

GREGORY SMITH,

Appellant

v.

HOWARD COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-26

### OPINION

Appellant, a special education teacher, appeals the decision of the local board upholding his involuntary transfer from Howard High School to Centennial High School. Appellant maintains that the principal of Howard High School illegally recommended him for an involuntary transfer based on retaliation for his involvement in union activities as a Howard County Education Association (“HCEA”) building representative and for his success with grievances and appeals that Smith filed against the principal. The local board has submitted a motion for summary affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal and that there is no basis to support Appellant’s claims of retaliation. Appellant has submitted an opposition to the local board’s motion.

### FACTUAL BACKGROUND

The Appellant began his employment with the Howard County Public Schools in 1980 serving as a special education instructor at Waterloo Middle School. After three years, Appellant transferred to the School of Technology. During Appellant’s fourth year at the School of Technology, Mary Day became his principal. In Appellant’s sixth year at the School of Technology, he served as a building representative for the HCEA. In this capacity he participated in the filing of grievances and administrative appeals against Ms. Day involving issues such as denying an HCEA member the full planning time that was to be afforded under the contract and the approval of vending machines and use of vending machine proceeds.<sup>1</sup> At the end of the 1993-94 school year, Smith was involuntarily transferred from the School of Technology to Howard High School.<sup>2</sup>

In 1996, Ms. Day became principal of Howard High. Appellant began to serve as the HCEA building representative in 1998. Beginning with the 1999-2000 school year, Smith filed grievances or complaints regarding his being required to use his planning time for IEP meetings, his non-appointment to becoming boys’ varsity basketball coach, contributions to the staff social

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<sup>1</sup>These two grievances were denied.

<sup>2</sup>Smith did not appeal the transfer.

committee fund, and distribution of a local realtor's brochure in teachers' mailboxes.<sup>3</sup> In a November 2001 meeting with Roger Plunkett, Assistant Superintendent for School Administration, Appellant agreed in the future to take his problems and concerns directly to the principal to give her an opportunity to address his concerns first rather than immediately resorting to grievances and appeals.

By letter of February 11, 2002, Ms. Day advised Appellant that she was seeking an involuntary transfer of him.<sup>4</sup> The letter stated that the reason for the request was "to provide [Appellant] an opportunity to broaden [his] professional experiences." Mr. Plunkett, acting as the superintendent's designee, reviewed the transfer request. Mr. Plunkett had previously mediated several disputes between Smith and Day and was aware of the tension between the two. Mr. Plunkett testified that he approved the transfer because Appellant failed to demonstrate a level of trust in the principal's leadership and because Plunkett believed the transfer was in the best interest of the high school.

On appeal, Superintendent John O'Rourke found that Appellant failed to provide any evidence to support his charge of retaliation. Mr. O'Rourke noted that if one were to "accept the argument that a mere filing of grievances later followed by a transfer of an employee could equate to retaliation, all employers would have to suspend all previously planned transfers of anyone who had ever filed a grievance or an appeal." *See* 9/13/02 letter from O'Rourke to Whattam, counsel for Appellant.

On further appeal, the local board referred the matter to a local hearing officer to hear evidence and make a recommendation. After a full evidentiary hearing, Hearing Officer Gregory A. Szoka upheld the superintendent's decision to transfer Appellant from Howard High School to Centennial High School. The hearing officer found that the transfer decision was based on legitimate reasons, including the level of distrust exhibited by Appellant toward Day. *See* Hearing Officer Report at 8. He also found that the evidence failed to establish that Day acted in a retaliatory manner because of Appellant's initiation of review processes of Day's decisions and therefore § 6-409 of the Education Article was not violated.<sup>5</sup> *See* Hearing Officer Report at 7.

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<sup>3</sup>Appellant prevailed in his grievances concerning the use of his planning time and the coaching position. As a result of the grievance of the coaching position, Appellant received an amount equal to the coach's stipend for the 2000-01 school year even though he did not actually coach the team. He assumed coaching duties for the 2001-02 school year.

<sup>4</sup>Day had previously advised him of the transfer request in person.

<sup>5</sup>Section 6-409 states that "[a] public school employer and employee organization may not interfere with, intimidate, restrain, coerce, or discriminate against any public school employee because of the exercise of his rights under §§ 6-402 and 6-403 of this subtitle." Section 6-402 states that "[p]ublic school employees may form, join, and participate in the activities of employee organizations of their own choice for the purpose of being represented on

In a 3-1 decision, the local board adopted the recommendation of the hearing examiner upholding the superintendent's decision to transfer Appellant and found that the transfer was in the best interest of the school system.<sup>6</sup> Specifically, the local board found that Appellant's transfer did not violate § 6-409 of the Education Article which addresses an employee's right to join or refuse to join a union, and that even if § 6-409 were interpreted broadly to encompass a wide range of union related activities and not mere membership, the record failed to support a finding of illegality. The board majority concurred with the hearing examiner's conclusion, based on Associate Superintendent Plunkett's testimony that:

A lack of confidence in the Appellant and the level of distrust exhibited by Appellant toward Day are sufficient reasons for the transfer. (Page 8) Both the Superintendent and Mr. Plunkett testified about the great care they expended in examining the situation to make sure that retribution was not involved and that the transfer was in the best interest of the school system.

Board Decision, p. 3.

## ANALYSIS

### *Mootness*

In his appeal to the State Board, Appellant challenges the local board's decision upholding his transfer and requests relief from that action without specifying the relief. In its Motion for Summary Affirmance, the local board argues that Appellant is seeking an advisory opinion because he has indicated through his attorney that he does not or may not wish to leave Centennial High and return to Howard High. The transcript of the hearing before the local hearing examiner discloses that Appellant's counsel argued that Appellant should be given "the option to return to Howard High School," stating:

He may not choose to do that, but he needs to be given that option because that should be his right to choose whether to go back there or not. If he chooses not to, so be it. But, if he chooses to, that should be his right, and we would ask that that be offered as a remedy to him, should he choose to exercise it.

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all matters that relate to salaries, wages, hours, and other working conditions." Section 6-403 states that "[a] public school employee may refuse to join or participate in the activities of employee organizations."

<sup>6</sup>The dissenting board member found that the transfer was illegal based on improper motivations proscribed by § 6-409 of the Education Article.

Tr. at 143-144. Mr. Plunkett testified that in conversations with the administration at Centennial High School and through his own visits to the school, Appellant appeared to be very pleased and comfortable in his new assignment. Tr. at 96-97.

Although Appellant did not address this issue in his response to the local board's motion, his counsel during oral argument vigorously argued that the issue is not moot. Based on the statements of Appellant's counsel, we find that the dispute is not moot.

### Merits of Case

It is well established in Maryland that a local superintendent has broad statutory authority to transfer teachers "as the needs of the system require." Md. Code Ann., Educ. §6-201(b). Numerous State Board opinions and the Court of Appeals in *Hurl v. Board of Education of Baltimore County*, 6 Op. MSBE 602, 605 (1993), *aff'd*. 107 Md. App. 286 (1995), affirm that a transfer of a teacher to a lateral position or to a position of lower rank is within the discretion of the local superintendent. *See, e.g., Heaney v. New Board of School Commissioners for Baltimore City*, MSBE Opinion No. 99-2 (January 26, 1999)(lateral transfer of principal); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997)(transfer from assistant principal to classroom teacher); *Chenowith v. Board of Education of Baltimore County*, 7 Op. MSBE 192 (1995)(transfer from assistant principal to director of recruitment); *Cameron v. Board of Education of Baltimore County*, 6 Op. MSBE 814, 815 (1995)(transfer from assistant principal to classroom teacher). While a teacher may not agree with the reasoning behind a local superintendent's decision to reassign him or her, the disagreement alone does not make the decision arbitrary, unreasonable, or illegal.

Appellant maintains, however, that his involuntary transfer was initiated by Ms. Day in retaliation for his activities as an HCEA building representative at the school and for having previously filed numerous successful grievances and administrative appeals against Ms. Day. He argues that this unlawful motivation fatally infected Mr. Plunkett's recommendation supporting the transfer and subsequently the superintendent's ultimate action in approving the transfer request.

Based on the legal precedents cited above, we believe that if there were a working relationship between a teacher and a principal that involved a serious lack of trust not primarily derived from the teacher's exercise of union rights and responsibilities, the local superintendent would be able to transfer that teacher under the broad transfer authority provided by §6-201(b) of the Education Article. However, based upon our review of the record and the very unique circumstances of this case, we find a reasonable inference that the motivation of Appellant's principal for requesting the involuntary transfer of Appellant was because of his activities as an HCEA building representative. This inference is derived from the following.

Ms. Day's initial request for an involuntary transfer of Appellant was from the School of Technology where Day was the principal, after Appellant had filed several grievances in his

capacity as HCEA building representative in that school beginning with the 1994-1995 school year. Appellant was sent to Howard High School where he worked until the end of the 2001-2002 school year. Ms. Day was transferred to Howard High School as the principal beginning with the 1996-1997 school year.

During their years there together, the Appellant filed a number of administrative appeals and grievances against Ms. Mary Day in her capacity as principal of Howard High School. A sampling of them is as follows:

- During the 1999-2000 school year, Appellant filed a grievance against Ms. Day alleging that she had improperly infringed upon his planning time. This grievance ultimately went to arbitration and was decided in favor of the Appellant.
- During the 2000-2001 school year, the Appellant became embroiled in a dispute with Ms. Day over her failure to assign him to a varsity basketball coaching position (which she had given to an individual from outside the school system instead of the Appellant, who was then the head junior varsity coach of that sport). This dispute ultimately went before the county board, and was decided in favor of the Appellant. As a result of this ruling, the county board ultimately agreed that the outside coach could finish the 2000-2001 season, but that the coaching position would be guaranteed to the Appellant for the 2001-2002 school year. While at first balking at assigning the Appellant to the coaching position for 2001-2002, Ms. Day finally relented and allowed him to fill the position for that year. But almost immediately upon the completion of the season, Ms. Day informed the Appellant that she was requesting his administrative transfer for the 2002-2003 school year, along with that of another HCEA building representative at Howard High School.
- This transfer request also followed on the heels of yet another grievance filed against Ms. Day by the Appellant during the Fall of 2001, having to do with the principal's refusal to release funds donated by staff members to the school's social committee. This grievance was ultimately resolved by Ms. Day being directed by her superiors to release the funds, as the Appellant had requested.
- Immediately prior to Ms. Day informing the Appellant of her intention to seek his involuntary transfer, he raised a concern with HCEA about Day's placement of advertisements for a realtor friend in teachers' mailboxes, contrary to school board policy. He went to Ms. Day first with his concern, and was told by her that she had been authorized to do so by Ms. Kaplan, the public relations officer for the county board. The Appellant went to Marius Ambrose, the HCEA UniServ Director for MST A, and asked if Ambrose could check into that for him. Mr. Ambrose testified that he immediately called Ms. Kaplan and was informed by her that she

did not recall any conversation about this issue.

In addition, during the course of the investigation into the social committee concern in the Fall of 2001, Roger Plunkett, Associate Superintendent, met with the Appellant and Ms. Day to try to resolve the differences between them. It was during this meeting that Ms. Day stated that she was upset with the Appellant because he constantly “ran to HCEA” with his problems instead of coming to her.

While Mr. Plunkett, the superintendent’s designee, testified that he approved Day’s request for an involuntary transfer of Appellant based on Appellant’s distrust of Day and lack of confidence in her building leadership, we find based on this record that Appellant’s distrust and lack of confidence reasonably stemmed from the principal’s improper actions and Appellant’s exercise of grievance rights to challenge those actions under §§ 6-402 and 6-409 of the Education Article.

### CONCLUSION

For all of these reasons, we reverse the involuntary transfer decision of the Howard County Board of Education.

JoAnn T. Bell  
Vice President

Philip S. Benzil

Dunbar Brooks

Calvin D. Disney

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Maria C. Torres-Queral

John L. Wisthoff

DISSENT

Based upon my review of the record and the broad statutory authority of the local superintendent to transfer professional personnel as the needs of the schools require, I would find that Appellant's distrust of the principal and his lack of respect for building leadership was a sufficient basis for the involuntary transfer. I therefore respectfully dissent and would uphold the decision of the local board.

Dr. Edward L. Root  
President

May 26, 2004