

JEROME WHITTINGTON

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-33

OPINION

In this appeal, Appellant, a noncertificated employee, challenges his termination for theft, conduct which reflects unfavorably on the school system, and violations of administrative regulations or department rules. The local board has submitted a motion for summary affirmance maintaining its decision was not arbitrary, unreasonable or illegal. Appellant has not submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant was employed by the Prince George's County Board of Education for over thirteen years. (T. 27). Most recently, Appellant was employed as a Laborer II in the Maintenance Department.

The incident leading up to Appellant's termination was a theft that occurred on October 24, 2005 at Frederick Douglas High School ("Frederick Douglas"). Security officers at Frederick Douglas conducted an investigation and identified Appellant as the perpetrator of the theft. Appellant then admitted to breaking into a vehicle, owned by another school employee, which was parked in the school parking lot and stealing money from the vehicle.¹ (Whittington Statement, 10/31/05). Appellant testified that he noticed money on the console, put his hand through an opening in the window, unlocked the door and took the cash. (T. 35). Appellant confessed to this act in a written statement. (Whittington Statement, 10/31/05). He later returned the money and apologized to the vehicle's owner. (T. 36, 38).

He also admitted to having a drug problem for the past nine years. (T. 43, Whittington Statement, 10/31/05). On November 20, 2005, he checked himself into a 30 day rehabilitation program at Prince George's Hospital Center where he was under medical care for substance abuse and stress related issues. (T. 38; Dimensions Healthcare System letter, 12/20/05). Although the program manager stated in a letter that he needed a "step-up in treatment" to deal with his issues, Appellant did not continue with treatment because his medical insurance lapsed.

¹Although Appellant admitted to taking \$85.00, it was reported that the actual amount stolen was \$105.00. (T. 24).

(*Id.*; T. 47-48).

Appellant's work history includes a record of attendance problems over the course of several years. In October 2000 and January 2002, John Unkle, Maintenance Supervisor, met with Appellant regarding leave usage issues. He advised Appellant regarding "the importance of adherence to the established policies, procedures, regulations, and the expected conduct of [his] position." (Unkle Memoranda, 10/31/00 & 1/14/02). Mr. Unkle also advised Appellant that further unsatisfactory attendance could lead to disciplinary action, including dismissal. (Unkle Memorandum, 1/14/02). In September 2005, James Terry Brown, Grounds Shop Master Foreman, documented his concerns regarding Appellant's excessive leave usage, his use of unscheduled leave, and his failure to have the proper leave to cover his absences. (T. 16-18). Mr. Brown met with Appellant and reiterated the concerns previously raised by Mr. Unkle. (Brown Memorandum, 9/14/05).² Although Appellant has had satisfactory evaluations, those evaluations have included comments regarding his need to improve attendance and punctuality. (T. 42).

Appellant and his Union representative, Susan Lessor, met with school system officials on November 14, 2005 to discuss his employment situation. Ultimately, Appellant was terminated from his position effective November 14, 2005 for the following reasons: (1) incompetence or other similar unsatisfactory performance; (2) abuse or theft of school system property; (3) being under the influence of alcoholic beverages or a controlled dangerous substance during the work day; (4) violations of administrative regulations or departmental rules; and (5) conduct which reflects unfavorably on the school system as an employer. (Letter from Robinson, 11/15/05).

Appellant appealed the termination. A full evidentiary hearing was held on January 30, 2006, before Dorothy Stubbs, serving as the hearing officer for the Chief Executive Officer. Ms. Stubbs issued her Findings of Fact, Conclusions and Recommendation on March 29, 2006. In her decision, she highlighted Appellant's theft of property committed while Appellant was on duty and on school grounds, and Appellant's history of attendance problems. Based on the evidence presented, Ms. Stubbs determined that Appellant failed to prove a school system practice of retaining employees who commit the offense of theft. (Stubbs' Decision, p.6). She further found that Appellant's termination was an appropriate penalty for conduct reflecting unfavorably on the school system and for conduct which was a violation of administrative regulations and department rules. (*Id.*). Howard Burnett, the Interim Chief Executive Officer, concurred with Ms. Stubbs' and upheld Appellant's termination. (Final Decision and Order of CEO).

On further appeal, the local board upheld the action of the Interim CEO terminating

²Appellant testified that his attendance problems stemmed from his role as a care-taker for several elderly individuals. (T. 31-32).

Appellant by a vote of six to two.³ This appeal followed.

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 administrative review of a termination pursuant to §4-205(c)(4) 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. COMAR 13A.01.05.05A.

ANALYSIS

Appellant does not argue that no discipline should have been imposed in this case. Instead, he maintains that a lesser disciplinary action was warranted as in other cases in which school system employees committed theft but were not terminated. Ms. Lesser and Mr. Faith Jones, Union President, both testified that such cases do exist, however, neither offered testimony that the cases involved employees with similar employment and leave usage histories. Nor did either witness offer sufficient testimony to establish a current school system practice of retaining employees who commit the offense of theft. Rather, the cases cited by the witnesses were dated and occurred during a prior administration. In fact, Mr. Jones specifically stated that he was unaware of any recent cases in which the school system elected to retain an employee who admitted to theft. (T.79).

The school system chose not to use progressive discipline here. The applicable Negotiated Agreement between the local board and Appellant's bargaining union, Local 2250, does not require it in all instances. It states that "No advance notice or prior letter of warning is required when circumstances indicate that immediate termination is warranted." (Negotiated Agreement, p.9). The school system presented evidence that it does not strictly follow a progressive discipline model because there are situations where employees should be terminated for a single, grave offense. Other employment related issues can also play into the decision of whether termination is warranted in a particular case. (Robinson Affidavit).

The local board found that termination was appropriate here given the theft of property on school grounds from another school employee while Appellant was on duty. In addition, Appellant has a history of attendance problems spanning several years and an admitted drug abuse problem for which he is no longer seeking treatment. We do not find the local board's decision arbitrary, unreasonable or illegal in light of the record in this case.

As for Appellant's allegation that his termination was based on racial discrimination, we

³One local board member was absent and did not vote. (Local Board Order).

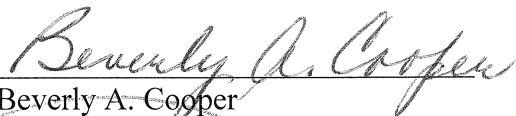
believe this claim lacks merit. Appellant testified that a Caucasian employee who admitted to stealing was not terminated. The fact that one Caucasian employee was not terminated for committing theft does not establish that the termination decision here was discriminatory.

CONCLUSION

Based upon our review of this record, we conclude that the local board's decision was not arbitrary, unreasonable or illegal. We therefore affirm the decision of the local board to terminate Appellant from his position in the Maintenance Department with the Prince George's County Board of Education.⁴



Dunbar Brooks
President



Beverly A. Cooper
Vice President



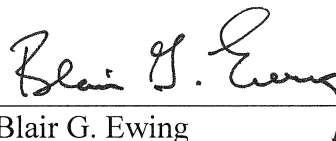
Lelia T. Allen



J. Henry Butta

RECUSED

Charlene M. Dukes

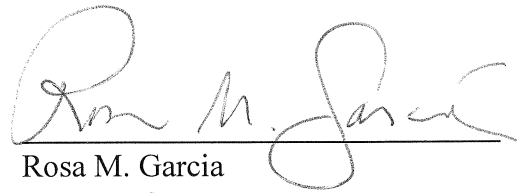


Blair G. Ewing



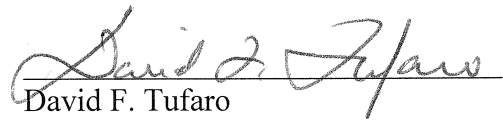
Mary Kay Finan

⁴Dr. Charlene M. Dukes has recused herself from this decision.


Rosa M. Garcia


Richard L. Goodall


Karabelle Pizzigati


David F. Tufaro

August 29, 2007