

WYNETTE W. WILKINS,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-10

OPINION

In this appeal, Appellant challenges her termination from her position as Chief Financial Officer ("CFO") for the Prince George's County Public Schools ("PGCPS"). Appellant argues that (1) her due process rights were violated because she was not provided with notice of the reasons for her termination or the opportunity to be heard on the termination, and (2) that the termination decision was arbitrary, unreasonable and illegal. The local board has submitted a Motion for Summary Affirmance maintaining that (1) Appellant's due process rights were not violated because she was not entitled to notice or the opportunity to be heard on the termination, and (2) that the termination decision was not arbitrary, unreasonable or illegal. Appellant has submitted a reply in opposition to the local board's motion. The local board has submitted a response to Appellant's reply.

Because it was relevant to understanding the procedural posture of this case, the State Board requested that the parties submit additional information addressing whether Appellant was terminated from her position by the Interim Chief Executive Officer ("CEO") or by the local board. Legal counsel for the local board submitted a letter stating that Appellant was terminated by the Interim CEO "at the express direction of the Board of Education of Prince George's County." *See* February 6, 2006 letter from Andrew W. Nussbaum. Appellant has objected to this submission by the local board attorney because it does not constitute additional evidence regarding the termination decision. *See* February 7, 2006 letter from Melehy. We agree with Appellant that Mr. Nussbaum's letter may not be considered evidence of the termination decision because it does not contain any documentation of official board action.

FACTUAL BACKGROUND

The local board hired Appellant as the Chief Financial Officer for Prince George's County Public Schools in January 2004. The CFO duties include the "day-to-day management and oversight of the fiscal affairs of the [school system]". Md. Code Ann., Educ. §4-404(a)(1). The CFO is the Chief of the Division of Budget and Finance and is responsible for the Departments of Budget, Financial Services, Payroll, Accounting, Accounts Payable, and Purchasing and Supplies and reports directly to the Chief Executive Officer. The qualifications for the CFO position do not require State certification. Nor did Appellant hold any State certification. *See* Affidavit of Howard Burnett, Interim Chief Executive Officer.

The local board had deep concerns about the fiscal management of the school system for a considerable period of time. Audits conducted by local, State, and private audit teams identified serious and recurring inefficiencies throughout the Division of Budget and Finance which was headed Appellant. The written audits contained numerous findings pertaining to inefficient and deficient management and accountability practices throughout the Division. *See* Affidavit of Howard Burnett.

Based on concerns about the fiscal management of the school system and on the audit findings, Howard A. Burnett, Interim Chief Executive Officer, advised Appellant of her termination by letter dated August 12, 2005. *See* Affidavit of Howard Burnett. The letter stated that she was being relieved of her current duties and being placed on administrative leave effective at the close of business on August 15, 2005, with her employment terminating on October 11, 2005. The letter further stated that Appellant would be reimbursed for any accrued annual leave at the end of her employment. *See* 8/12/05 letter from Burnett to Appellant.

Thereafter, Appellant wrote to the local board asking that it “reconsider the terms of the severance provided upon [her] discharge from Prince George’s County Public Schools.” That letter also states,

It is my position, that I was due a contract with Prince George’s County Public Schools, and that the Administration and the Board have failed to honor this request and responsibility. It is also my position that I was never provided the necessary procedural processes to an appropriate termination. As I have exhibited respect to the Board and professionalism in my job, I would ask the Board to reciprocate by providing me six months of severance, in addition to the reimbursement of accrued leave as previously indicated in the discharge letter.

See 8/25/05 letter from Appellant to Stone. In response, local board attorney, Roger Thomas, advised Appellant that “[a]fter a thorough review of [her] letter, the Board decided to decline [Appellant’s] request for six months of severance. . . .” *See* 9/12/05 letter from Thomas to Appellant.

This appeal ensued. Appellant claims that when she began her employment as CFO, the fiscal operations of PGCPs were in disarray with no system of accountability for funds, no financial reporting to Program Managers, major technical difficulties in accounting due to a failed system implementation with Oracle, significant personnel problems, lack of staffing, and lack of organization. She also maintains that, when she began her job in January 2004, she found that the fiscal year 2003 audit had not been completed and the fiscal year 2004 books had not been opened. She also discovered unreported deficits of approximately \$82,000,000 and reported deficits of \$23,000,000. *See* Affidavit of Appellant.

Appellant asserts that she took substantial steps to improve the fiscal policy of PGCPs during her time as CFO and that she implemented various programs and procedures to remedy many of the problems present when she began. Specifically, she references a 6.2 million dollar grant from the United States Department of Education that was withdrawn from the school system prior to her tenure which she helped get reinstated. Essentially, Appellant maintains that many of the fiscal problems experienced by the school system existed prior to her employment and that she made strides to remedy these problems. *See* Affidavit of Appellant.

Appellant asks that this Board reverse her termination and direct the Prince George's County Board to provide her with a contract that terminates on June 30, 2006. *See* 9/12/05 letter of appeal to State Board.

STANDARD OF REVIEW

In *Livers v. Charles County Board of Education*, 6 Op. MSBE 407 (1992), *aff'd* 101 Md. App. 160, *cert. denied*, 336 Md. 594 (1994), the State Board held that a non-certificated support employee is entitled to an administrative appeal of a termination pursuant to § 4-205(c)(3) of the Education Article. The standard of review that the State Board applies to such a termination is that the local board's decision is *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless its decision is arbitrary, unreasonable, or illegal. *See* COMAR 13A.01.01.03E(1). This same standard applies to termination of professional noncertificated employees. *See also* *Venter v. Howard County Board of Education*, MSBE Opinion No. 05-22(2005); *Walsh v. Montgomery County Board of Education*, MSBE Opinion No. 00-54.

ANALYSIS

Procedural Issue: Has the Appellant Filed a Proper Appeal of Her Termination?

State law provides for review of Appellant's termination through the appeal process. Section 4-205(c)(3) of the Education Article states:

A decision of a county superintendent may be appealed to the county board if taken in writing within 30 days after the decision of the county superintendent. The decision may be further appealed to the State Board if taken in writing within 30 days after the decision of the county board.

As a preliminary matter, this Board finds that this appeal is not properly before it because Appellant failed to properly note her appeal to the local board in the first instance. Based on the record, Appellant was terminated by the Interim Chief Executive Officer and not by the local board. *See* 8/12/05 termination letter from Burnett to Appellant. Entitlement to an appeal of the Interim CEO's termination decision presumes that Appellant has filed with the local board the

appropriate request for review to initiate the appellate process. Appellant maintains that she filed an appeal with the local board as evidenced by her August 25, 2005 letter and that the appeal was denied. As set forth above, the Appellant's letter began with, "I am writing to you and your fellow Board members to personally petition you and the Board to reconsider the terms of the severance provided upon my discharge from Prince George's County Public Schools." She goes on to say:

It is my position, that I was due a contract with Prince George's County Public Schools, and that the Administration and the Board have failed to honor this request and responsibility. It is also my position that I was never provided the necessary procedural processes to an appropriate termination. As I have exhibited respect to the Board and professionalism in my job, I would ask the Board to reciprocate by providing me six months of severance, in addition to the reimbursement of accrued leave as previously indicated in the discharge letter.

The local board treated Appellant's letter, not as an appeal of the termination itself, but as a request for six months severance which the local board ultimately denied. A review of Appellant's August 25 letter to the local board discloses that Appellant indeed requested that the local board "reconsider the terms of the severance provided upon [Appellant's] discharge" from PGCPs. Although Appellant stated in the letter that she was denied due process and that she was due a contract from the school system, she did not request that the local board review her termination, or that the local board reinstate her as Chief Financial Officer or place her in any other position with the school system.

The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal).

CONCLUSION

Based on the record, we find that Appellant failed to initiate an appeal before the local board of the termination decision. Accordingly, we dismiss this case.

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March 29, 2006