

KENT COUNTY BOARD OF EDUCATION,

BEFORE THE

Appellant

MARYLAND

v.

STATE BOARD

KENT COUNTY TEACHERS'
ASSOCIATION, INC.,

OF EDUCATION

Appellee

Opinion No. 08-26

OPINION

INTRODUCTION

The Kent County Board of Education (local board) filed a Petition for Declaratory Ruling presenting a question about the proper subject for collective bargaining and arbitration. The Kent County Teachers' Association (KCTA) responded by filing a Verified Answer and Motion for Summary Affirmance. The local board filed a Reply.

FACTUAL BACKGROUND

This case began when Joanne Garber, a teacher for nineteen years in the Kent County Public Schools, questioned whether she was receiving the correct salary. Specifically, the local board set Ms. Garber's annual salary for the 2007-2008 school year as \$71,843, in part, because she has an Advanced Professional Certificate with a Master's Degree ("APC w/MA"). (Local Board, Ex. 3). Ms. Garber, however, concluded that that designation was incorrect and that she should be considered to have an Advanced Professional Certificate with a Master's Degree plus 30 credits ("APC w/MA + 30"). Her salary at that level would be \$73,819. (KCTA, Ex. 7). It is undisputed that Ms. Garber has 30 credits beyond her Master's degree. Having 30 credits, however, does not automatically entitle a teacher to be classified as APC w/MA + 30.

The local board has adopted a Personnel Policy, Reg. No. 100-3, that defines the types of credits a teacher must have to be considered APC w/MA + 30. (Local Board, Ex. 5). Fifteen of the thirty credits must be graduate credits. Other types of credits, such as undergraduate credits or continuing professional development credits offered through MSDE, can comprise the other 15 credits. (Local Board's Petition at 5-6 and Ex. 5).

It is undisputed that Ms. Garber does not have 15 graduate level credits. After several meetings with school personnel to resolve the issue, KCTA initiated a grievance on behalf of Ms.

Garber. (KCTA, Ex. 8). The Supervisor of Human Resources, Jeffery Grafton, considered the Level I Grievance and denied it on the grounds that Ms. Garber had only 3 graduate credits, not the 15 graduate credits required by board policy to attain the "plus 30" status. (Local Board, Ex. 9). The KCTA, thereafter, requested a Level II Grievance - Superintendent's Level. (KCTA, Ex. 11). At that stage, the Superintendent, through counsel, informed Ms. Garber that the matter was not a grievable one. (Local Board, Ex. 10). In response, the KCTA advised that the matter would proceed directly to Level III, Binding Arbitration. (Local Board, Ex. 11).

The local board, through counsel, asked that KCTA refrain from arbitration until the local board could file its Petition for Declaratory Ruling seeking a determination on the matter from this Board. (Local Board, Ex. 12). The KCTA refused to refrain from arbitration. (Local Board, Ex. 13A & 13B). The Petition for Declaratory Ruling was filed forthwith.

STANDARD OF REVIEW

In a case in which the State Board is asked to declare the intent and meaning of an education law, the State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations. COMAR 13A.01.05.05(D).

LEGAL ANALYSIS

The central issue in this case is whether the determination of the type of credits necessary to achieve "plus 30" status is subject to collective bargaining. If it is, disputes about this matter are arbitrable. If it is not, disputes about the matter are subject to local board rules and policies appealable to the State Board through the § 4-205 appeals process.

Collective bargaining law establishes that a public school employer must negotiate "all matters that relate to salaries, wage, hours, and other working conditions." Md. Educ. Code. Ann. § 6-408(b). Those are the mandatory topics for collective bargaining. The public school employees and the bargaining unit may "mutually agree" to negotiate on other matters, but the law precludes any negotiation on "the school calendar, the maximum number of students assigned to a class, or any matter that is precluded by applicable statutory law." *Id.* at § 6-408(b)(2) and (3). Such negotiation would be considered "illegal."

For those matters that are negotiable (mandatory and mutually agreed matters), the collective bargaining agreement may call for binding arbitration. *Id.* § 6-408(a)(2). It does so in this case.

KCTA argues that the matter at issue here is "purely" a salary matter which is a mandatory topic for collective bargaining. Therefore, KCTA asserts that the types of credits Ms. Garber needs to reach "plus 30" status is subject to binding arbitration, not subject to local board

regulation.

The local board views the matter a different way. It posits that establishing the type of credits necessary for “plus 30” status is within the local board’s exclusive province because that is an education policy decision and a school management decision. The local board explains that by statute the local board has been given the authority to establish educational policy and to administer and manage the county public schools. See Md. Educ. Code Ann. §§ 4-101; 4-108; 4-204; 4-205; and 6-411(a). It would be illegal, the local board argues, for the parties to negotiate or arbitrate such matters.

Both parties correctly define the lines that are drawn in this case, specifically, whether the designation of 15 of 30 credits as graduate credits is a matter involving salary/wages or one involving educational policy/administration of the public schools?

Over the course of 30 years, this Board and the courts of Maryland have grappled with where to draw the line between matters involving salary, wages and working conditions and ones involving educational policy and the administration of the public schools. As the Court of Appeals has explained, employees usually “argue for an extremely broad interpretation of the statutory phrase ‘all matters that relate to salaries, wages, hours, and other working conditions.’ Literally, almost any educational matter may relate to an employee’s ‘working conditions’ in the broadest sense of the term. . . . On the other hand, the General Assembly may have contemplated that a somewhat narrower scope be given to the concept of ‘matters’ relating ‘to salaries, wages, hours, and other working conditions,’ perhaps intending to draw a line between educational policy matters and wages, hours, salaries and other working conditions.” See *Montgomery County Education Assoc., Inc. v. Board of Education of Montgomery County*, 311 Md. 303, 310-311 (1987) (hereinafter “*Montgomery County*”) citing *Board of Education for Dorchester County v. Hubbard*, 305 Md. 774, 790-791 (1986).

In order to ascertain where that line should be drawn, this Board has adopted a balancing approach. It balances the direct fundamental interests of employees with the general interests of the school system as a whole. *Montgomery County*, 311 Md. at 316. If the interest of the employee in the matter outweighs those of the school community, the matter is negotiable and arbitrable. If the matter is one that effects the school community more generally, it is not negotiable or arbitrable. *Id.* at 317. As the Court of Special Appeals explained in *Livers v. Board of Education of Charles County*, 101 Md. App. 160, *cert. denied*, 336 Md. 594 (1994), it is up to the State Board to determine in which direction the scale should tip and where the line will be drawn. *Id.* at 166.

According to KCTA, the scale should tip in Ms. Garber’s favor because this matter is a salary issue alone. KCTA asserts that the Negotiated Agreement covers the general salary amounts, the salary lanes, and the titles of salary lines including “APC w/MA” and “APC w/MA + 30.” (Verified Answer at 1-2). It does not limit in any way the types of credits a teacher needs

to attain "plus 30" status. KCTA also notes that the Agreement states that "The total salary for each teacher will be based exclusively on the degree and certificate held, its appropriateness for the teaching assignment, total years of teaching experience and whether or not the teacher is eligible for a military service stipend." (*Id.* at 3, and Article XXIX, Section C.2 of Negotiated Agreement, KCTA, Ex. 7). Again, the point is that the Agreement does not address credit requirements. KCTA argues that because the Negotiated Agreement, in place since 1970, "does not contain any limitation on acceptance of the '+30' credits beyond a Master's degree, . . . [those] credits . . . may be [professional development] credits or graduate credits in any combination." (Verified Answer at 4).

In essence, KCTA's argument is that the 15 graduate credit requirement deprived Ms. Garber of a salary commensurate with the APC w/MA + 30 salary lane. Thus, because this case involves a "salary advancement," it is a salary matter alone. KCTA concludes, therefore, that the local board policy establishing the 15 graduate credit rule violates the terms of the Negotiated Agreement, is therefore void, and that this matter is arbitrable instead. (*Id.* at 8-9).

The local board views this case as one involving educational policy and administration. The board argues that establishing "requirements of a particular job classification that underpin[s] a salary scale or salary lane on the Pay Schedule serves an essential role in determining and implementing educational policy [because] it is the mechanism through which [the local board] determines continuing educational objectives that it desires teachers to pursue. By selecting those educational objectives that will be rewarded with additional pay, [the local board] provides an economic incentive for teachers to pursue such educational objectives, with the system objective of improving the quality of instruction provided to student." (Petition at 10).

The local board makes clear that, in its view, the prerogative to establish the specific credit requirements for the "plus 30" status rightly rests with them, not with an arbitrator because this is not solely an employee issue, it is a school system and student issue. Specifically, the local board asserts that "graduate level courses are understood to require a more demanding mastery of a particular area of knowledge" than professional development courses or undergraduate courses. (Reply at 7). The local board believes that the monetary incentive concomitant with the "plus 30" status will encourage teachers to take the "more rigorous . . . demanding . . . and . . . highly specialized graduate level courses." *Id.* at 15. Thus, "advancement to a higher pay scale, encourages a teacher to pursue the . . . educational undertakings deemed desirable to make such teacher better suited for educating the children attending the public school system." *Id.*

Moreover, the local board explains, teachers with an Advanced Professional Certificate must earn six (6) credits in appropriate areas of continuing education every five (5) years in order to maintain the APC. COMAR 13A.12.01.11B(1). Those credits can be professional development credits and undergraduate credits, but do not necessarily have to be graduate level

credits. COMAR 13A.12.01.05(C). Over time, therefore, the local board concludes, a “teacher with an APC and a Master’s degree would earn the additional 30 credits required to receive the bump up to the APC w/MA + 30 . . . merely by completing the [lower-level] course work [acceptable] to maintain the APC.” *Id.* at 7. The local board posits that, for the additional bump in salary, the school system and the students should benefit from the added skills of the more rigorously trained teacher. *Id.*

In weighing and balancing the factors involved here, it is our view that establishing the types of credits necessary to obtain a higher salary at the “plus 30” level is more a matter of educational policy, than a matter solely of salary/wages. It is a policy matter that effects, not only individual teachers (their educational choices and their take-home-pay), but also the educational climate of the school system and the educational experience offered to its students.

We agree with the conventional wisdom espoused by the local board that graduate courses are generally more rigorous than undergraduate courses or professional development courses, that such rigor improves a teacher’s content knowledge, thereby enriching the classroom. We recognize that that may not be the case on an individual course/individual teacher basis, but generally the conventional wisdom is based on accepted educational principles that increased rigor improves content knowledge and teachers with strong content knowledge enrich instruction in a classroom. It is those principles that support the requirement for “highly qualified teachers” in every classroom.

It is our view that the 15 graduate credit requirement is part of the local board’s goal to have the highest qualified teachers in the classroom. That is an educational policy matter, more than a teacher salary matter.

KCTA argued that the “plus 30” status involves a salary increase, which of course it does, and therefore, this must be designated as a salary matter. We know, however, that courts have recognized that just because an action of the local board increases or decreases salary that does not lead *automatically* to the legal conclusion that the matter is a salary matter and, therefore, a mandatory topic for negotiation and arbitration.

For example, in *Montgomery County Education Association v. Board of Education of Montgomery County*, 311 Md. 303 (1987), the local board reclassified jobs and significantly affected salary, yet the Court of Appeals affirmed the State Board’s decision that the local board’s action was not a “salary” matter, but rather an educational policy matter. *Id.* at 322-323. Likewise, even though the reclassification plan in Washington County Public School System placed teachers in new pay grades and steps (higher, but not as high as the teachers union argued for), the Court again agreed that the matter was not about salary, it was about educational policy. *Washington County Educational Classified Employees Assoc. v. Board of Education of Washington County*, 97 Md. App. 397, 403-404, *cert. denied*, 333 Md. 201 (1993). *See also, New Board of School Commissioners of Baltimore City v. Public School Administrators and Supervisors*, 142 Md. App. 61, 78 (2002) (demotions to assistant principal reduced salaries, but

not an arbitrable matter).

KCTA also argued that because the Negotiated Agreement is silent on the matter of the types of credits necessary to achieve "plus 30" status, its silence places this matter on the salary side of the line, subject to negotiation and arbitration. The local board responds to this argument with long history about the negotiations that have occurred over many years (none addressing the credit requirement issue). *See* Affidavits of Miller and Grafton, Local Board, Ex. 16. The local board also explains that there has been a long standing policy in effect in Kent County Public Schools addressing similar credit requirements. That policy, along with all other board policies, was organized into a Personnel Manual in 1999 and republished as Regulation 100-3 in 2000. (Grafton Affidavit ¶ 14, Local Board, Ex. 16).

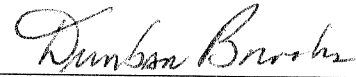
Although that history is not dispositive of the legal issue - - whether the 15 credit requirement is a salary or an educational policy matter - - it does undercut the argument that silence in the Negotiated Agreement must be accepted to mean that the intent of the Agreement was that any 30 credits earned would lead to a salary increase, and, therefore, this is just a salary issue.

It is our view that the local board's arguments reflect a strong educational policy reason for the credit requirement and rest on cases that recognize that, although a local board's action affects salary, that action is not necessarily a "salary matter" for negotiation/arbitration purposes.

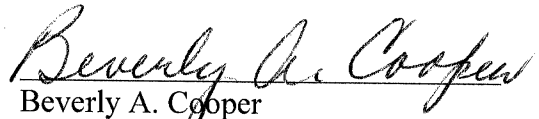
Therefore, we issue the following declaratory ruling:

- (1) The local board rule(s) establishing the type of credits necessary to obtain classification as Master's Degree plus 30 credits on the salary scale are a matter of educational policy, not a salary matter.
- (2) Those local board rule(s) are not subject to collective bargaining or arbitration.
- (3) Ms. Garber's dispute concerning this matter is subject to the jurisdiction of the local board and the State Board of Education pursuant to the administrative review process established in Section 4-205 of Education Article.

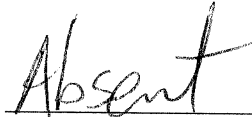
- (4) The American Arbitration Association does not have jurisdiction over the dispute herein.



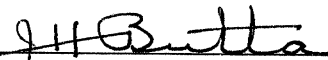
Dunbar Brooks
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Beverly A. Cooper
Vice President



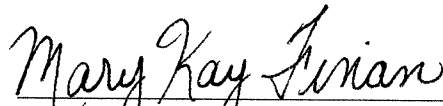
Lelia T. Allen



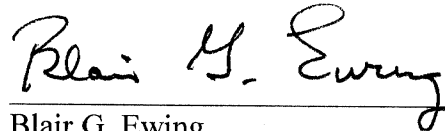
J. Henry Butta



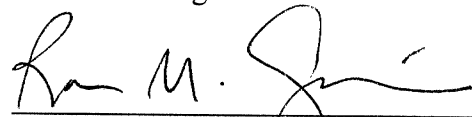
Charlene M. Dukes



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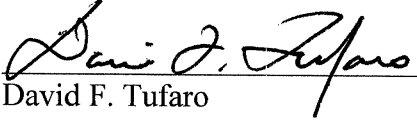


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May 28, 2008


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