

DOROTHY HAMPTON

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-03

OPINION

INTRODUCTION

Ms. Hampton appeals the decision of Prince George's County Board of Education (local board) concerning a reduction in her salary. The local board filed a Motion for Summary Affirmance which the Appellant opposed. The local board filed a Reply.

FACTUAL BACKGROUND

Since 1995, Ms. Hampton was employed in the Prince George's County Public School System in various administrative support positions. In 2007, she was promoted to Parent Liaison Grade 8. In May 2010, she received a letter informing her that the Parent Liaison positions were going to be eliminated due to budget constraints. Thereafter, she received a letter re-assigning her to a Secretary II, Grade 15, Step 13 position. This resulted in a salary reduction from \$29.98 per hour (\$57,388.80 per year) to \$27.27 (\$56,721.60 per year). She worked in the position for some period of time. She is now retired.

Ms. Hampton asserts that, under the terms of the collective bargaining agreement, she should have been paid at her Parent Liaison rate of pay for the time she worked as a Secretary II. The local board did not agree. This appeal ensued.

STANDARD OF REVIEW

Because this appeal involves 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.

LEGAL ANALYSIS

The central issue in this case is whether or not Ms. Hampton's reassignment occurred under the Reduction in Force (RIF) provision of the collective bargaining agreement (CBA). If so, no salary protection is available.

A RIF occurs when it is necessary to reduce the number of employees "within a particular class because of lack of funds or other cause[s]." CBA §15, Motion, Ex. 3. The Appellant states that she was notified by letter in May 2010 that her position was being eliminated due to "budgetary constraints." (Appeal at 1).

The Appellant asserts that the Parent Involvement Liaison position were not "eliminated" but rather re-titled to Bi-Lingual Parent and Community Outreach Assistant. (Appeal at 4). She attached to her appeal the job description for each position. We have reviewed those job descriptions and find that they differ in the type of skills, skill sets, and duties to be performed. In our view, the position of Parent Involvement Liaison was eliminated or reduced for some reason, likely budgetary. We conclude, therefore, that the action taken was a Reduction in Force.

There is no salary protection in the Reduction in Force provisions of the CBA. The Appellant asserts, however, that the Reclassification Downward provision applies to prevent reduction of salary. That provision states "When an employee's position is reallocated to a class of lower salary grade, the employee shall be permitted to continue at his present rate of pay . . ." (Motion, Ex. 4). As the local board explains, however, the Reclassification Downward provision applies only if the position itself has been reclassified resulting in a lower pay grade. That did not occur here. The position was eliminated and replaced with a different position requiring different skills. It was not reclassified downward.

The Appellant also argues that the Retention of Salary provisions of the CBA apply to preclude a salary reduction. That provision states:

An employee whose position has been reduced in grade or who has been involuntarily transferred due to a school closing or decline in enrollment will continue to be paid at his or her current salary for a period of one year....

Appellant's Opposition Ex. 4, CBA Article 9 §5.

There is no evidence in the record that the personnel action here occurred because of a school closing or decline in enrollment. Moreover, the Appellant's "position" was not reduced in grade. It was eliminated. As a result she was bumped into a new position in lieu of layoff. (Motion, Ex. 2, Affidavit ¶ 7). Therefore, the Retention of Salary provision is not applicable.

Other Issues

The Appellant asserts that the school system did not follow the Reduction in Force procedures set forth in §15 of the CBA. Those procedures are:

- B. Procedures: When it becomes necessary to reduce employees within a particular class because of lack of funds or other cause, the following procedure shall apply.
 - 1. Temporary and Probationary Employees: All temporary and probationary employees in the affected classification shall be separated before any permanent employees are reduced.
 - 2. Permanent Employees: The reduction of permanent employees shall be on the basis of the following three factors:
 - a. Seniority in a particular class and grade;
 - b. Seniority with the Prince George's County Public Schools;
 - c. Where seniority in a particular class and grade is equal, skill, ability and efficiency may be taken into consideration by the Board in determining reductions in force.
 - 3. Bumping: If a permanent employee is scheduled to be laid off, he or she shall be offered a transfer or demotion to a lower class if her or she has preference over an employee in that class in accordance with Paragraph b. of this section and is qualified for the position occupied by the employee over who he or she has preference.
 - 4. Recall: Permanent employees shall be recalled from layoff in the reverse order in which they had been laid off in accordance with the procedures set forth above for reduction in force. An individual will retain recall rights for a period of two (2) years....

(Motion, Ex.3).

The Appellant contends that the local board did not separate all temporary and probationary employers before permanent employees were reduced. This argument was not raised below. Therefore, we will not consider it here.

The Appellant also contends that she should have been given a higher level position. The local board avers, however, that:

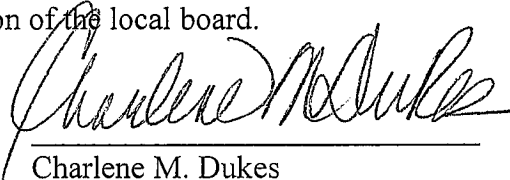
As a general rule, in order for Ms. Hampton to have been considered for the positions that she identified, such as Family Service Workers, Program Accounting Technician, Data Certification Technician, Secretary III, Internal Audit and Character Education Support Coordinator, per the CBA, she would have also have to have been deemed qualified for these positions. (See Affidavit Exhibit No. 3, Section 15.B.3). These positions were not identified by Human Resources as positions into which bumping could occur. However, Ms. Hampton interviewed for positions via the competitive job postings process, but was not selected because she was not evaluated as the most qualified candidate based upon interview assessments and scores.

(Motion, Ex. 2, Affidavit ¶ 13).


Ms. Hampton's contentions to the contrary are mere allegations which cannot stand in the face of a sworn affidavit.

CONCLUSION

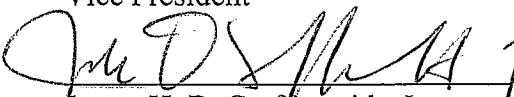
For all these reasons, we affirm the decision of the local board.



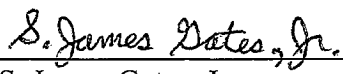
Charlene M. Dukes
President



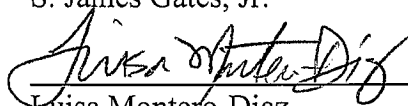
Mary Kay Finan
Vice President



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S. James Gates, Jr.



Luisa Montero-Diaz



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Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Ivan C.A. Walks

Ivan C.A. Walks

Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

Kate Walsh*

January 22, 2013

* Ms. Walsh's term expired on June 30, 2012. She served as a Board Member until her successor was appointed on January 4, 2013.