

BALTIMORE TEACHERS UNION,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-34

OPINION

In this appeal, the Baltimore Teachers' Union ("BTU") requests that the State Board require the City Board to bargain concerning the reclassification of the academic coach position from an 11-month to a 10-month position and/or require that the dispute be submitted to arbitration. The City Board has submitted a Motion for Summary Affirmance maintaining that the dispute involves the reclassification of a position which is not a subject of collective bargaining or arbitration. BTU has filed a Memorandum in Opposition and a Cross Motion for Summary Affirmance reiterating its contention that the academic coach position was not "reclassified," but merely "reduced" from an 11-month to a 10-month position.

FACTUAL BACKGROUND

On or about June 21, 2002, the BTU and the City Board apparently attempted to negotiate a Memorandum of Understanding ("MOU") for the new position of academic coach.¹ The MOU indicated, among other things, that academic coaches would be included in the bargaining unit described in Article 1.2 of the Negotiated Agreement between BTU and the City Board; academic coaches would be 11-month employees beginning with the 2002-2003 school year; appointments to the position of academic coach would end on July 31, 2003; employees who accepted the academic coach position may not work in BCPSS summer school positions during June and July 2003. The MOU also set out a salary schedule for academic coaches and stated that all other provisions of the Negotiated Agreement remain in full force and effect and are not modified or changed by the MOU.

Thereafter, due to budget constraints, the City Board reclassified the academic coach position from an 11-month to a 10-month position. In May 2003, employees holding the position of academic coach were notified in writing that their positions as academic coaches would end at the end of the school year on June 30, 2003, one month prior to the date they were to expire under the unexecuted MOU, thereby resulting in a reduction of salary. The notice also offered the academic coaches the opportunity to work in summer school during July, 2003.

¹Although the MOU was signed by the BTU President, it was not executed by any BCPSS official.

On May 6, 2003, BTU filed a grievance accusing the City Board of violating §16.5 of the Negotiated Agreement by failing to bargain with BTU prior to making the change concerning the academic coach position.² BTU also alleged that the actions of the City Board violated various sections of the academic coach MOU.

BTU initiated proceedings before the Federal Mediation Conciliation Service to move the grievance to final and binding arbitration under Article 4, §4.3 of the Negotiated Agreement and sought to compel the City Board to submit to arbitration by filing an action in the Circuit Court for Baltimore City. The City Board maintained before the court that the reclassification decision was an illegal subject of collective bargaining and that the State Board of Education had primary jurisdiction to hear the dispute. BTU subsequently dismissed the case in circuit court in order to present this controversy to the State Board.

ANALYSIS

BTU argues that the breach of the Negotiated Agreement and the MOU does not concern a reclassification, but concerns the failure to pay negotiated wages for a certain period of time, which is a negotiable subject of bargaining. On the other hand, the City Board maintains that the issue in this case concerns a reclassification of the academic coach position which is an illegal subject of collective bargaining and therefore not subject to arbitration.

The State Board first considered the precise issue raised by BTU with respect to the reclassification of a position in 1970, in *Montgomery County Education Association, Inc. v. Board of Education of Montgomery County*, 1 Op. MSBE 35. There, the State Board was asked to determine whether the local board violated its labor agreement with its teachers by unilaterally adopting a calendar for duty days, professional days, holidays, and student session days; and unilaterally reclassifying certain staff positions without prior negotiations with the teachers' association. The State Board held that both topics were non-negotiable. With respect to the reclassification issue, the State Board concluded that the "the right of appointment,³ which must necessarily include the right of classifying all jobs in its domain, rests in the complete control of the county board of education" and that the reclassification of positions does not fall under the "salary, wages, hours and other working conditions" clause of the collective bargaining statute.. *Id.*

²Section 16.5 of the Negotiated Agreement provides, in part, that "[n]o teacher shall be disciplined, reduced in rank or compensation, suspended, or discharged without just cause." In *Einem v. Howard County Board of Education*, 5 Op. MSBE 327 (1989), the State Board held that this provision is an illegal topic of bargaining and is therefore unenforceable.

³Section 6-201 of the Education Article, Annotated Code of Maryland, vests solely in the local boards of education the authority to appoint certificated employees.

The Maryland Court of Appeals first addressed the issue of job reclassification in *Montgomery County Education Association, Inc. v. Board of Education of Montgomery County*, 311 Md. 303 (1987).⁴ In that case, the State Board had determined that job reclassification decisions are not subject to mandatory collective bargaining, even though reclassification decisions may affect an individual teacher's wages or salary. In affirming the State Board, the Court approved the two pronged test employed by the State Board to determine whether a subject is negotiable. That two pronged test is:

- (1) Whether there is a statute that precludes negotiation on a topic by delegating that authority to the local board or its agents. If there is such a statute, the issue is an illegal topic of bargaining.
- (2) If there is no statute on the topic, then it is necessary to balance the interests of the employee in the matter against the interests of the school system as a whole. If the employee's interests outweigh the interests of the school community, the matter is a mandatory subject of bargaining. If the school system's interests predominate, the issue is a non-negotiable matter of educational policy within the control of the local board.

Applying the two pronged test, the Court considered the fact that reclassification decisions may significantly impact individual employees and result in a reduction in salary. Nonetheless the Court agreed with the State Board that job reclassification decisions are not subject to negotiation given the serious adverse impact submitting such decisions to the collective bargaining process would have on the local board's ability to operate its school system. 311 Md. at 322-323.⁵

⁴The Court defined reclassification as follows:

Reclassification occurs when, as a result of reassessment of an employee's duties and responsibilities, a supervisor decides to assign the employee a new 'classification' or status. This reclassification may result in an increase or a reduction of the employee's salary.

311 Md. at 305, n.1.

⁵Effective October 1, 2002, § 6-408(b) of the Education Article, the statute on collective bargaining was amended to provide:

- (b) (1) On request a public school employer or at least two of its designated representatives shall meet and negotiate with at

The issue of job reclassification was again reviewed by the State Board in *New Board of School Commissioners of Baltimore City v. Baltimore Teachers' Union*, MSBE Opinion No. 99-53 (1999). In that case, the BTU demanded to negotiate the reclassification of the position of ARD Managers from a twelve month to a ten month position. The City Board refused to negotiate and the BTU filed for arbitration. The City Board refused to submit to arbitration on the grounds that the change from a twelve-month to a ten-month position constituted a job reclassification which was not subject to collective bargaining. Relying on the *Montgomery County Education Association* case, the State Board found that the job reclassification was an illegal subject of bargaining and further found that the City Board did not act in bad faith in making decisions about the job reclassifications unilaterally. The Court of Special Appeals affirmed that determination in *New Board of School Commissioners v. BTU*, No. 938, Sept. Term 2000 (October 1, 2001).

least two representatives of the employee organization that is designated as the exclusive negotiating agent for the public school employees in a unit of the county on all matters that relate to salaries, wages, hours, and other working conditions.

(2) Except as provided in paragraph (3) of this subsection, a public school employer or at least two of its designated representatives may negotiate with at least two representatives of the employee organization that is designated as the exclusive negotiating agent for the public school employees in a unit of the county on other matters that are mutually agreed to by the employer and the employee organization.

(3) A public school employer may not negotiate the school calendar, the maximum number of students assigned to a class, or any matter that is precluded by applicable statutory law.

(4) A matter that is not subject to negotiation under paragraph (2) of this subsection because it has not been mutually agreed to by the employer and the employee organization may not be raised in any action taken to resolve an impasse under subsection (d) of this section.

(5) In Montgomery County, the exclusive negotiating agent for the public school employees in a unit and the public school employer shall meet and negotiate under this section the salaries, wages, hours, and other working conditions of all persons actually employed as substitute teachers or home and hospital teachers.

Because this appeal addresses a matter that arose prior to October 1, 2002, the principles set forth by the Court in *Montgomery County Educators' Association* are controlling. However, even under the revisions to § 6-408(b) of the Education Article, reclassifications are not subject to negotiation because the matter is within the appointment authority vested in the local boards under § 6-201, and therefore precluded by statute.

CONCLUSION

From our review of the documents filed in this matter and the legal principles noted above, we find that *Montgomery County Educators' Association* and the *New Board of School Commissioners* cited above is controlling here. Accordingly, we hold that the Baltimore City Board's decision to change the status of the academic coach position from an eleven-month to a ten-month position is a job reclassification which is an illegal subject of collective bargaining and therefore not subject to arbitration under the Negotiated Agreement.

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