THOMAS TYLER,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
HARFORD COUNTY BOARD OF EDUCATION (II),	OF EDUCATION
Appellee.	Opinion No. 15-17

OPINION

Thomas Tyler (Appellant) appeals the amended decision[1] of the Harford County Board of Education (local board) upholding his demotion from the Assistant Supervisor of Facilities Maintenance to the position of Preventative Maintenance Technician. The local board submitted a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded to the motion.

FACTUAL BACKGROUND

Appellant started working for Harford County Public Schools (HCPS) in 1997 as a preventative maintenance technician, which at the time was a brand-new department. (T. 187-88). Preventative maintenance technicians perform repairs and make replacements to equipment throughout the school system in order to prolong the life of machinery and avoid costly breakdowns. (T. 449). They are set up in teams of two across five zones in Harford County. (T. 499).

For most of his time as a preventative maintenance technician, Appellant partnered with C.V., and they were assigned to work in the Havre de Grace area. (T. 213). The technicians received a 30 minute lunch break each day (from 12-12:30 p.m.) and two 15-minute breaks (from 10-10:15 a.m. and 2-2:15 p.m.). Because repairs could carry over into these breaks, technicians would sometimes postpone their breaks and take them at different times if necessary. (T. 61-62).

C.V. lived near Havre de Grace High School and Middle School. (T. 28). During the work week, Appellant and C.V. would periodically go to her home at lunchtime so that she could let her dog outside. These visits occurred a few times a week when they happened to be in the area. Appellant would stay in the truck during these visits, though he sometimes would go inside her home to heat up his lunch. (T. 37, 238-40).

---

[1] The State Board remanded this case to the local board on September 23, 2014, because the local board's original decision failed to explain its reasoning in rejecting the recommendation of its hearing examiner. *Tyler v. Harford County Bd. of Educ.*, MSBE Order No. OR 14-08 (2014).

In addition, C.V.'s father owned a repair garage about three or four blocks away from the schools, but it was no longer in operation as a business. Appellant and C.V. sometimes stopped to greet C.V.'s father as they passed by and on a few occasions went to his garage to borrow tools for repairs. (T. 40, 240). There are no HCPS policies against conducting personal business during breaks so long as employees do not extend the break or lunch period. (T. 509). Appellant explained that these trips did not extend past their allotted time for lunch or breaks. (T. 368-70).

In 2005, Appellant twice overstayed his lunch break while visiting the garage with C.V. Once, in the summer of 2005, he stayed to watch a crew remove an underground fuel tank. Three months later, he stayed to watch soil samples being taken from the ground where the tank had been removed. (T. 217-227). Neither of these observations were directly related to his job. (T. 357). Appellant estimated he stayed approximately 45 minutes over his allotted lunch each time. (T. 224, 227). Appellant and C.V. still completed their work assignments for those days, but did not inform their supervisor of their actions or seek permission to overstay their lunch breaks. (T. 359).

In July 2010, Appellant was reassigned to a different zone with a different partner. (T. 246-49). In October 2010, Appellant received a promotion to Automated Building Systems Technician. (T. 267-68). He held that post until July 5, 2011, when he was promoted to Acting Assistant Supervisor for Facilities Maintenance. (T. 269). Appellant took over the role permanently in November 2011. (T. 279). Cornell Brown, the Assistant Superintendent of Operations, made the promotion decision. (T. 558, 565).

Sometime in late 2011 or early 2012, Brown received an anonymous call from a woman who complained that HCPS employees drove an HCPS van into a garage during the work day and left in another vehicle. (T. 582). Independently, other supervisors received reports about employees misusing work time and had begun investigating. (T. 585). Following an initial investigation, HCPS learned that the van in question was the one used by C.V. and her new partner, K.R. (T. 586). As a result, HCPS officials decided to interview the employees.

When questioned, K.R. admitted that he and C.V. often overstayed their breaks while visiting her home to let the dog out or while stopping by her father's garage. He told investigators that he was uncomfortable with the practice, but that he didn't say anything because he believed that the practice had occurred for a long-time, including with C.V.'s former partner. Because Appellant was C.V.'s former partner, he was also interviewed. (T. 475-81).

Brown concluded that Appellant gave inconsistent answers during his interview, initially stating there were more frequent visits to C.V.'s home and the garage for a variety of reasons before later admitting to only two incidents of overstaying his time: the two visits to the garage in 2005 to watch the fuel tank removal and soil samples being taken. (T. 597, 669). Appellant stated in his interview that it would be wrong for an employee to misuse work time. (T. 594).

Brown suspended K.R. for two weeks without pay. (T. 514). C.V. was demoted to a custodial position. (T. 92). Appellant received a written reprimand on April 20, 2012. (Motion, Ex. 4). He later was demoted back to his original role as a preventative maintenance technician. Brown explained that he demoted Appellant because he was an administrator charged with

enforcing rules and regulations, and his prior breaking of those rules undermined Brown's confidence in his ability to supervise others. (T. 500). He added that had he known about the incidents, it would have affected his decision on the promotion. (T. 257). The difference in salary between the two positions was roughly $43,000 a year: Appellant made $89,610 as a supervisor and $45,994 as a preventative maintenance technician. (T. 271-72).

Appellant appealed the demotion. His case was referred to a hearing examiner, who conducted a hearing over the course of four days, from February 6 to March 19, 2013, resulting in a 683-page transcript. On November 4, 2013, the hearing examiner issued his conclusion that the demotion was arbitrary and unreasonable. As a remedy, the hearing examiner recommended reinstating Appellant to his former position. (Hearing Examiner Recommendation).

The Interim Superintendent filed 92 exceptions to the recommendation. (Motion, Ex. 1). On May 5, 2014, the local board concluded by a vote of 4-1 that there was a sufficient basis to reverse the decision of the hearing examiner. After Appellant appealed the decision to the State Board, the State Board remanded the case to the local board for failure to state the grounds upon which it based its rejection of the hearing examiner's recommendation. *Tyler v. Harford County Bd. of Educ.*, MSBE Order No. OR 14-08 (Sept. 23, 2014).

The local board issued an amended decision on November 21, 2014, again rejecting the hearing examiner's recommendation and upholding the demotion. The local board faulted the hearing examiner for not giving appropriate weight to Brown's testimony that Appellant's behavior caused him to lose confidence in his ability as a supervisor. The local board maintained that it was reasonable for the superintendent to conclude that, had the misuse of time been disclosed, it would have impacted the decision to promote Appellant. The amended decision cites to State Board cases, and other cases from around the country, that upheld the authority of superintendents to terminate employees because of a lack of confidence in their leadership and judgment. (Motion, Ex. 3).

This appeal followed.

STANDARD OF REVIEW

The decision of a local board concerning a local dispute or controversy is presumed to be *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A. A decision may be arbitrary or unreasonable if it is (1) contrary to sound educational policy or (2) a reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached. COMAR 13A.01.05.05B.

LEGAL ANALYSIS

A local superintendent has broad statutory authority to transfer personnel "as the needs of the system require." Md. Code Ann. Educ. 6-201(b). Numerous State Board opinions and the Court of Special Appeals in *Hurl v. Bd. of Educ. of Baltimore County*, 107 Md. App. 286 (1995), affirm that a transfer of personnel to a lateral position or to a position of lower rank is within the

discretion of the local superintendent. *Johnson v. Somerset County Bd. of Educ,* MSBE Op. No. 14-38 (2014) (citing cases); *Foster v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 14-61 (2014).

Although characterized as a "demotion," our cases have not drawn a distinction between transfers that occur for disciplinary reasons and those stemming from other causes. Appellant mistakenly relies on our previous decision in *Martin v. Baltimore City Bd. of School Commissioners*, MSBE Op. No. 06-25 (2006), for the proposition that "cause must be demonstrated for disciplinary demotions, but not for mere reassignments." (Reply to Motion at 3). In *Martin*, we stated that cause is required for discipline that relates to the suspension or dismissal of an employee under Educ. §6-202. *Id.* at 6. We drew a distinction between situations in which a reassignment occurred for illegal reasons (such as because an employee engaged in a protected activity) and those that were simply a result of discipline and therefore not illegal. *Id.* at 7. As we stated in *Martin*, "the local superintendent is not required to show cause for reassignment." *Id.* Appellant has raised no issue of illegality, so we are left with the question of whether the decision was arbitrary or unreasonable.

Appellant maintains that the local board's decision, rejecting the recommendation of the hearing examiner, was not supported by substantial evidence. He argues that the evidence showed he only overstayed his lunch break on two occasions and that his demotion was far out of proportion to his actions. Appellant denies having described his own actions as being wrong (Appeal at 21); argues that the local board conflated his actions with the misconduct of C.V. and K.R.; (Appeal at 17-20); and that Brown could not have lost confidence in Appellant's ability to lead because there was no basis to support that conclusion. (Appeal at 22-26). Furthermore, he contends that his demotion was unreasonable because K.R. was not demoted. Appellant seeks reinstatement in his supervisory role, as well as back pay and attorney's fees.

We note that this case does not hinge on credibility determinations made by the hearing examiner. Although Appellant stresses that he and his witnesses were considered credible by the hearing examiner, so, too, were the witnesses for the local board.

An additional point raised by Appellant is that the incidents occurred prior to his becoming a supervisor and were seven years old by the time they were discovered. In our view, the length of time that passed and the fact that the incidents took place while he served in another job role do not impact our decision. To conclude otherwise would absolve employees of any consequences of misconduct so long as their employer does not immediately discover it, or they transfer to a new position. Similarly, Appellant's argument that his demotion was unfair because K.R. was not demoted overlooks the fact that Appellant was in a supervisory role when the misconduct was discovered. That alone was a distinction that could justify disparate treatment because of Appellant's role in having to discipline his employees for similar behavior.

The incidents of overstaying time are the sole blemish on Appellant's professional record. Multiple witnesses at the hearing praised Appellant's work ethic and character. Between 1997 and 2010, he was never disciplined and he consistently received successful evaluations. (T. 197-209). For these reasons, the hearing examiner concluded that it was in the best interest of HCPS to have Appellant as a supervisor because of "his expertise, skills and leadership" and that

his talents would be underutilized as a preventative maintenance technician. (Hearing Examiner Recommendation, at 12).

Brown, who made the transfer decision, explained that he felt Appellant exercised a pattern of misusing work time. He based that conclusion on Appellant's admissions, what he believed were inconsistencies in Appellant's explanations, and his own subsequent loss of confidence in Appellant's ability to lead. Had he been aware of the misuse of time, Brown stated it would have affected the promotion decision. In rejecting the hearing examiner's recommendation, the local board focused on Brown's rationale and the broad discretion afforded to the superintendent to transfer employees.

The hearing examiner's recommendation, and the arguments raised by Appellant, tend to focus on whether it was a good decision to remove Appellant from his supervisory role and demote him to the position of a technician, rather on whether it was an arbitrary or unreasonable one. In *Hurl*, the Court of Special Appeals held that superintendents are permitted to make transfer decisions based on their subjective professional judgments. *Hurl*, 107 Md. App. at 309. "[E]ven if his or her subjective rationale is without merit that does not mean the decision is arbitrary." *Id.*

There is no dispute in the record that Appellant overstayed his breaks by approximately 45 minutes on at least two occasions. In our view, reasoning minds could have disagreed about the proper response to Appellant's conduct and whether it required further action. In fact, the record indicates that Brown and his colleagues had such a discussion before settling on Appellant's demotion as the response they felt was appropriate. Our role, however, does not allow us to substitute our judgment for that of the superintendent. Given that there were admitted instances of misconduct, we cannot say that *no* reasoning mind could have reached the same conclusion that the superintendent did in this situation.

CONCLUSION

For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

Mary Kay Finan
President

James H. DeGraffenreidt, Jr.

Linda Eberhart

Chester E. Finn, Jr.

S. James Gates, Jr.

Larry Giammo

Luisa Montero-Diaz

Sayed M. Naved

Madhu Sidhu

Andrew R. Smarick

Guffrie M. Smith, Jr.

May 19, 2015