

JOSEPH P. HEANEY,

Appellant

v.

NEW BOARD OF SCHOOL
COMMISSIONERS FOR BALTIMORE CITY,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-2

OPINION

In this appeal, Joseph Heaney argues that the local board's decision to transfer him from his position as principal of Calverton Middle School to principal of Dr. Lillie M. Jackson Elementary School was arbitrary, unreasonable and illegal, and that under the PSASA Collective Bargaining Agreement, he was entitled to a grievance hearing concerning the reasons for his transfer. The local board has filed a Motion for Summary Affirmance.¹ The Appellant has filed a reply.

BACKGROUND

While Appellant was serving as principal of Calverton Middle School, he received notice on June 11, 1998, that he was being reassigned as principal of Dr. Lillie M. Jackson Elementary School.² On that same day, Appellant discussed the matter with his immediate supervisor, Dr. Cynthia M. Janssen, Area Executive Officer, who advised him that the decision was made by Dr. Robert Schiller and was in the best interests of the school system. The transfer decision was confirmed by letter dated June 12, 1998 from Robert E. Schiller, and became effective on July 1, 1998.

On June 14, 1998, Appellant requested a hearing before the local board to review the pending transfer. In that letter, he indicated his belief that the transfer was in retaliation for his public criticism of Dr. Schiller. He also requested an explanation of the reasons for the transfer.

¹The local board's response is brief focusing on the broad authority of the superintendent (CEO) to transfer personnel as the needs of the system require.

²Appellant had served as principal at Dr. Lillie M. Jackson Elementary from 1991-1995, at which time he was assigned to Calverton.

Thereafter, several meetings were held between the local board and a group of constituents who requested that Appellant's transfer be rescinded. These efforts were denied. During one such meeting on June 23, 1998, however, Appellant alleges that he was advised that he could file a grievance, which he did on July 5, 1998. Appellant's request was denied July 20, 1998. The denial explained that the transfer was a reassignment decision within the discretion of the Chief Executive Officer (CEO) pursuant to state statute and the PSASA Contract, Art. VIII (A).³

Appellant filed a request to proceed to the next level of the grievance process on July 25, 1998. That request was denied by the local board which indicated that the assignment and transfer of personnel is not a matter subject to grievance proceedings. This appeal followed.

ANALYSIS

It is very well established that a transfer of a principal or any other staff member is within the discretion of the local superintendent. *See, e.g., Hurl v. Board of Education of Baltimore County*, 6 Op. MSBE 602, 605 (1993), *aff'd*, 107 Md. App. 286 (1995); *Earl Hart v. Board of Education of St. Mary's County*, MSBE Opinion No. 97-30 (June 25, 1997); *Chenowith v. Board of Education of Baltimore County*, MSBE Opinion No. 95-29 (1995); *Cameron v. Board of Education of Baltimore County*, 6 Op. MSBE 814, 815 (1995). Specifically, the local superintendent is vested with broad statutory authority to assign professional personnel and transfer them as the needs of the schools require. Md. Code Ann. Educ. § 6-201 (b)(2)(ii) (Supp. 1997). Moreover, no tenure attaches to administrative positions. Rather, employees in administrative positions acquire and maintain tenure in employment with the school system and not in any particular position. *Cameron*, 6 Op. MSBE at 815-816.

In support of his contention that the transfer was subject to the grievance procedures which entitled him to a hearing, Appellant cites to the PSASA Agreement which states that "Administrators/Supervisors shall be given an opportunity to discuss their assignments with the appropriate supervisor."⁴ PSASA Agreement, Art. VIII (B). This provision does not confer a right to a hearing in this case. Rather, it provides Appellant the right to notice of the transfer decision and an opportunity to discuss that decision with his supervisor. Such a meeting did occur between Appellant and his supervisor, Dr. Janssen. At that time, Appellant was advised

³In Baltimore City, the CEO is the individual responsible for the overall administration of the school system. *See* Educ. § 4-304 (1998 Supp.).

⁴Appellant actually refers to the Memorandum of Understanding between the PSASA and the School Board; however, he submitted a document that appears to be an excerpt from the PSASA contract and not the Memorandum.

that his transfer was in the best interests of the school system.⁵ At best, Appellant was entitled to documentation of the transfer as indicated in the Guidelines for Administering the Performance-Based Appraisal Instrument for Principals which states that “[a]dministrative decisions such as promotion, transfer, demotion, and salary determination of an employee require appropriate documentation and adherence to approved procedures.” Appellant received appropriate documentation of the transfer by letter dated June 12, 1998.⁶ The CEO was not required to establish cause for Appellant’s transfer. *See Hurl* and other cases cited above.

Appellant claims that the PSASA agreement provides that administrators may file a grievance for all claims arising under the agreement, including administrative transfer decisions. However, as explained above, administrative transfer decisions are not subject to the grievance procedures under that agreement. To the extent that provisions of the agreement attempt to confer a right to a hearing in an administrative transfer case such as this, any such provision is void as being contrary to the dictates of Maryland law. Appellant would be entitled to a hearing only if he were transferred for illegal reasons such as illegal discrimination. Here, the record fails to demonstrate that the CEO acted in an arbitrary, unreasonable or illegal manner.

CONCLUSION

For these reasons, we affirm the decision of the New Board of School Commissioners of Baltimore City.

Walter Sondheim, Jr.
President

Edward Andrews
Vice President

Raymond V. Bartlett

ABSTAIN*
JoAnn T. Bell

Philip S. Benzil

⁵The State Board takes notice of the status of Calverton as a reconstituted school with low student test scores and other low rates in the Maryland School Performance Standards.

⁶Appellant includes a July 1, 1987 memorandum from Vandalee H. Clark regarding administrative transfers. This 1987 memorandum is irrelevant and should be disregarded. The New Board of School Commissioners for Baltimore City and the CEO are now in charge of the governance and administration of the City school system. Transfer decisions are made pursuant to the authority provided by Md. Code Ann. Educ. § 6-201.

George W. Fisher, Sr.

Morris Jones

ABSTAIN*

Marilyn D. Maulsby

Judith McHale

Adrienne L. Ottaviani

John Wisthoff

* Ms. Bell and Ms. Maulsby are newly appointed members of the State Board of Education and did not participate in the review of this appeal.

January 26, 1999