

GARY RICHARDSON,

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 13-29

OPINION

INTRODUCTION

Appellant filed an appeal contesting the decision of the Baltimore City Board of School Commissioners (local board) affirming his termination from his position as a Human Capital Strategist with the school system. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. The Appellant responded to the motion and the local board replied.

FACTUAL BACKGROUND

Appellant began his employment with Baltimore City Public Schools on July 1, 2009 as a Business Operations Liaison. (T.19). The position was eliminated during a restructuring and, in July 2011, Appellant accepted the position of Human Capital Strategist with the school system. (T.22). As a Human Capital Strategist, Appellant's job entailed developing strategies and initiatives to recruit and retain employees and helping with implementation of the new Baltimore Teachers Union (BTU) and Public School Administrators and Supervisors Association (PSASA) contracts. (T.23-24). The Human Capital Strategist position was an unaffiliated, at-will position that could be terminated at any time, with or without cause. (T.49-50, 69, 161-162). As an at-will employee, Appellant served at the pleasure of the Chief Executive Officer (CEO) and the CEO's designee, Dr. Kimberly Lewis, who was Appellant's supervisor. (*Id.*, 67). Because Appellant began employment in a new position, he also began a new one year probationary period. (T.162).

In August 2011, shortly after Appellant started the new position, Nakeia Drummond, Contract Implementation Specialist, contacted Appellant with a time sensitive request for assistance in compiling a list of all principals who had been on Performance Improvement Plans (PIPs). The data was needed because the PSASA employees were to receive increases in compensation based on their evaluations as part of their negotiated agreement. (T.139-140). Ms. Drummond spoke with Appellant orally and asked him to handle getting information from the networks while she collected information from the Central Office, specifically from Executive Directors, Irma Johnson and Roger Shaw. (T.137-142). Ms. Drummond had already been in

touch with Ms. Johnson when she saw the August 25, 2011 email from Appellant to Ms. Johnson. (T.142-144).

Appellant's August 25 email to Ms. Johnson contained the subject line "Principals on PIPs???" and had a long list of principals attached. It stated:

Irma,

Below is a list of principal (sic) with a "Satisfactory" rating. I need to know whether or not any of these principals were placed on a PIP for the SY'10-'11. We also need this information by COB Friday as this will affect the number of LU credits they will be eligible to receive towards compensation. Thank you for your time and help regarding this matter.

Ms. Johnson responded at 11:08 a.m.:

Who are you??????

Appellant replied at 3:19 p.m.:

I am not sure what you are asking, so I will answer your question like this: I am an employee of Baltimore City Public Schools who is concerned about getting the stakeholders of this organization correctly paid per the new PSASA contract as soon as possible. This means we need this information by COB Friday if we are going to be able to get the salary corrections in their 9/2 check. I am not sure if that answers your question, but I know of no other way to answer it. If you feel more comfortable giving the information to Nakeia Oliver, that will work just fine. The priority is to keep our stakeholders happy, engaged and free of worry regarding their pay. Thank you for your time and help regarding this matter.

Ms. Johnson's response at 4:37 p.m.:

First – I find it inappropriate for you to address me as Irma. I don't know you nor have I ever met you in a social or work setting. Therefore addressing me as Irma is unacceptable. Second – I find your subject: Principals on PIPs??? Offensive. What are you attempting to say? Third – You are not my supervisor therefore, you do not direct me to give me a COB time to submit information.

I find both of your emails to be offensive and inappropriate.

Appellant's final reply at 5:36 p.m.:

Ms. Johnson,

Regardless of your personal issues being addressed by your first name and your belief that the subject line is "offensive", the date given was to ensure our stakeholders receive monies owed to them per the new PSASA contract.

I believe it is extremely important that we get this right and it is done as soon as possible. If you don't care about the perceptions of the stakeholders in our organization, take your time and provide the information on your schedule. We will be awaiting your decision. Thank you for your time and have a great day.

Both Appellant and Ms. Johnson copied Appellant's supervisor, Dr. Lewis, on these emails, as well as several other individuals. At 5:00 p.m., Dr. Lewis sent an email to Ms. Johnson apologizing for her "staff's inappropriate behavior" in reference to Appellant's emails.

Dr. Lewis had also received complaints from two staff members concerning the tone and aggressiveness of Appellant's work interactions. (T.69-70). The two staff members were no longer willing to work with Appellant as a result of their interactions with him. (*Id.*). Dr. Lewis had also witnessed Appellant's "temper" and had concerns about it. (*Id.*).

Dr. Lewis and Jerome Jones, Labor Relations Manager, met with the Appellant to discuss the manner in which he communicated with Ms. Johnson. Dr. Lewis believed the emails to Ms. Johnson were inappropriate and could have been handled differently. She inquired whether Appellant would change how he handled the situation having had time to reflect on it. The Appellant responded that he would not change a thing. Dr. Lewis concluded that Appellant failed to possess the ability to create, foster, or maintain effective customer relationships and effective customer service. (T.70-71, 97, 103-105). Dr. Lewis was also concerned about Appellant's demeanor at the meeting and felt afraid because Appellant seemed volatile. (T.104-105).

Dr. Lewis' interaction with Appellant during the meeting solidified her view that the Appellant was not a good fit for the Office of Human Capital. Although she was originally only going to issue him a reprimand, she decided to terminate him instead. (T. 103).

By letter dated September 5, 2011, Dr. Lewis terminated Appellant from his employment. The letter stated:

In my capacity as the designee of Dr. Andrés Alonso, Chief Executive Officer, I have determined that your conduct summarized below warrants your termination as an employee of Baltimore City Public Schools (City Schools) effective September

2, 2011. The grounds for this action are as follows: Your at-will employment with Baltimore City Public Schools is at the pleasure of the Chief Executive Officer and is subject to termination with or without cause.

The "Notice of Termination of Employment" document in the Appellant's personnel file lists "at-will" as the reason for the termination.

Appellant appealed his termination to the local board. The local board referred the matter to a hearing officer who conducted a hearing on April 23, 2012. The hearing officer recommended that the local board uphold Appellant's termination from employment, finding that the Appellant was an at-will employee who could be terminated at any time, with or without reason, and that Appellant had failed to show that his termination was arbitrary, unreasonable or illegal. In the alternative, the hearing examiner also concluded that the Appellant had engaged in misconduct and conduct tantamount to insubordination through his communications with Ms. Johnson and during the meeting with Dr. Lewis and Mr. Jones.

Appellant filed exceptions to the hearing officer's recommendation, objecting to various findings of fact and alleging various misstatements contained in the hearing officer's report. For the most part, the alleged inaccuracies pertain to the sequence of events and various communications surrounding the data collection for the PIPs. The CEO responded to the exceptions asking the local board to uphold the termination decision. (6/11/12 Letter). By order dated June 13, 2012, the local board affirmed the hearing officer's recommendation and upheld the termination. (Local Bd. Order).

STANDARD OF REVIEW

The standard of review in appeals concerning the suspension and termination of non-certificated employees is that 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.

ANALYSIS

Appellant argues that the local board's decision was arbitrary, unreasonable or illegal because no reason was given for the termination which Appellant maintains violates the progressive discipline policy set forth in the Employee Handbook. The progressive discipline policy sets forth various gradations of punishment for school system employees up to and including termination based on various infractions.

In maintaining that the progressive discipline policy applies to him with regard to termination, Appellant is essentially arguing that he could only be terminated for cause. Appellant's own testimony discredits the position he asserts here. Appellant testified that his position as Human Capital Strategist was an at-will position that could be terminated at any time and that he served at the pleasure of the CEO and Dr. Lewis. (T.49). Dr. Lewis and Mr. Jones

also testified to this fact. (T.69, 161-162). Thus, there is no dispute that the position was an at-will position. An at-will employee may be terminated without cause so long as the reason is not illegal or discriminatory. See *Dozier v. Department of Human Services*, 164 Md. App. 526, 538 (2005). While Dr. Lewis may have had a basis to terminate the Appellant, it was not necessary that a basis be given for the termination due to Appellant's at-will status.

Appellant also maintains that the local board's decision violates State Board precedent because it fails to provide a reason for his termination and fails to address the exceptions he filed to the hearing officer's decision. He relies on the case of *Mohan G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-15 (2008), in which we held that a local board must convey a basis for its decision in order for the State Board to conduct a meaningful review on appeal. In *Mohan G.* we found that neither the decision of the local board, nor the decisions of the Chief Operating Officer or the hearing officer contained a sufficient explanation of the reasons for the decision such that the State Board could conduct a meaningful review. *Id.* That is not the case here. In this case, although the local board affirmed the decision of the hearing officer without providing a separate rationale, the hearing officer report contains an explanation for the termination decision. Thus, there is a rationale that allows this Board to review the local board's decision in this case.

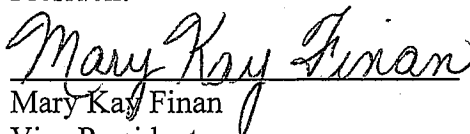
While we would have preferred the local board to deal with Appellant's exceptions, its failure to do so is of no consequence. One of the bases for the hearing officer's decision was that the Appellant was an at-will employee who could be terminated for any reason by the CEO or Dr. Lewis and the Appellant offered no evidence that the termination was for illegal reasons. While the hearing officer alternatively found that there was misconduct or behavior tantamount to insubordination that justified the termination under the disciplinary policy, there is no need to reach those issues or the Appellant's exceptions given that we affirm the termination on the basis that Appellant was an at-will employee who was not terminated for illegal reasons.

CONCLUSION

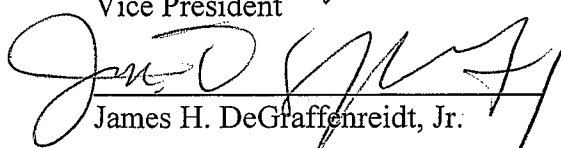
Because we find that the local board's decision was not arbitrary, unreasonable or illegal, we affirm the local board's decision to terminate Appellant from his employment with the school system.



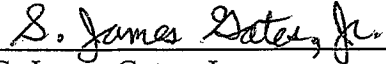
Charlene M. Dukes
President

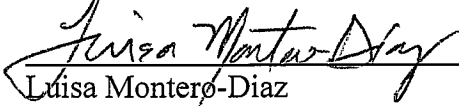


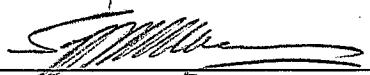
Mary Kay Finan
Vice President

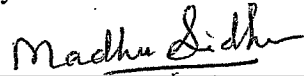


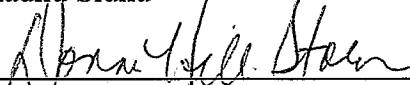
James H. DeGraffenreidt, Jr.

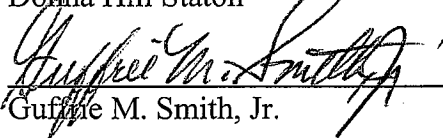

S. James Gates, Jr.


Luisa Montero-Diaz


Sayed M. Naved


Madhu Sidhu


Donna Hill Staton


Guffie M. Smith, Jr.

Linda Eberhart

May 21, 2013