

TRACEY JOHNSON,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-35

OPINION

In this appeal, Appellant challenges her two day suspension without pay for insubordination, willful neglect of duty and incompetence. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has submitted a reply.

FACTUAL BACKGROUND

Appellant has been an employee with the Howard County Public School System (HCPSS) for approximately 25 years. She is currently a supporting services employee in the Custodial Support department. She is assigned as a day building supervisor at the County Diagnostic Center (CDC) where she is in charge of cleaning and providing other custodial services in the school building.

Beginning in the fall of 2006, Ms. Linda Flanagan, Facilitator of Countywide Services and the building administrator, requested that Appellant remove "No Violence" stickers that were on several doors and windows throughout the school building, presumably for esthetic reasons.¹ Appellant declined to do so, maintaining that the school lacked the authority to remove the stickers because they were issued by the government. Ms. Flanagan conferred with Mr. Steve Drummond, Coordinator of School Security, who approved the removal of the stickers. Appellant continued to refuse Ms. Flanagan's request. (Local Board Decision at 1; Suspension Letter, 12/11/06).

On November 29, 2006, Ms. Flanagan and Mr. Edward Nicholson, Assistant Manager of Custodial Services, approached Appellant at the CDC to discuss removal of the stickers. Mr.

¹The stickers state "No Violence" and give the number for a tip line. They also state "Promoting Safe Schools in Howard County". (See Stickers).

Nicholson directed Appellant to remove the stickers. When Appellant refused, Mr. Nicholson repeated his request. Appellant again refused and stated that she was not going to remove the stickers. Mr. Nicholson then directed Appellant to punch out and go home, and advised her that she would not be paid after 10:30 am. Appellant refused to leave stating, "I'm not going anywhere and I will be paid." (Suspension Letter, 12/11/06).

This incident prompted a meeting with Appellant and Ms. Olivia Claus, Manager of Custodial Services, on December 5, 2006. Ms. Claus discussed the situation with Appellant, who continued to refuse to remove the stickers. Appellant stated her belief that she was not authorized to remove the stickers, despite approval from Mr. Drummond. She also stated that she did not leave the building when directed by Mr. Nicholson because she did not believe that she had done anything that would warrant such a request. (Suspension Letter, 12/11/06).

By letter dated December 11, 2006, Ms. Claus advised Appellant that she would be recommending her suspension for two days without pay. The letter states as follows:

Upon review of all of the information received and discussions held, the behavior you displayed, is in direct violation of Board Policy 1420-R (Professional Responsibility of Employees); Policy 1811 (Human Relations), Insubordination; Willful Neglect of Duty; and Incompetence. This behavior displays poor conduct and judgment and is incompatible with the HCPSS's work ethic, and, as a result of these violations, you will be recommended for a two (2) day unpaid suspension on December 19 and 20, 2006. Any further behavior of this nature will result in additional disciplinary action, up to and including a recommendation to terminate your employment with HCPSS.

(Id.).

On January 9, 2007, Mr. Ken Roey, Executive Director of Facilities Planning and Management, met with Appellant to discuss a grievance filed by Appellant in regard to her suspension. Appellant claimed in the grievance that she had been suspended without just cause and requested back pay for the two missed days. Mr. Roey concluded that the suspension was reasonable and consistent with local policy, and upheld Ms. Claus' decision to suspend Appellant for two days without pay. (Letter from Roey, 1/10/07).

Appellant has an employment history that includes numerous disciplinary incidents and work performance problems that predate the incident at issue. Some of the more notable incidents include the following:

- 11/11/91 - Memorandum from Assistant Principal at Patuxent Valley

Middle School regarding insubordination;

- 12/91 - Transfer to Swansfield Elementary School due to lack of cooperation with administrative staff;
- 3/29/93 - Swansfield Elementary School Principal requests that Appellant be transferred based on strained relationships with staff members;
- 7/22/93 - Three day suspension for insubordination;
- 10/5/98 - Transfer from Bollman Bridge Elementary School to maintenance Department based on concerns regarding interpersonal relationships with staff;
- 6/12/01 - Suspension for 2 days without pay for insubordination for improperly reporting to Clarksville Elementary School and refusing to leave when directed to do so;
- 6/15/01 - Letter for violating terms of suspension by returning to the Custodial Department and using a government vehicle;
- 8/25/04 - Letter documenting excessive lateness;
- 9/22/04 - Memorandum documenting mop-run concerns and expectations;
- 3/1/05 - Memorandum concerning mop laundry duties;
- 2/15/06 - Memorandum concerning work performance;
- 7/6/06 - Memorandum concerning work performance;
- 8/15/06 - Written warning concerning continued poor work performance.
- 11/3/06 - Written reprimand for failure to follow the written or verbal instructions of a supervisor/administrator.

Appellant appealed to the local Superintendent. By letter dated 1/26/07, the local Superintendent upheld Appellant's suspension. He stated: "Upon reviewing the circumstances I feel confident that this penalty was appropriate. I found no evidence of disrespectful behavior or harassment on behalf of your supervisors when asking that you complete tasks that are within your role and responsibilities."

On appeal to the local board, Appellant argued that her suspension violated local board Policy 1815 - Title IX/Harassment. Policy 1815 is the local board's policy prohibiting discrimination based on sex. The portion of that policy on which Appellant focused states that the "Board will not tolerate nor condone any act of insensitivity, disrespect, bias, or discrimination in any form." (See Appeal Information Form and attachments). Appellant maintained that she was shown "disrespect" when Ms. Flanagan contacted Mr. Nicholson and Mr. Drummond about removing the stickers, rather than contacting a local board member as Appellant had suggested. She further maintained that Mr. Nicholson and Ms. Claus showed her "disrespect" by not giving credence to her position on the removal of the stickers and contacting a board member. (Letter to Cousin, 1/22/07).

The local board upheld the decision to suspend Appellant for two days without pay, characterizing the suspension as "generous" given Appellant's disciplinary history. The local board noted that Appellant had been counseled, warned, written up, reprimanded, or suspended for insubordination on nine previous occasions, in addition to other memoranda dealing with work performance issues. The local board also noted that Appellant had been transferred a number of times due to her inability to get along with staff as various assignments. (Local Board Decision at 2-3).

This appeal to the State Board followed.

STANDARD OF REVIEW

The standard of review in an appeal concerning the suspension of non-certificated staff is set forth in COMAR 13A.01.05.05A. In such cases, the local board's decision is considered 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.

ANALYSIS

Appellant does not deny that she refused to remove the stickers. She believes, however, that the disciplinary action imposed against her for her refusal was too harsh. The local board maintains that the suspension for two days without pay was justified, if not generous, in light of the circumstances and Appellant's employment history.

Appellant's suspension was based on insubordination, wilful neglect of duty and incompetence. "Insubordination" is defined as the "[f]ailure to follow a valid directive from a person in a position of authority, (c.g., supervisor, administrator)." "Misconduct in office" is defined as "[a]ny wrongdoing by an employee in relation to the duties of his/her assigned position" and includes "[i]nappropriate/unprofessional conduct toward or relations with other persons. . ." "Wilful neglect of duty" is defined as the "[f]ailure to follow . . . directives, or job requirements known to the employee." (Policy 1408-R(D)).

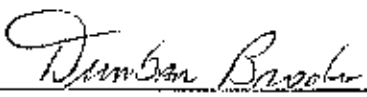
Appellant is a day building supervisor responsible for providing custodial services in the school building. Her supervisors, Ms. Flanagan and Mr. Nicholson, directed her to remove the stickers on the windows and doors, most likely for esthetic purposes. Appellant failed to heed those directives. Although we see nothing wrong with Appellant expressing concern about the propriety of removing the stickers when she was initially asked to do so, once Ms. Flanagan investigated and determined that removal was appropriate, Appellant no longer had a basis for refusal. Additionally, although Appellant wanted Ms. Flanagan to direct her inquiry about removal of the stickers to a local board member, it was not up to Appellant to determine who should be contacted about the issue. Appellant also acted inappropriately when Mr. Nicholson requested that she leave the premises for the rest of the day.

Appellant's continued refusal to follow directives given by her supervisors and her unprofessional conduct towards them constituted insubordination, misconduct in office, and willful neglect of duty under local board policy. The specific form of discipline chosen in an individual case is at the discretion of the Superintendent or designee. (See Local Board Policy 1408-PR(T)). In this case, the Superintendent imposed a two day suspension without pay. We do not believe that this penalty is arbitrary or unreasonable under the circumstances. This is particularly true in light of Appellant's employment history which includes, among other things, prior incidents of insubordination.

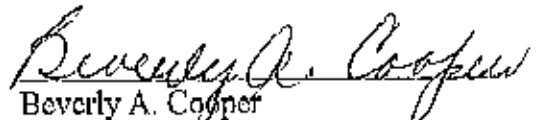
Appellant also claims that the circumstances here constitute a violation of Local Board Policy 1815 entitled "Sexual Harassment" which prohibits the sexual harassment of an employee and protects employees against sex discrimination. The claim is based on Appellant's belief that Ms. Flanagan and Mr. Nicholson were disrespectful in their dealing with Appellant. It is also based on Appellant's belief that this disciplinary action and two prior ones, one from 1993 and one from 2001, were too harsh. While Appellant sets forth various complaints in her letter of appeal, she provides no evidence of sexual harassment or discrimination on the basis of sex. The State Board has consistently held that an Appellant must support allegations of illegality with factual evidence. See *Ewing v. Cecil County Board of Education*, 6 Op. MSBE 818 (1995); *Stepper v. Board of Education of Anne Arundel County*, 7 Op. MSBE 324 (1996). The only thing Appellant has shown here is that she disagrees with the suspension and dislikes the manner in which she was dealt with by Ms. Flanagan and Mr. Nicholson.

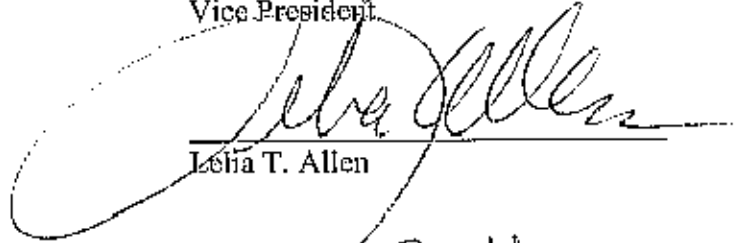
CONCLUSION


We do not find the local board's decision to be arbitrary, unreasonable or illegal. Accordingly, we uphold the local board's decision to affirm Appellant's two day suspension without pay.



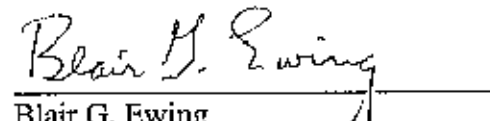
Dunbar Brooks
President

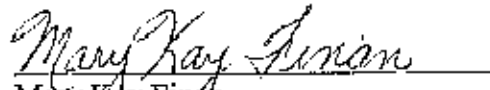

Beverly A. Cooper
Vice President

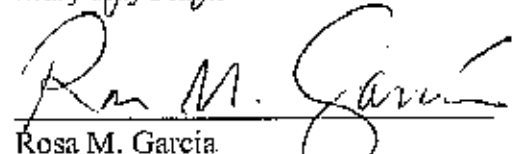

Lelia T. Allen



J. Henry Butta

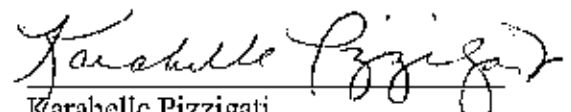

Charlene M. Dukes

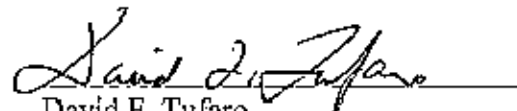

Blair G. Ewing


Mary Kay Finch


Rosa M. Garcia


Richard L. Goodall


Karabelle Pizzigati


David F. Tufaro

September 25, 2007