

JAMES D. HEISTER
CHRISTINA L. MARVEL,

Appellants

v.

TALBOT COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-30

OPINION

This is an appeal filed on behalf of James D. Heister and Christina L. Marvel, teachers for whom certain paychecks were withheld by the superintendent for Talbot County Public Schools (“TCPS”), based upon the failure of the teachers to give timely notice of their resignations.¹ The Regular Contract for Maryland public school teachers is set forth in COMAR 13A.07.02.01B and requires that teachers and school systems mutually advise one another in writing by certain specified dates if they wish to terminate or, for probationary teachers, renew the teaching contract. If a teacher resigns in violation of his or her contract, the regulation specifies that the State Board may suspend the teacher’s certificate for one year and “salary already accrued will be forfeited, in the discretion of the Local Board of Education.” *See* COMAR 13A.07.02.01.

Appellants maintain that the forfeiture provision in the contract permitting the withholding of wages is an unenforceable penalty clause and not a valid liquidated damages clause. The local board has submitted a motion for summary affirmance maintaining that the local board’s decision upholding the superintendent’s determination to withhold accrued salary from the Appellants is not arbitrary, unreasonable, or illegal. The board argues that the contractual provision at issue is mandated by valid State Board regulation and serves a valid public policy. Appellants have submitted an opposition to the local board’s motion.

FACTUAL BACKGROUND

James D. Heister

At the time of his resignation, Mr. Heister was a second year teacher with TCPS assigned to Easton High School to teach math. Mr. Heister was employed under a Provisional Contract as required by State Board regulation. The Provisional Contract contains the same forfeiture clause as the Regular Contract. *See* COMAR 13A.07.02.01C.

¹Appellants have consolidated their cases on appeal to the State Board. The facts of each case are similar and Appellants have set forth the same legal argument.

By letter of February 12, 2003, the Assistant Superintendent, John Masone, advised Mr. Heister that he would receive written notification from TCPS no later than May 1, 2003, if the local board were to decide not to renew his teaching contract. The letter also advised Mr. Heister of his obligation to provide timely written notice if he intended to resign from his position.² The letter states, in part:

The Maryland employment contract also **requires you to notify us**, in writing, not later than May 1, 2003, if you wish to resign and thereby terminate your contract at the end of this school year. Resignations received after this date are considered to be in violation of the contract and may result in the suspension of your certification and/or forfeiture of salary. Please contact me immediately if you have any questions concerning the contractual rights and obligations described above.

By letter dated April 22, 2003, then Superintendent, J. Sam Meek, notified Mr. Heister that he was granted tenure.

On July 16, 2003, Mr. Heister met with Mr. Masone and turned in his resignation. The resignation letter states:

Due to a "Once in a life time" business opportunity I am turning in my resignation as a Mathematics Teacher at Easton High School. I do apologize for the late notice but the financing for the business has just been granted in the last two days. I have had a great experience with you and the rest of the Talbot County Public Schools employees. I thank you for this experience and for the understanding that my resignation was not planned to be at such a late date.

When Mr. Masone reminded Mr. Heister of his contractual obligation and the penalties associated with an untimely resignation, Mr. Heister stated "I'll take my chances." *See* letter from Salmon to Cottington. The superintendent withheld the remaining payments of Mr. Heister's 12-month salary.³

²An identical letter was sent to Mr. Heister during his first probationary year in 2002. TCPS distributes this form letter to each first and second year teacher. While this notification is not required by law or regulation, TCPS provides this letter to avoid untimely resignations. This notice letter represents a concerted effort by TCPS to help minimize the number of late resignations which the school system experienced in the late 1990's.

³All TCPS teachers are paid on a 12-month pay schedule, as negotiated between the local board and the Talbot County Education Association, the exclusive bargaining agent for the teachers. Mr. Heister did not receive three paychecks of \$1,437.50 each, for a total of \$4,312.50.

TCPS provided substantial training and mentoring services to Mr. Heister during his employment with the school system. TCPS had no warning prior to July 16, 2003, that Mr. Heister did not intend to fulfill the obligations of his contract. TCPS has been unable to secure a replacement for Mr. Heister's position. A substitute teacher not certified in mathematics was placed in his classroom.

On appeal, the local board unanimously upheld the superintendent's decision to withhold Mr. Heister's accrued salary. The local board found that the withholding of accrued salary was warranted, reasonable, and consistent with the terms of the Regular Contract as set forth in COMAR; that the forfeiture provision contains no language making it applicable only to individuals who resign during the school year; that it applies to Mr. Heister who completed teaching the school year; and that the forfeiture clause is valid and enforceable.

Christina L. Marvel

At the time of her resignation, Ms. Marvel was a first year certified teacher with TCPS assigned to Easton Middle School to teach math. Ms. Marvel was employed under the Regular Contract as required by State Board regulation. *See* COMAR 13A.07.02.01B.

By letter of February 12, 2003, the Assistant Superintendent, John Masone, advised Ms. Marvel that she would receive written notification from TCPS no later than May 1, 2003, if the local board were to decide not to renew her teaching contract. The letter also advised Ms. Marvel of her obligation to provide timely written notice if she intended to resign from her position. The letter contained the same language as the letter to Mr. Heister referenced above. On April 22, 2003, TCPS renewed Ms. Marvel's contract.

On August 4, 2003, the school system received a letter of resignation from Ms. Marvel. The resignation letter states as follows:

It is with deep regret that I will be unable to return to Easton Middle School for the 2003-2004 school year. I appreciate the opportunity that you have provided to me this past year in allowing me to work in your school district. However, a position has become available, at the last minute, closer to my home and I have decided to transfer to that school district. I want to thank you again for the experiences you have provided me through teaching in your school district, and apologize for the short notice.

Ms. Eunice Jenkins, Personnel Supervisor, contacted Ms. Marvel and advised her that resignations had been due on May 1. Ms. Marvel indicated that she had accepted a teaching position in Delaware. Thereafter, the superintendent withheld the remaining payments of Ms.

Marvel's 12-month salary as of the date of her resignation.⁴

TCPS provided substantial training and mentoring services to Ms. Marvel during her employment with the school system. TCPS had no warning prior to August 4, 2003, that Ms. Marvel did not intend to fulfill the obligations of her contract. TCPS has been unable to secure a suitable replacement for Ms. Marvel's position. A substitute teacher not certified in mathematics was placed in the classroom, but later left. A second substitute teacher, also not certified in mathematics, has since been placed in the classroom.

On appeal, the local board unanimously upheld the superintendent's decision to withhold Ms. Marvel's accrued salary. The local board found that the forfeiture clause was reasonable, was created pursuant to a valid exercise of the State Board's authority to regulate public schools in Maryland, and was enacted to further a legitimate public purpose.

ANALYSIS

Standard of Review

The applicable standard of review is set forth in COMAR 13A.01.01.03E(2):

The State Board shall exercise its independent judgement on the record before it in the explanation and interpretation of the public school laws and State Board regulations.

The contract forms for Maryland public school teachers are set forth in State Board regulation at COMAR 13A.07.02.01. School systems are required to use these contract forms in employing their teachers and are prohibited from altering the contractual terms. *See* COMAR 13A.07.02.01A ("All contracts with certificated professional employees shall be in writing and on contract forms prescribed by the State Board of Education."). For the regular teacher's contract, "the form entitled 'Regular Contract' shall be used and others may not be recognized." COMAR 13A.07.02.01B(1). For provisional certificates, "the form entitled 'Contract – Provisional Certificate' shall be used, and no others shall be recognized." COMAR 13A.07.02.01C.

The contractual provision at issue in this appeal is the forfeiture clause which states as follows:

If any of the conditions of this contract shall be violated by the certificated employee named herein, salary already accrued will be forfeited, in the discretion of the Local Board of Education.

⁴One regular paycheck in the amount of \$1,572.09 and one paycheck for summer school in the amount of \$1,895.08 for a total of \$3,467.17 were withheld.

The language of this provision is identical in the Regular Contract (COMAR 13A.07.01.01B) and the Provisional Contract (COMAR 13A.07.01.01C).

Appellants contend that the forfeiture clause is void and unenforceable because it is a penalty clause rather than a valid liquidated damages clause. In response, the local board maintains that the provision is enforceable as a lawful regulation promulgated by the State Board of Education.

State Board Regulation

The State Board has broad statutory authority to “adopt bylaws, rules, and regulations for the administration of the public schools.” Md. Code Ann., Educ. § 2-205(e).⁵ As the Maryland Court of Appeals has held, the State Board is plainly vested “with the last word on any matter concerning educational policy or the administration of the system of public education.” *Resetar v. State Bd. of Educ.*, 284 Md. 537, 556 (1979). The State Board’s authority has been also been characterized as a “visitatorial power of the most comprehensive character. . . .” *Id.* (citing *Wiley v. School Comm’rs*, 51 Md. 401, 406 (1879)).

In cases where the General Assembly has delegated broad authority to an agency to promulgate regulations in an area, the agency’s regulations are generally considered valid provided that the regulations do not contradict the statutory language or purpose. *Lassier v. Maryland Racing Comm’n*, 343 Md. 681 (1996) (State Racing Commission regulation authorizing Commission to impose penalty on persons violating regulations was valid). *See also Christ v. Maryland Dep’t of Natural Resources*, 335 Md 427, 437 (1992).

Pursuant to its broad statutory authority, the State Board has set the terms for teaching contracts for public school teachers in the State through regulation. It is our understanding that at the time the regulation was developed, the State Board negotiated the terms of the contracts with the State teachers’ union and the union agreed upon the language, including the forfeiture clause.

The forfeiture clause was designed to further the legitimate public purpose of helping to ensure that teachers do not resign beyond a specified mid-summer date when it is difficult to hire replacements. The deterrence of late resignations provides a local board the time needed to recruit and hire qualified teachers to fill the resulting vacancies before the new school year begins. Equally as important, the provision attempts to reasonably compensate the local board for damages incurred in recruiting and training a replacement teacher at the last moment and the additional costs of using substitute teachers. Because the State Board has such broad statutory authority to promulgate regulations in furtherance of educational policy and the administration of the system of public education, and because the forfeiture clause does not contravene the statutory language or purpose, we find that the forfeiture clause is valid.

⁵State Board regulations have the force and effect of law when adopted and published. *Id.*, § 2-205(d).

Liquidated Damages Clause Versus Penalty Clause

Appellants argue that under traditional contract law, because the regulation permits the withholding of the accrued salary but does not mandate it, the clause is a penalty provision that is not enforceable. We disagree. Applying traditional principles of contract law, we find that the forfeiture provision is a valid liquidated damages clause.⁶

Maryland law sets forth the following requirements for an enforceable liquidated damages clause: (1) the clause must provide clear and unambiguous terms for a certain sum; (2) the clause must reasonably be compensation for the damages anticipated by the breach; and (3) the clause must be a mandatory binding agreement before the fact which may not be altered to correspond to actual damages determined after the fact. *See Massachusetts Indemnity and Life Ins. Co. v. Dresser*, 269 Md. 364, 368 (1973).

Appellants incorrectly assert that none of the above requirements is met. In fact we find that all three elements are satisfied. (1) At the time of breach, each individual teacher subject to this provision can calculate with reasonable certainty the amount of salary already accrued which is subject to forfeiture. *See Holloway v. FAW, Casson & Co.*, 319 Md. 324, 354 (1990) (Fee equivalent provision requiring payment of “the prior year’s fee for any clients” could be calculated with reasonable certainty as a specific sum.) (2) As already discussed above, this amount is designed to help compensate the local board for damages incurred in recruiting and training a replacement teacher at the last moment and for the additional costs of using substitute teachers. Obviously the exact amount of damages cannot be known with precision ahead of time; however, the formula is reasonable in anticipation of those costs. (3) Finally, the contract terms are set forth in regulation and cannot be changed by the parties. Teachers know that their accrued salaries may be forfeited for untimely resignation and the amount cannot be changed based on actual damages as a result of the breach.

In this regard we note that courts in other jurisdictions throughout the country have upheld a school board’s enforcement of a liquidated damages contractual provision as compensation for the loss of equivalent services. *See, e.g., Arrowhead School District No. 75 v. Klyap*, 70 P.3rd 250 (Mont. 2003)(upholding liquidated damages provision in the amount of \$4,100, calculated as a percentage of annual salary determined by the date of breach); *Unified School District No. 315 v. DeWerff*, 626 P.2d 1206 (Kan. App. 1982)(upholding recovery of liquidated damages of \$400 based on untimely resignation of teacher and coach); *Bowbels Public School District No. 14 v. Walker*, 231 N.W.2d 173 (N. D. 1975)(upholding liquidated damages provision in the amount of \$252 for untimely notice of resignation); and *National Education Association, Inc. v. Leigh County Board of Public Construction*, 260 S.2d 206 (Fla. 1972)(\$100

⁶We note that in addition to the contractual forfeiture clause, the State Board has adopted a regulation that authorizes the suspension of a teacher’s certificate for 365 days if the certificate holder leaves the employment of a local school system after July 15. *See* COMAR 13A.12.05.02B. We view the ability to suspend a certificate as a penalty provision.

payment per teacher authorized as liquidated damages to recover monetary loss incurred by teacher's walkout).

There is no dispute that both Mr. Heister and Ms. Marvel failed to submit their resignations in a timely manner in accordance with their teaching contracts and State Board regulation. Further, as previously noted, the forfeiture clause has been in regulation since the contracts were initially negotiated approximately 30 years ago.

CONCLUSION

For the reasons and precedents cited above, we find that the forfeiture provision is valid and enforceable. Accordingly, we affirm the decisions of the Talbot County Board of Education approving the withholding of salary already accrued for both Mr. Heister and Ms. Marvel based on untimely notice of their resignations.*

Edward L. Root
President

JoAnn T. Bell

Dunbar Brooks

Calvin D. Disney

Clarence A. Hawkins

Karabelle Pizzigati

Maria C. Torres-Queral

July 21, 2004

* Lelia T. Allen, Henry Butta, Beverly A. Cooper, and David F. Tufaro, newly appointed members of the State Board of Education, did not participate in the deliberations of this appeal.