

LORRAINE FOLKMAN

Appellant

v.

CHARLES COUNTY BOARD
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 07-16

OPINION

INTRODUCTION

This is an appeal of a denial of Appellant's request for a salary adjustment. The local board has filed a Motion to Dismiss or for Summary Affirmance maintaining that the decision is not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant retired in July 2006 after working for Charles County Public Schools ("CCPS") for approximately thirty-two years. She was first hired in 1974 as a part-time food service worker, and was placed at grade 1 and step 1 on the salary scale. From 1974 to 1998, Appellant received various promotions and salary increases, most of which are set forth below:

- 1975 -- Salary increase to Grade 2, Step 2;
- 1975 -- 1979 -- Salary increases ultimately reaching a Grade 2, Step 5;
- 1979 -- Secretary at the "Thomas Stone Annex" with salary increase to Grade 5, Step 4 (more than a 100% increase in salary);¹
- 1980 -- Secretary at the "101 Annex" with salary increase to Grade 6, Step 3;
- 1982 -- Accounting Clerk at the "101 Annex" with salary increase to Grade 6, Step 5;
- 1983 -- Secretary to the Food Services Director with salary increase to Grade 7, Step 6;
- 1984 -- Salary increase to Grade 8, Step 6;

¹ While this salary was at a lower Step than her previous position, the salary was higher. Appellant accepted the position and at no point complained or appealed the salary designation. It is unknown why Appellant's salary was at a lower step, and no evidence was presented to explain the difference.

- 1986 -- Salary increase to Grade 9, Step 9;
- 1995 -- Accounting Clerk in the Food Services Department at Grade 9;
- 1997 -- Accounting Assistant for the Food Services Director with salary increase to Grade 10; and
- 1998 -- Salary increase to Grade 11;

(Local Board Opinion, p. 1-3; Record of Experience).

In 2002, the Superintendent reorganized the CCPS Accounts Payable Department (“Accounts Payable”), which was responsible for processing invoices and vendor payments for the school system, to include two accounting assistant positions classified at Grade 11-12.² These positions performed duties different from Appellant’s, despite the “Accounting Assistant” title. (Local Board Opinion at 3). The new accounting assistant positions in the Accounts Payable Department were advertised and Appellant had the opportunity to apply for them, but she chose to remain in her Accounting Assistant position with the Food Services Department (“Food Services”). (*Id.*).

In 2004, the Superintendent reorganized the Food Services Department to eliminate the Secretary position and to include two Accounting Assistant positions with additional responsibilities.³ The Accounting Assistant positions were reclassified as Grade 11-12, the same grade as the Accounting Assistants in Accounts Payable. Appellant was awarded one of those positions and her salary was increased to Grade 12. The second Accounting Assistant position was awarded to a co-worker, who had served as the only secretary in the Food Services Division. Both Appellant and her co-worker share the same job description, although they have different duties and responsibilities. (*Id.*).

Dissatisfied that her position was reclassified two years after the Accounts Payable positions, Appellant requested a salary increase in October 2004. She requested an amount equivalent to the increase from a grade 11 to a grade 12 for the two years between 2002, when Accounts Payable was reorganized, and 2004, when Food Services was reorganized. (Schwartz Memorandum to Local Board). Paul Balides, Assistant Superintendent for Finance, Business, Administration and Technology, denied Appellant’s request. He reasoned that the Accounting Assistants in Accounts Payable performed different functions and had greater responsibilities than those in Food Services during the two-year period in question. He also noted that the Food Services Accounting Assistants received a salary increase in 2004 because the Superintendent added some payroll-related functions to their responsibilities.

In October 2005, Appellant requested a bonus in order to purchase three years of service

²The Accounts Payable Department and the Food Services Department were separate from each other but were within the same division.

³In prior years, the Food Services Department included one accounting assistant and one secretary. (Schwartz Memorandum to Local Board).

credit for the years 1976-1977, 1977-1978 and 1978-1979 in preparation of retirement. She stated, "This would make a difference on my monthly retirement calculation as if my salary was higher during my final working years when other accounting assistants were made grade 12." (Memorandum to Balides, 10/31/05). Mr. Balides referred Appellant's request to Keith Hettel, Assistant Superintendent for Human Resources. (*Id.*).

In November and December 2005, Appellant met with Mr. Hettel and Connie Armstead, Director of Human Resources, to discuss her request. During a meeting on November 28, she argued that assigning her co-worker to an Accounting Assistant position at a grade 12 salary essentially resulted in an unfair raise because that co-worker was not performing her assigned duties. Appellant further argued that this entitled Appellant to a higher salary because she was fully performing her duties. (Local Board Decision, p. 4). Appellant also complained that Mr. Balides had created a hostile work environment based on Appellant's previously filed worker's compensation claim. (*Id.*).

In December of 2005, Mr. Hettel reviewed Appellant's claims and subsequently denied Appellant's salary adjustment request. Mr. Hettel did, however, increase Appellant's salary from step 28 to step 30, retroactive to the start of the 2005-2006 school year, because his review of Appellant's personnel records showed that on two occasions during the late 1970s her salary was placed on a lower Step than before. (*Id.*). Mr. Hettel did not require Appellant to prove that CCPS made an error and thought it unlikely that an error was made since Appellant still received a salary increase in those years. (*Id.* at 5). Nevertheless, he gave the benefit of the doubt to Appellant and adjusted for any possible mistake.

Dissatisfied with Mr. Hettel's decision, on March 8, 2006, Appellant sent Mr. Hettel a memorandum listing four acceptable salary resolutions. On March 15, 2006, Mr. Hettel denied Appellant's request for an additional salary adjustment.

Appellant appealed the decision on March 21, 2006, to the Deputy Superintendent, Ronald Cunningham, acting as the Superintendent's designee. Mr. Cunningham met with Appellant and investigated the matter. On April 26, 2006, Mr. Cunningham informed Appellant that he was upholding Mr. Hettel's decision and gave a basis for denying each of Appellant's assertions. (Local Board Decision). Mr. Cunningham rejected Appellant's argument that she had been receiving a lower salary since 1979 because the school system erroneously placed her two steps lower than they should have. Mr. Cunningham explained that, "Salaries will be adjusted according to polices in place at the time one's employment status changes. The administration will make any correction at the time it is made aware of errors in the assignment notice. Corrections will be made retroactive to the start of the current contractual year only." (Letter to Appellant, 4/26/07, p. 1). Mr. Cunningham stated that this was exactly what Mr. Hettel did.

Mr. Cunningham also rejected Appellant's claim that she was entitled to a salary increase because she had filed a claim for workers' compensation. Mr. Cunningham stated that the date of the alleged injury was January 23, 1998, the claim was closed on July 15, 1999, and that the

statute of limitations had run. (*Id.*).

Next, Mr. Cunningham addressed Appellant's claim that Mr. Balides created a hostile work environment for Appellant based on her filing the workers' compensation claim. Mr. Cunningham investigated the claim and found that no formal complaint was ever filed, that Mr. Balides denied the allegations and that there was no evidence that the claim impacted Mr. Hettel's decision concerning the salary adjustment. (*Id.* at p. 2).

Lastly, Appellant claimed that her salary should be adjusted because another employee received a salary increase and a promotion even though there was no change in job functions. Mr. Cunningham responded that, "the school system does not have any practice of providing employees unearned or undeserved benefits, or treating employees different for improper reasons. As with any confidential personnel matter, other employees may not be aware of all of the facts and considerations involved in particular employment decisions." As such, Mr. Cunningham explained to Appellant that she lacked standing to challenge specific employment actions taken with other employees. (*Id.*).

On May 3, 2006, Appellant appealed Mr. Cunningham's decision to the local board. Appellant's main contention was that her co-worker was being paid for occupying a position for which she does not perform all the specified job duties. The local board held that Appellant lacked standing to challenge CCPS's decision regarding the employment and salary designation of another employee because Appellant has no legal interest in the other position. The local board also found that Appellant failed to present any evidence that she suffered any financial harm to her own position due the hiring of her co-worker. (Local Board Decision, p. 6). In addition, the local board concluded that Appellant failed to establish any illegality or misconduct by the Superintendent or CCPS because the Superintendent has the authority to reorganize and reclassify positions and fill positions as needed. Finally, the local board rejected Appellant's allegations of retaliation and age discrimination because Appellant did not provide any supporting facts. The local board, therefore, upheld Mr. Cunningham's decision.

This appeal ensued.

STANDARD OF REVIEW

Because this appeal concerns a decision of the local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board, the local board's decision is considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.03E(1).

ANALYSIS

At the outset, we note that due to the lack of clarity in Appellant's submissions, it is

difficult to fully understand the precise issues she raises in her appeal to the State Board, as well as those that were raised in her appeal to the local board. Nevertheless, we have done our best to interpret Appellant's claims.

I. *Standing*

Appellant appears to challenge the school system's decision to hire her co-worker as an Accounting Assistant in Food Services, arguing that this resulted in her co-worker receiving a salary and benefits that she did not deserve because she did not perform her job responsibilities. The local board determined that Appellant lacked standing to challenge the personnel decisions concerning another employee. We concur.

The general rule on standing is that "for an individual to have standing, even before an administrative agency, he must show some direct interest or 'injury in fact, economic or otherwise'." *Adams, et al. v. Montgomery County Board of Education*, 3 Op. MSBE 143, 149 (1983); *Schwalm v. Montgomery County Board of Education*, MSBE Opinion No. 00-10 (February 23, 2000); *Vera v. Board of Education of Montgomery County*, 7 Op. MSBE 251 (1996). Furthermore, the State Board has held that individuals with no legal interest in a position lack standing to challenge personnel decisions regarding that position. See *Gartner v. Howard County Board of Education*, MSBE Opinion No. 01-41 (December 2001); *Belotte v. Anne Arundel County Board of Education*, MSDE Op. No. 03-08 (August 2003).

Here, Appellant cannot demonstrate any cognizable interest in the other employee's position. When the reorganization of Food Services took place in 2004, Appellant took one of the Accounting Assistant positions and her co-worker took the other. The Appellant cannot show any injury from her co-worker being awarded the Accounting Assistant position. Appellant actually benefitted financially from the reorganization because she was upgraded to a grade 12 on the salary scale. We therefore find that Appellant lacks standing to challenge personnel decisions concerning the other employee, including the classification of her position and the duties assigned to that position.

II. *Merits*

Appellant contends that she is entitled to a salary adjustment based on the Superintendent's decision to reclassify the Food Services Accounting Assistants in 2004, rather than in 2002 when the Accounts Payable Accounting Assistant positions were reclassified to a higher grade. We find, however, that the Superintendent acted within his discretion in making those reclassification determinations as he has the authority to appoint clerical and other non-professional personnel. See Section 6-201(c) of the Education Article. Other than stating her disagreement with the Superintendent, Appellant has not presented any evidence that shows that the decisions were based on anything other than the needs of the school system. Nor has she demonstrated that her assignments and the assignments of the Accounts Payable accounting Assistants were identical during 2002 through 2004.


Additionally, Appellant contends that she is entitled to a salary adjustment because CCPS mistakenly placed her on a lower Step in 1979, when she was switching positions. To account for the possibility of such a mistake, Mr. Hettel approved for Appellant a salary increase of two steps retroactive to July 1, 2005. This was done without proof of any error on CCPS's part, and despite the fact that Appellant's salary always increased. The increase was retroactive to 2005 because Appellant had signed an assignment sheet specifying that CCPS would only make corrections to salaries retroactive to the start of the current contractual year. Appellant, therefore, is not entitled to further remedy based on that alleged error.

Appellant suggests that her salary adjustment was denied because she filed a worker's compensation claim and was consequently subjected to a hostile work environment by Mr. Balides. In addition, Appellant contends that CCPS is engaging in age discrimination through its method of re-evaluating positions. Appellant fails to provide any supporting facts for these allegations. Allegations of retaliation and discrimination without any supporting factual specifics are insufficient to challenge the legality of the Superintendent's decision. *See Hurl v. Howard County Board of Education*, 6 MSBE Op. 602, 604-605 (1993), *aff'd*, 107 Md. App. 286 (1995). These contentions, therefore, do not warrant further discussion.

Finally, Appellant maintains that her co-worker's promotion is an example of a larger CCPS policy of providing employees with unearned salaries or benefits. First, as mentioned above, Appellant lacks standing to challenge personnel decisions concerning her co-worker. Second, Appellant has not presented any facts that evidence such a policy. The Superintendent stated that "the school system does not have any practice of providing employees unearned or undeserved benefits, or treating employees differently for improper services." (Letter to Appellant, 4/26/06, p. 2). As for employees who may not be performing their employment duties satisfactorily, Appellant is probably unaware of "all of the facts and considerations involved in a particular employment decision" in a confidential personnel matter. (*See Local Board Decision*, p. 8).

CONCLUSION

For all of these reasons, we find that the local board's decision was not arbitrary, unreasonable or illegal. Accordingly, we uphold the decision of the Board of Education of Charles County to deny Appellant's request for a salary adjustment.



Edward L. Root
President

Dunbar Brooks

Dunbar Brooks
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J. Henry Butta

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Beverly A. Cooper

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David F. Tufaro

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April 24, 2007