NEW BOARD OF SCHOOL COMMISSIONERS OF BALTIMORE CITY	BEFORE THE
v.	MARYLAND
BALTIMORE TEACHERS' UNION;	STATE BOARD
* * *	
BALTIMORE TEACHERS' UNION	OF EDUCATION
v.	Opinion No. 99-53
NEW BOARD OF SCHOOL COMMISSIONERS OF BALTIMORE CITY	

OPINION

On July 22, 1999, the State Board received an appeal filed by the New Baltimore City Board of School Commissioners (BCPSS) involving a dispute between BCPSS and the Baltimore Teachers' Union (BTU). As phrased by the City Board, the dispute is "whether a grievance filed by the BTU against BCPSS is arbitrable. If it is not, this appeal asks the State Board to decide whether BCPSS acted legally by taking the actions which the grievance challenges."

Five days later on July 27, 1999, the BTU filed a response to the City Board's appeal, maintaining that the appeal was pre-emptory to avoid an appearance before a neutral labor arbitrator and that the board's appeal may well be unnecessary as the arbitrator could first decide questions of substantive arbitrability. The BTU maintains that the City Board violated its duty to bargain in good faith on three matters: ARD Managers, school calendar, extended duty days. The union requests that its letter be accepted to initiate a proceeding against the local board and that it be consolidated with the local board's appeal and referred to the Office of Administrative Hearings "to compile a full and complete record with testimony and evidence from the parties, and with issues of credibility, if any, determined by the ALJ."

At the request of the State Board, the parties presented oral argument to the Board on September 21, 1999, on whether the disputed issues are legally controlled by the principles affirmed in *Montgomery County Educators' Association v. Board of Education of Montgomery County,* 311 Md. 303 (1987).

FACTUAL BACKGROUND

On June 2, 1999, the BTU filed a grievance accusing the City Board of violating § 16.2 of its agreement by taking the following actions without prior notice or bargaining over the substance of the changes or over the effects or impact of the changes on members of the bargaining unit:

(1) BCPSS changed ARD Managers from 12 month to 10 month employees;
(2) BCPSS adopted beginning and ending dates and the number of duty days for teachers for the 1999-2000 school calendar; and
(3) BCPSS extended the 1998-1999 school year through June 16.

On June 7, 1999, the City Board responded that the issues raised by the BTU were not arbitrable. On June 28, 1999, the BTU initiated proceedings before the American Arbitration Association for final and binding arbitration on the same issues. The City Board responded on June 29 that it would not arbitrate the grievance because according to decisions of the State Board and the courts in Maryland, the issues raised by the grievance were not subject to arbitration. Their response also indicated that the BTU could file an appeal to the State Board. However, because the BTU did not file an appeal, the City Board filed its appeal requesting the State Board to declare that the subjects of the grievance are not arbitrable as a matter of law and as a matter of educational policy and that the City Board had the right to take the actions it did.

(1) ARD Managers[1]

A review of documentation in the record discloses that prior to 1995, ARD Managers were ten month employees. However, in order to meet the obligations of the *Vaughn G.,* Consent Decree[2] to bring all special education time line activities into compliance with State and federal law and after meeting with approximately 300 principals, assistant principals, and ARD Managers, Sister Feeley[3] unilaterally recommended to the Court approved Management Oversight Team by memorandum of July 31, 1995, that the ARD Manager position be reclassified from a 10 month to a 12 month, 8 hour day position. The Management Oversight Team accepted this recommendation at its meeting on August 1, 1995. There was no negotiation on this reclassification.

The union references a September 5, 1995 memorandum from Alan Harris to the BTU President as evidence that the reclassification had been negotiated. However, a review of that memorandum indicates that as a result of a meeting among Sister Feeley, the BTU President, and the School System Director of Legal Affairs/Labor Relations, a plan of transition to implement the new hours and working conditions for the 12-month ARD Managers was developed.

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[1]ARD Managers are defined as school based staff members who report to the principal and who work with students with disabilities. Memorandum of Understanding (MOU) between the Baltimore City Board of School Commissioners and the BTU, ¶1-5 (1998 & 1999).

[2]*Vaughn G., et al. v. New Baltimore City Board of School Commissioners*, United States District Court for the District of Maryland, Case No. MJG-84-1911.

[3]Sister Feeley served as the Court-appointed Special Education Administrator from 1995 to 1997.

Four years later by memorandum of May 5, 1999, Gayle Amos, the Special Education and Student Services Officer, recommended to Dr. Booker, CEO for the Baltimore City School System, that the position of ARD Manager be reclassified from a 12 month, 8 hour day to a 10 month, 8 hour day, but that the lead ARD Manager position remain at 12 months. The responsibilities that were done by the 12 month ARD Managers during July and August would be fulfilled by the lead ARD Managers as well as principals and assistant principals who work 12 months. Additional responsibilities would be fulfilled by 10 month employees who chose to work on a per diem basis during the summer. Dr. Booker accepted this recommendation and notified the ARD Managers of his decision through a May 28, 1999 memorandum. The Union argues that the effect of this reclassification is to diminish the annual earnings of ARD Managers by 16.6% and that the City Board may not make such classification decisions unilaterally.[4]

(2) The School Calendar

The MOU at issue between the City Board and the BTU provided in § 7.1: "The starting dates for new teachers and returning teachers for school year 1998-99 shall be determined after an evaluation of the prior school year by the Union and the Board." There is no explanation in the MOU of what the parties meant by "evaluation" nor is there similar language pertaining to the 1999-2000 school year. The City Board adopted a school calendar for the 1999-2000 school year which provided a starting date of August 23, 1999, and an ending date in June, 2000.

The Union maintains that by past practice the City Board and the Union had always consulted on the school calendar and that they had always negotiated the number of duty days. The Union also asserts that last year the same dispute for the 1998-99 school calendar was arbitrated. The arbitrator found that for ten years or more, labor agreements between the City Board and BTU required management and labor to consult and to evaluate the prior school year before the final dates for a new school calendar were set and that the City Board had violated the MOU by failing to evaluate the prior school year in consultation with the BTU. With respect to the starting date for school, the arbitrator found that the grievance was arbitrable because "the evaluation of the prior school year" was a "process," and that the State Board decisions allow negotiations when there are violations of process. The arbitrator did find that the City Board acted properly and not in violation of the MOU by scheduling 190 duty days for teachers.

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[4]That the 12-month ARD position would be subject to reclassification is underscored by a requirement in the 1996 *Vaughn G.* court-ordered Long Range Compliance Plan. Objective V.A.(d) of that plan requires the City school system to "develop alternative [special education] staffing position allocation models that would be more cost-effective without compromising quality of services or goals of LRCP" and (e) requires the system to "develop cost-effective operating procedures that do not compromise quality of services or goals of LRCP." *See* 5/5/99 Memorandum of Gayle Amos *quoting from* the court-ordered plan. It would have been preferable if the City School System at that time had clearly indicated to the ARD managers that their positions were subject to future reclassification. Had such notice been given, we think the current ARD manager dispute could have been avoided.

The remedy that the arbitrator awarded on August 17, 1998, for the procedural violation was "that the parties shall meet to evaluate the 1997-1998 school year for the purpose of establishing starting dates for the 1998-99 school year." However, no meeting was held and pursuant to the school calendar which had been adopted on March 10, 1998, school started for teachers one week later on August 24, 1998.

(3) June 15 and 16, 1999 Duty Days

For a number of years prior to the 1998-99 school year teachers in Baltimore City had never worked more than 188 days. However, § 7.1 of the MOU provided that "the length of the school year shall be a maximum of one hundred and ninety (190) days." For the 1998-99 school year, the City Board adopted a calendar requiring 190 duty days for all school based personnel. June 15 and 16, 1999 were the 189th and 190th duty days for that school year.

The Union concedes that the MOU for the 1998-99 school year called for 190 teacher work days. It argues: "However, given snow days and other events, teachers were not scheduled to work the full 190 days before students were dismissed for the year. Despite that fact, there remained no useful or beneficial purpose to require teachers to report to work on June 15 and June 16 other than to require them to report to fill out the entire 190 days. Indeed, no plans existed for professional activates (sic) for the month of June 1999." The Union asserts that time served by the teachers on June 15 and June 16 was just that - time served. The Union maintains that it was therefore an unfair labor practice.

ANALYSIS

The issues before the State Board in this case are virtually identical to the issues before the State Board in *Montgomery County Educators' Association v. Board of Education of Montgomery County*, 311 Md. 303 (1987). As phrased by the hearing examiner, the issues there were whether the Board of Education of Montgomery County was required to engage in good faith negotiations on the following items:

A. The school calendar; and
B. The salary impact of classifications of new positions and reclassifications of existing positions.

The union in that case charged the local board with engaging in unfair labor practices through its refusal to negotiate on those two items.

The Court of Appeals described the school calendar as follows:

> The school calendar sets the beginning and end of the school year. In addition, the calendar determines the days during the school year on which the schools are open for instructional purposes and for

> teacher 'duty days.' Conversely, the calendar determines the days during the school year on which the schools are closed for holidays and teacher 'professional days.'

311 Md. at 305, n. 1. The Court defined reclassification as follows:

> Reclassification occurs when, as a result of reassessment of an employee's duties and responsibilities, a supervisor decides to assign the employee a new 'classification' or status. This reclassification may result in an increase or a reduction of the employee's salary. *Id.*

The State Board determined that school calendar and job reclassification decisions are not subject to mandatory collective bargaining, even though reclassification decisions may affect an individual teacher's wages or salary. In affirming the State Board, the Court approved the two step test employed by the State Board to determine whether a subject is negotiable. That two step test is:

> (1) Whether there is a statute that precludes negotiation on a topic by delegating that authority to the local board or its agents. If there is such a statute, the issue is an illegal topic of bargaining.
>
> (2) If there is no statute on the topic, then it is necessary to balance the interests of the employee in the matter against the interests of the school system as a whole. If the employee's interests outweigh the interests of the school community, the matter is a mandatory subject of bargaining. If the school system's interests predominate, the issue is a non-negotiable matter of educational policy within the control of the local board.

Applying that two step test, the Court agreed with the State Board that setting the school calendar is an illegal subject of bargaining. The Court quoted favorably from the State Board's opinion:

> The County Board must harmonize the interests of three employee unions and the need for parents and students to be informed of the school calendar in advance in order to plan their schedules. If the school calendar was deemed negotiable and if an agreement could not be reached between the union and the County Board it is very likely that Section 6-408(d) impasse procedures would be time-

> consuming with the school calendar remaining unscheduled to the detriment of members of the community. 311 Md. at 319.

On reclassification, the Court also agreed with the State Board that job reclassification decisions are not subject to negotiation. The Court noted that the impact of reclassification decisions upon individual employees may be significant and may include a reduction in salary. However, the Court affirmed the State Board's conclusion that, "submitting such decisions to collective bargaining would have a serious adverse impact on a local board's ability to operate its school system." 311 Md. at 322-323.

From our review of the documents filed in this matter and applying the legal principles noted above, we find that the disputed issues are controlled by the *Montgomery County Educators' Association* case and are illegal subjects of bargaining. It follows that since the disputed issues are illegal subjects of bargaining, the City Board did not act in bad faith in making decisions on the school calendar, the duty days, and the job reclassifications unilaterally.

CONCLUSION

For these reasons and finding that the disputed issues are illegal subjects of bargaining, we affirm the decisions of the New Baltimore City Board of School Commissioners on these matters.

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