

MARIE LOWE-YATES,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-21

OPINION

In this appeal, Appellant contests the decision of the local board to terminate her for insubordination, violation of rules, unauthorized absences, and conduct which reflected unfavorably on the school system. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted a reply opposing the local board's Motion.

FACTUAL BACKGROUND

Chronology of Events

Appellant was employed for approximately six years as a secretary with Prince George's County Public Schools ("PGCPS"). Appellant began her employment with PGCPS in 1994 at Oxon Hill High School and was eventually terminated in February 2001. Throughout her employment with PGCPS, Appellant was reassigned to numerous schools.

In 1995, Appellant was assigned to Crossland High School. On May 3, 1995, Appellant was involved in a verbal altercation with another secretary about whose responsibility it was to file certain letters. During the altercation, Appellant used inappropriate language in the presence of students which the principal, Ms. Chisholm, found to be disruptive to the educational setting. Appellant's language included statements such as, "I don't have to take this shit", "I'm tired of students and adults disrespecting me", and "f - - k this job". Tr. 17-28.¹ This incident led Ms. Chisholm to request the Director of Personnel, Thomas D. Kirby, to extend Appellant's probationary period based on Appellant's inability to relate appropriately with people. *See* 5/15/95 memorandum from Chisholm to Kirby. Appellant's probationary period was extended. In addition, by letter of May 26, 1995, Mr. Kirby advised Appellant that her performance was unsatisfactory due to conduct which reflected unfavorably on the school system, and that any further unsatisfactory performance would result in disciplinary action, including termination of employment. *See* 5/26/95 letter from Kirby to Appellant.

¹All transcript references are citations to the transcript of the hearing before Hearing Officer Dorothy Stubbs on December 4, 2001.

Beginning in September 1995, a series of reassignments of Appellant to different schools occurred. During the 1996-97 school year, Appellant was assigned to Parkdale High School under the supervision of Principal William LeFevre. Dr. LeFevre testified that while at Parkdale, Appellant was involved in several altercations with staff members, including an incident in which Appellant threatened to strike another secretary. Appellant also had conflicts with students and failed to report to work on several occasions. Tr. 76-77. Dr. LeFevre gave Appellant an unsatisfactory rating on her April 8, 1997 interim evaluation, indicating that her job performance was unsatisfactory in the area of cooperation and working with others. He ultimately recommended that Appellant be terminated.

Rather than termination, Appellant was reassigned to Bowie High School and eventually back to Crossland. Appellant received a satisfactory performance rating in her January 20, 1998 evaluation from Principal Chisholm. However, on May 27, 1999, Ms. Chisholm wrote to Robert Gaskins, Acting Director of Human Resources, documenting concerns regarding Appellant's inappropriate interaction with staff and her job performance during the 1998-99 school year at Crossland. Ms. Chisholm identified conflicts Appellant was having with secretaries in the front office and Appellant's refusal to accept assignments for coordinating early departures of students and dealing with minor health concerns in the absence of the school nurse. Appellant also exhibited inappropriate, disrespectful, and confrontational behavior when students, the Dean, and Ms. Chisholm failed to buy Appellant a birthday gift. Additionally, Appellant was suspected of deleting data from the school's computer system after being asked to report to the Personnel Office. *See 5/27/99 memorandum from Chisholm to Gaskins.*

By letter of May 27, 1999, Mr. Gaskins advised Appellant that she was being terminated from employment with the school system based on insubordination and unprofessional conduct in office. Appellant was reinstated to her position, however, and transferred to Surrattsville High School.

Mr. Barnes, the principal of Surrattsville, testified that he had problems with Appellant's behavior and conduct at work. Tr. 97-99. For example, Mr. Barnes testified that Appellant would consistently refuse to accept assignments given to her by other administrators. He also indicated that when Appellant would become temperamental or had outbursts and leave her duty post, he would have to locate her to calm her down. It was his opinion that her temperament kept her from getting things accomplished and prevented other staff from doing their work. In addition, Appellant would frequently submit a request for immediate leave in the administrator's box and exit the building without getting prior approval. Tr. 97-99.

Despite these concerns, Barnes gave Appellant satisfactory performance ratings on her December 7, 1999 and December 15, 2000 annual evaluations. On December 19, 2000, Mr. Barnes wrote to Appellant documenting his concerns over Appellant's disputes with secretaries and administrators. Tr. 94-95. Mr. Barnes warned her that lack of cooperation with staff created an environment that was not conducive to daily school operations or staff productivity. He also warned her about improper use of leave and immediate departures that disrupted coverage in the

office. In addition, Mr. Barnes advised Appellant that future adverse conduct would result in transfer or termination. *See* 12/19/00 letter from Barnes to Appellant.

On January 30, 2001, Mr. Barnes met with Appellant and her union representative to discuss Appellant's failure to be present at her assigned duty post when she was scheduled to operate the switchboard on January 29.² A month earlier in December, 2000, all secretaries had been advised that they would take on the responsibility of switchboard coverage for 30 minutes beyond the school day on a rotating schedule. Adjustments were made to the employee's schedule for duty days so that the employee's work day was not in excess of the required 7.5 hours. Appellant testified that the change in schedule for operating the switchboard was problematic given her child care constraints, and that she had advised Mr. Barnes of this fact. Tr. 240-241. Mr. Barnes testified that he was aware of one occasion on which Appellant indicated she had a scheduling conflict for a particular day because she had to pick up her daughter from school. Tr. 122-123.

In any event, at the January 30 meeting, Appellant voiced her refusal to follow the schedule for office coverage. When the meeting concluded, Appellant completed a leave form, placed it in the mailbox of the administrator whose responsibilities included authorization of leave requests, and left the school building without getting the appropriate approval.³ That same day, Mr. Barnes requested Appellant's immediate termination. In a memorandum to Ben Benitez, Director of Human Resources, Mr. Barnes stated the following:

Mrs. Yates continuously refuses to follow various work-related requests made by the principal. In the past, we made concessions to accommodate Mrs. Yates regarding work and childcare provisions. Her continuous refusal to cooperate with her co-workers has created an atmosphere which is not conducive for daily operations. She has numerous outbursts in the main office and in the hallways and constantly shares negative comments with parents concerning the school and the administration. On occasions, she has contacted the police to file charges against Mrs.

²Mr. John Robinson, Team Leader for Labor Relations, was also present at that meeting.

³Appellant left the school to go to the Sasscer Administration Building in Upper Marlboro to meet with Mr. Benitez to discuss the meeting she had just attended. While waiting for Mr. Benitez, Mr. Robinson, Appellant's union representative, returned to the building and was in the hallway advising someone of the outcome of the earlier meeting. Appellant burst through the door of the office where she had been waiting and became hysterical. Mr. Robinson testified that Appellant was screaming about the unfairness of the system and described her demeanor as combative and hostile. Tr. 146-147. Appellant maintains that she overheard Mr. Robinson's comments and was reacting to the unprofessional manner in which Mr. Robinson was describing Appellant and her situation. Tr. 248-252.

Wanda Davis, Vice-Principal and Mrs. Phyllis Williams, my administrative secretary.

See 1/30/01 memorandum from Barnes to Benitez.

On February 1, 2002, there was a meeting in which Principal Barnes' request for Appellant's termination and the basis for that request were discussed. Appellant was present at that meeting with her union representative. The outcome of the meeting was a recommendation for Appellant's termination. Tr. 154. By letter dated February 12, 2001, Mr. Benitez advised Appellant that her employment with Prince George's County Public Schools was terminated for insubordination, violation of rules, unauthorized absences, and conduct which reflected unfavorably on the school system and that the termination was effective immediately. See letter of 2/12/01 from Benitez to Appellant.

Administrative Process

Appellant appealed the termination on February 14, 2001. The matter was referred for review to Hearing Officer Dorothy Stubbs. A hearing was conducted on December 4, 2001, at which Appellant was represented by counsel and was provided the opportunity to present evidence, cross-examine witnesses, and present argument.⁴ In recommending that Appellant's termination be upheld, Hearing Officer Stubbs stated the following:

In light of the aforementioned testimony and findings, the history of progressive discipline and protracted adverse conduct and behavior on Appellant's part, this Hearing Officer is persuaded that Mr. Benitez acted appropriately in terminating Appellant's employment with the school system. During her tenure of employment with the school system, Appellant was given every opportunity to improve her behavior and conduct upon reassignment to many different schools in the school system. However, it is clear that Appellant's failure to get along with staff, failure to accept job assignments, and failure to follow proper procedure for requests of leave continued at each of the schools to which she was assigned and, ultimately, culminated in Mr. Barnes requesting her termination from her final assignment at Surrattsville High School.

Hearing Officer Report at 23.

⁴Ms. Lowe-Yates is representing herself on appeal to the State Board.

The superintendent concurred with the hearing officer and recommended that Appellant's termination be upheld. On further appeal, by unanimous decision, the local board upheld the termination.

ANALYSIS

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.⁵ 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 the local board's decision is arbitrary, unreasonable, or illegal. See COMAR 13A.01.01.03E(1).

Consideration of Expunged Records

As a preliminary matter, Appellant maintains that the hearing officer improperly admitted and considered documentation and testimony concerning various events that occurred during Appellant's employment because certain records were to have been expunged from her personnel file. Despite this claim, Appellant has failed to present any evidence that items submitted into evidence were actually items that should have been expunged. To the contrary, Ms. Rita Doster, Human Resources Specialist I, testified at the hearing that there was an agreement to expunge certain records from Appellant's personnel file and that she was personally involved in the expungement process. Tr. 202-204. Prior to the hearing Ms. Doster assisted with preparing Appellant's personnel file and did not see any of the records in the file that were part of those records which were to be expunged. Tr. 205-206. All documents submitted during the hearing were taken from that personnel file. With regard to testimony during the hearing, Appellant has not indicated with any specificity what matters she believed related to the expunged records. Thus, we do not find Appellant has demonstrated that the hearing officer considered any evidence in the form of expunged records or testimony concerning matters from expunged records.

Due Process

Appellant also maintains that her due process rights were violated because the appeal hearing was not scheduled until December 4, 2001, approximately nine months from the date she appealed the termination decision. Additionally Appellant maintains that her due process rights were violated because oral argument before the local board did not occur until December 12, 2002.

⁵In its 2002 session, the Maryland General Assembly amended § 6-510 of the Education Article by providing that due process for discipline and discharge of noncertificated employees is a permissive subject of bargaining. Because Ms. Lowe-Yates' termination preceded the statutory change, the *Livers*' decision is controlling on her due process rights.

The local board regulations for supporting personnel provide that in the event of an appeal of disciplinary action, “the Superintendent of Schools shall arrange for a hearing to be held not less than five (5) or more than thirty (30) working days after the receipt of the request.” Regulations for Supporting Personnel at 10. There is no time limit set forth for oral argument before the local board.

As to the timing of oral argument, the board has explained in its motion that the delay in scheduling was due in part to the fact that the newly constituted local board assumed governance of the school system in July, 2002. Once a date for oral argument was established in this case, Appellant’s counsel requested a postponement due to scheduling conflicts. *See* 10/21/02 letter from Thomas to McCotter.

There is no dispute that the matter was not considered by the superintendent or the superintendent’s designee within the 30 day time frame. There is also no explanation in the appeal materials regarding the reason for such delay. While it would have been better for this matter to have been heard by the superintendent or the superintendent’s designee within the 30 day time frame set forth in the local board regulations, we concur with the local hearing officer’s analysis that any procedural error that occurred amounted to harmless error. As the hearing officer noted:

The Hearing Officer acknowledges that the school system was unable to schedule the hearing before this Hearing Officer within the thirty day time frame stated under the Regulations for Supporting Personnel. However, the County Board’s regulations do not provide any penalty and make no provisions in the event that there is a violation of this imposed time limitation. Furthermore, this Hearing Examiner’s decision would have still been the same, even if the hearing had been scheduled within the thirty day time frame. As such, the Appellant, in effect, has suffered no prejudice as a result of failure to schedule the hearing within the thirty day time frame.

Hearing Officer Report, p. 20. *Accord, Pollock v. Patuxent Inst. Bd. of Review*, ___ Md. ___, 2003 WL 21026745 (2003) (When *Accardi* doctrine applies, complainant must show that prejudice to him or her resulted from agency violation in order for agency decision to be reversed.) *See Cory Williamson v. Board of Education of Anne Arundel County*, 7 Op. MSBE 649 (1997) (failure to give prompt notice would be cured by local board’s full evidentiary hearing on appeal); *West & Bethel v. Board of Commissioners of Baltimore City*, 7 Op. MSBE 500 (1996) (failure to hold conference within ten days was cured by the de novo administrative hearing on merits before the local board); *Harrison v. Somerset County Board of Education*, 7 Op. MSBE 391 (1996) (failure to grant conference with superintendent or his representative in timely fashion was cured by local board’s full evidentiary hearing on appeal).

Furthermore, in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), the Supreme Court recognized that the core requirement of due process is that an individual be given notice of the intended action and an opportunity to present the individual's response before being deprived of any significant property interest. As to post termination delays, the Court in *Loudermill* recognized that a nine month adjudication was not unconstitutionally lengthy per se, and that such a delay would not necessarily create a constitutional claim. 470 U.S. at 547.

Here, in a pre-termination conference on February 1, 2001, Appellant was advised of the reasons for Mr. Barnes' request for her termination and given the opportunity to respond to those reasons prior to the termination itself. Tr. 154-155. Additionally, Appellant was afforded a full evidentiary hearing where she was represented by counsel and had the opportunity to present evidence, testimony, and argument. The hearing officer made a recommendation and the matter was subsequently reviewed by the superintendent. Thereafter, the local board heard oral argument and reviewed the matter before rendering its decision. At each level, the termination was upheld. Now the case is again being reviewed, this time by the State Board. In accordance with the principles articulated in *Loudermill*, we do not believe that Appellant has established any due process violations.

Merits of Termination Decision

Appellant maintains that her termination was not supported by sufficient evidence and that progressive discipline was not instituted in this case, denying her the opportunity to improve her performance.

A review of the record in this case, however, discloses an employment history with the school system consisting of constant reassignments to different schools over a period of approximately 6 years. Whether the reassignments were requested by Appellant or by school administrators,⁶ they were primarily a result of performance related problems that Appellant was having at her assigned school, with the reassignment affording her an opportunity to improve her behavior as it related to the performance of her job duties. Included in Appellant's employment history are requests for terminations on at least two other occasions, although those other terminations never came to fruition.

Appellant's employment history also includes evidence of a request by the principal for an extension of Appellant's probationary period at Crossland High School due to her inability to relate appropriately with people, specifically staff, administrators, and students. Appellant was warned at that time that further unsatisfactory performance could result in disciplinary action, including termination. See 5/26/95 letter from Kirby to Appellant. There is also an unsatisfactory interim evaluation in the area of cooperating and working with others while Appellant was assigned to Parkdale High School and ultimately a request for termination from Parkville's principal, Dr. LeFevre. See interim evaluation (4/8/97). Upon return to Crossland

⁶Appellant testified that one of the reassignments was for promotional purposes.

High School, Appellant continued to have problems interacting with staff and students, as well as other performance problems which ultimately resulted in a request for her termination. *See* 5/27/99 memorandum from Chisholm to Gaskin.

When Appellant was finally assigned to Surrattsville High School, she exhibited the same types of behavior and attitude that resulted in problems at the other schools. As stated by Hearing Officer Stubbs:

Mr. William Barnes, Principal of Surrattsville High School, testified regarding Appellant's refusal to accept work assignments and failure to follow proper procedure for taking leave. Also, Appellant had conflicts with staff and administrators at Surrattsville High School. According to Mr. Barnes, Appellant's attitude and lack of appropriate work ethic created a hostile environment at the school and placed an additional burden on other employees who had to assume Appellant's job responsibilities. Surprisingly, Mr. Barnes also gave Appellant satisfactory ratings on all categories on her annual evaluation. However, Mr. Barnes indicated that he wanted to give Appellant the benefit of the doubt and wanted her to have a fresh start at Surrattsville High School. Nonetheless, it is clear that Mr. Barnes appropriately documented his concerns regarding Appellant's attitude and lack of cooperation in his December 19, 2000, letter to Appellant, all of which culminated in his January 30, 2001, request to Mr. Ben Benitez, Director of Human Resources, that Appellant's employment at Surrattsville High School be terminated.

Hearing Officer Report at 22.

We believe that the record in this case contains more than sufficient evidence to support Appellant's termination. During her employment with the school system, Appellant was put on notice of her work related problems and was given numerous opportunities to improve her behavior and conduct upon reassignment to different schools within the school system. As stated by Hearing Officer Stubbs, "It is clear that Appellant's failure to get along with staff, failure to accept job assignments, and failure to follow proper procedure for requests of leave continued at each of the schools to which she was assigned and, ultimately, culminated in Mr. Barnes' requesting her termination from her final assignment at Surrattsville High School."

CONCLUSION

For all these reasons, we affirm the decision of the Prince George's County Board of Education terminating Appellant from her employment with the school system based on

insubordination, violation of rules, unauthorized absences, and conduct which reflected unfavorably on the school system.

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June 25, 2003