

QUIANNA COOKE

Appellant

v.

BALTIMORE CITY BOARD OF  
SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-46

## OPINION

### INTRODUCTION

Appellant appeals the decision of the Baltimore City Board of School Commissioners (“local board”) to pay Appellant according to the teacher pay scale for the 2011-2012 school year after her reassignment from a principal position to a teaching position. The local board filed a Motion to Dismiss maintaining that the State Board lacks jurisdiction. Appellant opposed the motion and the local board responded.

### FACTUAL BACKGROUND

Appellant was employed by the Baltimore City Public Schools (“BCPS”) for approximately 39 years. (T.17). During the 2008-2009 school year, Appellant was a principal at Lamel Middle School. After Lamel closed, Appellant was assigned to work as a Loaned Executive for the Combined Charity Campaign for the 2009-2010 and 2010-2011 school years. (T.17 – T.19). Appellant remained employed by the school system and received her principal salary during the time she was on loan.

By letter dated April 14, 2011, the BCPS Central Office Manager advised Appellant that her assignment at the Combined Charity Campaign would be ending on June 30, 2011, and explained that she could be reassigned to a teaching position if lateral movement was not possible. (Motion, Ex. D). Appellant continued to report to the Combined Charity Campaign after that date because her supervisor there advised her to do so. (T.26; Hearing Record, Ex. D). On August 18, 2011, Appellant received a phone call from a BCPS human resources employee advising her that she was being reassigned to a teaching position at the Baltimore Rising Star Academy at Laurence G. Paquin and that she should report there for the 2011-2012 school year. (T.23). Appellant was present and teaching at Paquin on the first day students were in school. Her salary was subsequently reduced to that of a teacher salary. (T.29). Thereafter, on or about September 6, 2011, Appellant received written notification of the reassignment by letter dated August 23, 2011. (T.80; Motion, Ex. E).

On October 3, 2011, Appellant's union representative filed on her behalf a Uniform Grievance Report with the local board arguing that Appellant's reduction in salary was a "contract violation" because she was entitled to receive her principal/administrator salary for the remainder of the 2011-2012 school year. The union representative filed the matter as a Level IV Grievance under Article XI (Reduction in Force) of the Memorandum of Understanding ("MOU") between the Public School Administrators and Supervisors Association ("PSASA") and the local board. (Appeal, Ex. A).

On January 19, 2012, Hearing Examiner Gary Brooks conducted a hearing on the grievance. On March 6, 2012, he issued a proposed decision recommending that the local board affirm the decision of the Chief Executive Officer to pay Appellant in accordance with the teacher pay scale for the 2011-2012 school year.

On March 16, 2012, Appellant filed exceptions to the Hearing Examiner's proposed decision. Appellant claimed that the Hearing Examiner's finding that Appellant failed to meet the timely grievance notice requirements of Article XVI of the MOU was erroneous.

On March 27, 2012, the local board affirmed the Hearing Examiner's recommendations. By letter dated March 28, 2012, the local board's Executive Officer advised Appellant that the local board's decision was appealable to the State Board of Education pursuant to §4-205 of the Education Article. (Motion, Ex. F).

This appeal ensued.

#### STANDARD OF REVIEW

In cases involving a decision of a local board concerning a local policy, 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.01.05.05A.

When the State Board explains the true intent and meaning of State education law and State Board rules and regulations, we exercise our independent judgment on the law's meaning and effect. COMAR 13A.01.05.05(E).

#### ANALYSIS

In this case, Appellant was transferred from a principal position to a teaching position. The Appellant does not appeal the transfer decision. Rather, she appeals the local board's decision to reduce her salary to the teacher pay scale for the 2011-2012 school year. Appellant maintains in her appeal that the local board's decision is a violation of the MOU between PSASA and the local board, as well as a violation of her Regular Contract of employment. She concedes in her opposition to the local board's motion, however, that the State Board does not have jurisdiction over the alleged MOU violation because such violations should be referred to arbitration at the next step in the grievance process. (Opposition at p.2).

The local board argues that the entire case before the State Board should be dismissed because the case was filed as a grievance and decided as a grievance, and therefore the grievance procedures set forth in the MOU apply.

We agree with the local board. Appellant grieved her salary reduction under the Reduction in Force provisions of the MOU maintaining that the reduced salary is a “contract violation because she is required to receive her same salary for one year.” (Appeal, Ex. A). The local board never reached the merits of this issue in the grievance because it affirmed the Hearing Examiner’s recommendation finding that Appellant had failed to file her grievance timely. (Motion, Ex. G).

The Grievance and Arbitration Procedures in the MOU state that if the grievance is not resolved at the local board level, PSASA may refer the dispute to arbitration within ten school days after receipt of the local board’s written decision. (Motion, Ex. A). Thus, Appellant’s avenue of redress on the grievance was to have her union representative take the dispute to arbitration in a timely manner.

Time Limits of the MOU state:

Failure to submit a grievance within the specified time limits or to appeal a grievance to the next successive step or to arbitration within the specified time limits shall be deemed a waiver of the grievance and/or acceptance of the decision rendered at that step.

*Id.* Appellant did not have her union representative pursue arbitration of her behalf. Thus, under the provisions of the MOU, Appellant is presumed to have waived her grievance and/or accepted the decision.

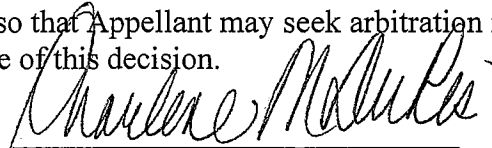
Appellant argues that the State Board has jurisdiction over her claim that the Hearing Examiner erred in his finding that the Regular Contract was not controlling in the case. We disagree. Appellant filed her case as a grievance of the Reduction in Force provisions of the MOU. Although Appellant claims in this appeal that she separately raised the Regular Contract issue, the record does not bear that out. Appellant did not file a separate appeal of the Regular Contract issue with the local board as part of a §4-205 appeal under the Education Article. The Hearing Examiner’s finding regarding the Regular Contract is part and parcel of the grievance decision, and it is a critical part at that. As a preliminary matter, he clarified that it was the MOU and not the regular contract that controlled. If Appellant disagreed with any part of the Hearing Examiner’s decision, her avenue of redress was to have it taken to arbitration pursuant to the grievance procedures. The State Board does not have jurisdiction over the issue in this instance and the case should be dismissed on that basis. COMAR 13A.01.05.03(C)(1)(d).

In the normal case, we would end here. But in this case, the local board’s own notice of its decision created confusion as to the appropriate path of review for Appellant. The cover letter attached to the local board’s order states that its decision may be appealed to the Maryland State Board of Education. (Motion, Ex. F). Given that the local board’s letter created confusion about

the avenue to be pursued by the Appellant, we remand the case to the local board so that the Appellant may proceed to arbitration on the local board's Level IV grievance decision if PSASA files the proper request within 10 school days of the date of this decision.

CONCLUSION

For the reasons stated above, we dismiss the claims before the State Board for lack of jurisdiction and remand the case to the local board so that Appellant may seek arbitration if properly requested within 10 school days of the date of this decision.



Charlene M. Dukes  
President



Mary Kay Finan  
Vice President

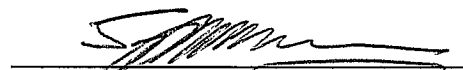


James H. DeGraffenreidt, Jr.

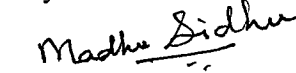
S. James Gates, Jr.  
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Absent

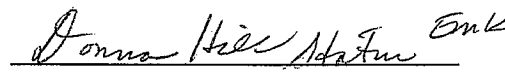
Luisa Montero-Diaz



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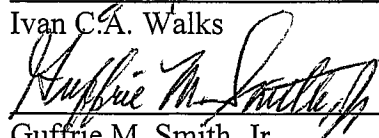
Madhu Sidhu



Donna Hill Staton



Ivan C.A. Walks



Guffrie M. Smith, Jr.

Absent

Kate Walsh

October 31, 2012