to deny the additional six months leave is soundly within the discretion of the superintendent and a reasonable person could have reasonably reached the same conclusion.

With respect to the Sick Leave Bank Committee decision, Appellant claims that the decision to deny her additional leave was arbitrary and unreasonable because the Committee did not ask for a second medical opinion. However, the rules for the Sick Leave Bank do not require that the Committee obtain a second opinion.

Appellant next argues that the Sick Leave Bank Committee was arbitrary when it denied her additional paid leave on the basis that she "had reached the maximum number of days for this illness" and that the rules of the Sick Leave Bank permit an employee to take 200 hours of leave during the employee's lifetime. She claims that the Committee members should not be making medical decisions.

The Committee, however, did not make a medical decisions - it only decided whether an employee should receive more *paid* leave. The Committee knew that Appellant had used all of the leave she had accrued during her employment, as well as additional Family Medical Leave beyond that required by law. The Committee had already granted the Appellant 78 days of paid leave from the Sick Leave Bank. There is no right to or guarantee that an employee will be granted all 200 hours of paid leave.

CONCLUSION

For all of these reasons, we find that the local board did not act arbitrarily or unreasonably in this matter. We therefore affirm the decision of the Cecil County Board of Education concerning Appellant's termination, leave of absence and sick leave.

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December 12, 2006