

SHEILA WILSON,  
  
Appellant  
  
v.  
  
ALLEGANY COUNTY  
BOARD OF EDUCATION,  
  
Appellee

BEFORE THE  
  
MARYLAND  
  
STATE BOARD  
  
OF EDUCATION  
  
Opinion No. 05-16

OPINION

In this appeal, Appellant, an instructional assistant, contests the decision of the local board to terminate her for physically assaulting her supervising teacher. The local board has submitted a motion for summary affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has submitted a reply opposing the local board's motion.

FACTUAL BACKGROUND

Appellant was a noncertificated instructional aide at Cash Valley Elementary School in the Allegany County Public School System. On April 1, 2004, Appellant got into an altercation with Daren Smith, the teacher who supervised her, in front of the students in the classroom. Both raised their voices and Appellant called Mr. Smith at the Board of Education office on her cell phone. When he was not available, Appellant attempted to use the classroom intercom to call the principal's office. According to Appellant's testimony, Mrs. Smith pushed her into the corner of the desk and over a chair. Appellant then slapped Mrs. Smith in the face. (Tr. 17)

At approximately 2:00 p.m. on that day, Mrs. Lafferty, the Acting Principal, reported the incident to the personnel office at the Board of Education. Mr. Jeffrey Blank went to Cash Valley to investigate the incident. Mr. Blank first spoke with Mrs. Lafferty, who told him that when she interviewed Appellant, Appellant said that Mrs. Smith had "gotten in her face and that she had hit Mrs. Smith, the teacher". (Tr. 25, Exh. 4). At that time, Appellant made no mention to Mrs. Lafferty that Mrs. Smith had pushed her. (Tr. 25, Exh. 4).

Mr. Blank proceeded to interview Mrs. Bailey, another instructional aide. Mrs. Bailey stated that Appellant had told her that Appellant was attempting to contact the office on the intercom when "Daren got into my face and I slapped her". (Tr. 26, Exh. 4). Appellant did not tell Mrs. Bailey that Mrs. Smith had pushed, shoved, or touched Appellant. (Tr. 26, Exh. 4).

Mr. Blank next interviewed Mrs. Sheetz, the school nurse, who had been in the room at the time of the incident. Mrs. Sheetz stated that she could not see whether Mrs. Smith touched Mrs. Wilson, but stated that Appellant most definitely did not fall over the desk or anything close to that. (Tr. 27) However, she did see Appellant slap Mrs. Smith.(Tr. 27, Exh. 4).

Mrs. Smith stated that she never touched Appellant and that Appellant hit her in the face with the palm of her hand. (Tr. 27, Exh. 4).

Appellant was put on leave with pay for two days. On April 6, 2004, Appellant was informed that her employment was terminated based upon her assault of another staff member. (Termination letter, Exh. 3).<sup>1</sup>

Appellant appealed to the local board, who held a hearing on the matter on June 8, 2004. Both Appellant and the Superintendent were represented by counsel and were provided an opportunity to testify and to present evidence.

The local board upheld the termination by a three to one vote on August 4, 2004.<sup>2</sup> This appeal followed.

## 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 noncertificated support employee is entitled to administrative review of a termination pursuant to § 4-205(c)(4) of the Education Article.<sup>3</sup> 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 maintains that while she did slap Mrs. Smith in the face, she did so in self defense. She alleges that Mrs. Smith was angry with her for reporting Mrs. Smith's alleged mistreatment of a child, *i.e.*, placing a child for excessive time in the time-out room, and that Mrs. Smith approached Appellant in "a physically menacing way". Appellant alleges that Mrs. Smith shoved her into the desk and/or chair causing Appellant injury.

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<sup>1</sup>On April 8, 2004, Mrs. Wilson consulted a doctor who found a large hematoma on her lower abdomen. On April 12, 2004, Appellant had a CT scan which confirmed a soft tissue hematoma. In May, she had a neurological examination and an MRI which confirmed a hematoma on the lower abdomen. (Exhibit 5, A-3 through A-6)

<sup>2</sup>The dissenter, Judie Thelen, provided no explanation for her dissent.

<sup>3</sup>In 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. Because that matter has not been negotiated in Allegany County, the *Livers'* decision is controlling on the due process procedures afforded the Appellant.

There is no question that Appellant slapped Mrs. Smith; Appellant admitted to doing so. Testimony presented on behalf of the Superintendent also indicated that at the time the incident occurred, Appellant did not claim that Mrs. Smith had pushed her into the desk/chair. That claim was made later on.

It is evident, based on the local board's decision to uphold the termination, that the local board found the testimony on behalf of the superintendent more credible than the testimony presented on behalf of Appellant. See e.g. *Board of Trustees v. Novik*, 87 Md. App. 308, 312 (1991), *aff'd*, 326 Md. 450 (1992) ("It is within the Examiner's province to resolve conflicting evidence. Where conflicting inferences can be drawn from the same evidence, it is for the Examiner to draw the inferences."). The State Board may not substitute its judgment for that of the local board unless there is independent evidence in the record to support the reversal of a credibility decision. See *Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994). Based upon our review of the record we find no independent evidence to support Appellant's belated statement that Mrs. Smith pushed her into a desk or chair.

While Appellant has stated that the incident occurred because Mrs. Smith was angry with her for reporting Mrs. Smith's misuse of the time-out room, we do not find that a sufficient excuse for assaulting a teacher in front of students. Whether Mrs. Smith's actions violated Md. Educ. Code Ann. §7-1110 which regulates the use of time-out rooms as alleged by Appellant, is a personnel matter for the local superintendent.<sup>4</sup>

## CONCLUSION

For all these reasons, we find that the local board did not act arbitrarily, unreasonably, or illegally in this matter. We therefore affirm the decision of the Allegany County Board of Education terminating Appellant from her employment with the school system based on assault of another staff member.

Edward L. Root  
President

Dunbar Brooks  
Vice President

Lelia T. Allen

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<sup>4</sup>We note in this regard that some personnel action was taken with respect to Mrs. Smith (Tr. 27-28), but that information is confidential.

JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

Clarence A. Hawkins

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

April 20, 2005