NANCY R. MALONE,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS,	OF EDUCATION
Appellee	Opinion No. 04-21

OPINION

This is an appeal of the local board's denial of a grievance concerning Appellant's pay rate for a summer school program during the summer of 2002. The local board filed a response to the appeal maintaining that its denial is not arbitrary, unreasonable, or illegal. Appellant has filed a reply in opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant is a special education teacher assigned to the Claremont School, a special education school, where she has been teaching for the past 15 years. Approximately ten years ago, Appellant applied for a federal grant to establish and fund the "S.S. Starz Work Study Academy" ("the program"). The program is a summer work study program for special needs students designed to teach the students preemployment skills. In recent years, the program has been funded annually by the Baltimore City Public School system ("BCPSS").

Funding for summer school programs must be requested annually. At the end of the program in 2001, Appellant was informed that future funding for the program was in doubt and that 2001 might be the program's last year. Nonetheless, Appellant submitted a technical proposal for the program to Claremont's principal, Dr. John Butt. This proposal included a staffing model, a schedule of activities and a proposed budget. The staffing model proposed five employees; two teachers, two paraprofessionals and a "managing/project director". Appellant proposed herself as the managing/project director, with a pay rate of $41.00 per hour.[1] The teachers were to be paid $36.00 per hour.

Dr. Butt approved the proposal on March 15, 2002 and forwarded it to the BCPSS Area Office for approval. By June 2002, funding had not yet been approved for the program. On June 17, 2002, Dr. Butt signed a BCPSS Budget Approval Form. The form approved only two staff members, a teacher and an assistant. Appellant, Dr. Butt, and parents of students in the program lobbied the local board for funding and additional positions at the local board's meetings on June 25 and July 2, 2002. As a result, the local board approved an amended budget that included 4.5

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[1]Appellant refers to the position as a "lead" teacher. She served in that capacity in the program for the years 1999-2001 at the pay rate of $41.00 per hour.

staff persons. However, there was no "managing/project director" or "lead" teacher approved at the rate of $41.00 per hour. The approved positions were one teacher, two part-time teachers, and one paraprofessional. At that time, Appellant knew that no "lead" teacher position had been approved. The start date of the program was delayed until July 1, 2002 due to late funding of the program.

Appellant worked in the program for its entire session. On September 6, 2002, Appellant filed a grievance with the BCPSS claiming that she should have been paid as a "lead teacher" for the summer school and alleging that being paid a lower rate was a violation of Summer School Policy and Article 16, Section 16.5 of her union contract providing "no teacher shall be disciplined, reduced in rank or compensation, suspended or discharged without just cause". Because she had been paid as a "lead" teacher during the summer of 2001, she alleged that her lower pay rate for the same duties in 2002 was a demotion without just cause.

BCPSS conducted a Level III grievance hearing on March 28, 2003. The hearing officer found that no facts were submitted to establish a violation of either the contract or the summer school policy because "[n]o lead teacher position was ever identified or funded". (Letter of April 14, 2003). The grievance was denied on April 14, 2003.

Appellant next appealed to Level IV. A full evidentiary hearing was held before Hearing Officer Elise Jude Mason on July 10, 2003. For the same reasons articulated in the Level III decision, the Hearing Officer recommended to the local board that the grievance be denied. At its September 10, 2003 meeting, after considering exceptions filed on behalf of Appellant, the local board voted to accept the Hearing Officer's recommendation and denied the grievance. This appeal followed.

ANALYSIS

The standard of review that the State Board applies in reviewing the decision of a local board concerning a local policy or the administration of the school system is that the local board decision shall be considered *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable, or illegal. *See, e.g., Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997). Appellant does not allege that the local board's decision was illegal. Thus, the local board's decision may only be overturned if it were arbitrary or unreasonable. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the conclusion the county board reached. COMAR 13A.01.01.03E(1)(b). Appellant does not allege that the decision is contrary to sound educational policy. Accordingly, the only question remaining is whether a reasoning mind could have reasonably come to the same conclusion as the local board did.

The local board adopted the recommendation of Hearing Officer Mason. After hearing testimony from both the Appellant and Dr. Butt and receiving documentary evidence, Hearing Officer Mason concluded that there was no evidence presented to support Appellant's claim. She

found that "[T]here was no guarantee that the program would be funded, nor was there a guarantee as to whether the funding proposal would be approved in its entirety." Further, she found that "[W]ith the approval of the final budget, it became clear to Grievant that her rate of pay for summer 2002 would be $36.00 per hour, and not $41.00 per hour, as was contained in the proposal she originally submitted." The hearing officer stated:

> Furthermore, record evidence affirms that BCPSS staff had knowledge that the position of "lead" teacher would no longer be funded after the summer of 2001.
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> Thus, while Grievant disagreed with the staffing model and rate of pay for her position, finally approved by the Board, she accepted those terms and conditions when she undertook the job duties of the position, subject to the Board's approved terms and conditions. There is simply no evidence in the record that the Board or BCPSS agreed to be bound to any other pay rate for Grievant for the 2002 summer program, except that which was ultimately approved. There is also no evidence that any other BCPSS employees were paid as "lead" teachers. Furthermore, BTU never introduced a policy document into evidence which BCPSS or the Board purportedly violated.

The hearing officer ultimately concluded:

> After carefully considering the testimony and documentary evidence, I conclude that there is no evidence in the record that either Article 16.5 of the Agreement was violated or that a Board policy was violated.

(Level IV Grievance Recommendation, pp. 7-8).

CONCLUSION

Based upon our review of the record in this matter and finding no evidence whatsoever to support Appellant's claim, we believe that Appellant has not met her burden of proving that the local board decision was arbitrary, unreasonable, or illegal. Accordingly, we affirm the decision of the Baltimore City Board of School Commissioners.

Edward L. Root
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April 21, 2004

John L. Wisthoff