

JOHN RYAN,
Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-23

OPINION

Appellant, a school bus driver on probationary status, appeals the local board's decision affirming his termination from employment due to unsatisfactory job performance. The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal and that Appellant's termination should be upheld based on his performance deficiencies. Appellant has submitted an opposition to the local board's motion.¹

FACTUAL BACKGROUND

Appellant was employed by the local board as a school bus driver for Baltimore County Public Schools for less than one year.² During his initial probationary period, Appellant received an unsatisfactory evaluation from his immediate supervisor, Mary Ann Savitsky, for the period September 1, 2001 through November 1, 2001. The evaluation noted deficiencies in safety; handling equipment; route/time schedule; relationship with administrators, supervisors, parents, students, and general public; and attitude and effort. *See* Appraisal Form dated 11/26/01 and attachment.³ The evaluation states as follows regarding Appellant's professional competencies:

¹Citations to the transcript (Tr.) refer to the transcript of the hearing before the local hearing examiner.

²Appellant worked for Bethlehem Steel for 43 years until his retirement. Thereafter, he worked for approximately one year for a private bus contractor, First Student, which provides bus services to schools in Baltimore City, Baltimore County, and Howard County. Appellant was certified to drive school buses in Baltimore City. (Tr. 235). He then began driving buses for the Baltimore County Public Schools. Appellant has held a commercial drivers license for 49 years without any points, but he did not have air brake endorsement. (Tr. 71-73). Based on an evaluation of his driving and his experience, Appellant was required to get air brake endorsement and attend pre-service training which includes 2 ½ days of classroom training. Someone with Appellant's experience is typically not required to take the pre-service course which is for new drivers; however, during the preparation for air brake endorsement the trainers became concerned about Appellant's skill level and believed he needed the extra training. (Tr. 230-232).

³Appellant disputes the deficiencies noted on the evaluation.

Since beginning his tenure with Baltimore County Public Schools, Mr. Ryan has been involved in one accident and has had a close encounter at the same intersection resulting in two students being injured on the bus when he slammed on the brakes. The school nurse treated these students. He also deviates from the assigned route sheet during his normal run, i.e., driving into a restricted area to pick up a student who lives in a motel, as well as other deviations. Mr. Ryan has been seen backing his bus in/out of areas and driving down the road with his flashers on and the stop sign extended. Students have also complained that he falls asleep while waiting for them to exit the bus. . . .

The accident referenced in the evaluation took place on October 24, 2001 and was deemed preventable by the Accident Review Committee.⁴ As a result of this unsatisfactory evaluation, Dr. Savitsky recommended that Appellant's probationary status be extended for an additional ninety days.

During the extended probationary period, Appellant received additional driver training. Nonetheless, Dr. Savitsky continued to receive complaints of Appellant reportedly leaving children unattended on the bus, cutting off traffic while switching lanes, failing to use proper lights for signaling, making unauthorized route changes. (Tr. 161-163). On November 28, 2002, a driver trainer conducted an observation of Appellant's route. The trainer observed that Appellant needed to improve in the areas of using warning lights, driving through intersections, turning and obeying traffic signs.⁵ See Route Observation Report. (Tr. 161).⁶ Dr. Savitsky subsequently provided Appellant with a performance update and recommended his termination from employment. See 2/11/02 Performance Update. The recommendation was accepted by Linda Fitchett, Director of Transportation. See Explanation of Termination Form.

Acting as the superintendent's designee, Rita Fromm, Executive Director of Planning and Support Operations, upheld the termination recommendation. Ms. Fromm believed that there was a "real concern about the safety of the operation when [Appellant] was behind the wheel of a bus" and was concerned about Appellant's inability to comprehend the seriousness of his poor

⁴According to State Board regulations, a preventable or not preventable disposition is indicative of whether or not the driver was driving defensively and did everything in his power to prevent the accident from occurring. It is not an indication of who is legally at fault. (Tr. 139-141).

⁵Appellant disputes most of the Route Observation Report.

⁶On January 16, 2002, one day after Appellant had received retraining, Appellant was involved in a second accident which was deemed "not preventable."

safety record.⁷ (Tr. 98-99). When Ms. Fromm spoke with Appellant regarding the termination, he maintained that all of the problems were a result of harassment by Dr. Savitsky. Appellant gave Ms. Fromm no specific information regarding the harassment other than alleging that Dr. Savitsky confronted him in the front of students on the bus. (Tr. 100). Ms. Fromm testified to the following:

I supported the recommendation because the indication in the files that I reviewed reflected a real concern about the safety of the operation when Mr. Ryan was behind the wheel of a bus. The fact that there was an extensive history of concern and a preventable accident all within a relatively short period of time with a new employee was of significant concern to me. So from a safety standpoint, I felt very uncomfortable about maintaining his employment status with us. I subsequently had a conversation with Mr. Ryan in which I got no assurance from him that he understood the issues of concern to the department.

(Tr. 98).

On further appeal, the local board referred the matter to a hearing examiner for review.⁸ Following a two day evidentiary hearing, the hearing examiner found that the record reflected “legitimate, potentially serious concerns about the Appellant’s driving skills.” In his decision, the hearing examiner discussed Appellant’s numerous driving deficiencies which were reported by a variety of reliable and unbiased sources including parents, driver trainers, and other employees.

In a unanimous decision, the local board upheld the decision of the superintendent’s designee to terminate Appellant.⁹ The local board found that the termination decision was not arbitrary, unreasonable, or illegal citing the totality of the evidence in the record, including evidence of Appellant’s deviations from safety procedures and the serious concerns about his driving ability.

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

⁷Ms. Fromm was formerly a bus driver.

⁸Appellant was represented by his union representative during the proceedings.

⁹Four members of the local board were absent.

Education Article.¹⁰ 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 its decision is arbitrary, unreasonable, or illegal. *See* COMAR 13A.01.01.03E(1).

Appellant challenges his termination maintaining that his discharge was purely a result of harassment by his supervisor, Dr. Savitsky.¹¹ The only evidence of alleged "harassment" is testimony that Dr. Savitsky would address performance issues regarding Appellant's driving deficiencies on the bus in the presence of students. While it would seem preferable for Dr. Savitsky to have raised work related issues with Appellant in private, her actions do not change the fact that Appellant demonstrated serious problems with his operation of a school bus. In addition, Appellant has failed to recognize any deficiencies in his performance which need correction, thus placing the safety of students on his bus and others at risk. Instead, Appellant provides a variety of reasons why certain problems occurred such as his alleged lack of training and alleged failure to receive the drivers' handbook.¹² Nonetheless, despite being given additional time through an extended probationary period and additional training to improve his performance, Appellant was unable to remedy his performance problems.

Based on the record in this case, we find that the local board did not act arbitrarily, unreasonably, or illegally in terminating Appellant from his position as a bus driver. There is ample evidence of Appellant's unsafe driving habits. As the hearing examiner noted in his decision:

¹⁰In 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. Article XV, Section 6 of the Master Agreement between the American Federation of State, County and Municipal Employees and the Baltimore County Board provides that probationary employees may be terminated at any time during the probationary period without right of appeal through the grievance procedure. Accordingly the *Livers'* decision is controlling on Appellant's due process rights.

¹¹Although it is not entirely clear, Appellant appears to make some new unspecified claims under the Americans with Disabilities Act and his being prohibited from bidding on new jobs with the school system. Because these matters were not raised before the local board, Appellant has waived his right to raise them before the State Board. *See Chase Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Earl Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal).

¹²The record discloses that Appellant received the required training and that he received the manual at some point, although the specifics of when he received it are unclear. *See* Decision of Hearing Examiner at 13.

The presence of information in the record about two documented accidents (one preventable, one not), the potential of at least two near-miss accidents, the failure of the Appellant to seek and obtain proper permission for, at least, several route deviations, concerns about improper stopping technique and the usage of bus warning equipment is sufficient evidence to support Management's concerns about the Appellant's ability to properly drive a school bus. This information was compiled from a variety of direct trainers, a school employee visiting a nearby bank and from a number of indirect sources cited by others (parents, a citizen).

Decision of Hearing Examiner at 15. The hearing examiner further stated as follows:

To accept Appellant's position that all of the problems discussed above were the result of Savitsky's harassment would require that the record before us be disregarded and would suggest some type of conspiracy by or on behalf of Savitsky to get Ryan. While Savitsky exercised poor judgment, there is absolutely no evidence in the record to support any organized effort to get Ryan. Further, there is sufficient evidence in the record to establish that the Superintendent's decision to terminate the Appellant was not arbitrary, unreasonable or illegal.

Decision of Hearing Examiner at 16.

The State Board has consistently noted that a local board is well justified in terminating a bus driver based on concern for the safety of its students. *See Kemp v. Montgomery County Board of Education*, MSBE Opinion No. 02-34 (July 23, 2002)(decertification of bus driver for having more than two preventable accidents in a 24-month period); *Grauel v. Montgomery County Board of Education*, MSBE Opinion No. 00-16 (March 22, 2000)(decertification of bus driver for having more than two preventable accidents in a 24-month period); *Blumenstock v. Board of Education of Howard County*, 7 Ops. MSBE 730 (1997)(contractor's employee determined to be unfit to transport students); *Jones v. Board of Education of Kent County*, 7 Ops. MSBE 149 (1995)(bus driver dismissed for leaving disabled student unattended on school bus).

CONCLUSION

For all of these reasons, we affirm the decision of the Baltimore County Board of

Education to terminate Appellant from his position as a bus driver for the Baltimore County Public School System.

Edward L. Root
President

JoAnn T. Bell
Vice President

Philip S. Benzil

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Clarence A. Hawkins

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Karabelle Pizzigati

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John L. Wisthoff

April 21, 2004