

MARTHA BROWN,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-21

OPINION

This is an appeal of the local board's affirmance of the superintendent's decision to reassign Appellant from her position as Supervisor of Mathematics to Regional Instructional Specialist. Appellant asserts that the local board's decision was arbitrary, unreasonable and illegal, and that there is insufficient evidence to support it. The local board has filed a Motion for Summary Affirmance maintaining that its decision should be upheld. The Appellant has filed a reply opposing the motion.

FACTUAL BACKGROUND

Appellant became Supervisor of Mathematics for the Prince George's County Public School System in 1985. From 1995 through 1998, Dr. Leroy Tompkins, then Chief Divisional Administrator for Instruction, received many complaints regarding Appellant and her performance as Supervisor of Mathematics. As stated by Dr. Tompkins in his affidavit:

...

3. From the time I took the position of Chief Divisional Administrator for Instruction, I received complaints, concerns and criticisms, regarding Dr. Brown, as the Supervisor of Mathematics.

4. For example, at a meeting of elementary school Principals on October 10, 1995, a large number of Principals approached me with concerns that they had about the mathematics program in general and Dr. Brown's leadership of that program in particular. Subsequent to that meeting, I requested that the Principals supply me with written concerns, and I summarized those concerns and wrote a Memorandum to the then Deputy Superintendent and to Dr. Brown's immediate supervisor regarding those matters....

5. The meeting described in the preceding paragraph was in the first year of my tenure as CDA for Instruction, and I became very concerned about the perception of Principals regarding Dr. Brown's leadership style.

6. In the years that followed, I continued to receive similar complaints, concerns, and criticisms of Dr. Brown. For example, during the 1995-96 school year, I attended a symposium where Chief Educational Administrators (Principals) and mathematics school based leaders met to share their concerns about the mathematics program in the public school system. Among other problems expressed at that meeting were concerns that specifically related to Dr. Brown, her lack of interpersonal skills, her leadership style, and her apparent inability to lead and interact appropriately with staff within the schools.

7. My concerns with Dr. Brown were focused in the areas of both curriculum development and in leadership and interpersonal skills in communicating the mathematics curriculum to Principals and teachers.

8. During the summer of 1997, the school system was required to return monies to the Maryland State Department of Education from a grant we received to conduct inservice training of mathematics teachers, because teachers refused to sign up to participate in the program. In my view, this lack of participation was largely the result of poor leadership by Dr. Brown as Supervisor of Mathematics.

9. In addition to my concerns about Dr. Brown specifically, the school system, in the beginning of the 1997-1998 school year, was in the process of moving into a different direction in the area of mathematics, and I felt that it would be in the best interest of the school system to obtain new leadership for the mathematics program, both in terms of implementing a new curriculum and instructional design and because of what I perceived to be the lack of leadership from Dr. Brown in the past.

Dr. Brown began a leave of absence based on medical reasons on September 25, 1998, and has remained out on sick leave since that date.¹ On December 1, 1998, a meeting was held among then Deputy Superintendent, Robert E. Slade; Dr. Tompkins; Dr. Brown; and Dr. Brown's attorney, where Appellant was advised that she was being reassigned from her position

¹During her period of sick leave, Dr. Brown has been earning a level of salary and benefits that she had been earning as Supervisor of Mathematics. In fact her salary has increased by two adjustments based on the terms of the Negotiated Agreement. See Affidavit of Franklin A. Rishel, Deputy Superintendent of Schools.

as Supervisor of Mathematics to a position as Special Projects Specialist. The Association of Supervisory and Administrative School Personnel (“ASASP”) then filed a grievance on Appellant’s behalf on or about December 7, 1998. *See* Memorandum on behalf of the Superintendent of Schools.

Because this case was not resolved before Dr. Jerome Clark vacated his position as Superintendent of Schools for Prince George’s County, the matter was still ongoing when Dr. Iris Metts took office as the new superintendent. In an effort to resolve the longstanding grievance, on March 21, 2000, Deputy Superintendent Franklin A. Rishel met with the Executive Director of ASASP, Doris A. Reed; Appellant’s attorney; and counsel for the superintendent. At this meeting, Mr. Rishel discussed with Appellant’s representatives the reasons for the action taken by the prior administration in transferring Appellant and gave them the opportunity to advise him of Appellant’s preferences concerning reassignment. He also shared with them a proposed administrative assignment to Regional Instructional Specialist. *See* Affidavit of Franklin A. Rishel. Further correspondence ensued between ASASP and Mr. Rishel. On June 8, 2000, Appellant requested that her case proceed to a formal appeal before the local board.² Oral argument was heard on December 14, 2000. On January 11, 2001, the local board upheld the Superintendent’s decision transferring Appellant from her position as Supervisor of Mathematics to a position as Regional Instructional Specialist.

In the appeal materials she submitted, Appellant sets forth a history of the problems she encountered with the school system as Supervisor of Mathematics which she believes influenced the transfer decision. *See* Affidavit of Martha A. Brown. Most notably, Appellant indicates that she confronted numerous difficulties getting the principals and teachers within the school system to comply with the established curriculum and courses approved by the local board. She claims that this resulted in complaints about her by those from whom she was mandating compliance. She also indicates that she received little to no support from the Division of Curriculum and Instruction in her endeavors as Supervisor of Mathematics. In sum, Appellant believes that she was the target of unwarranted attacks questioning the effectiveness of the mathematics office which ultimately and arbitrarily led to her transfer and reassignment.

ANALYSIS

Standards and Issues on the Transfer

It is very well established, based on State Board opinions and the Court of Special Appeals’ affirmance of *Hurl v. Board of Education of Baltimore County*, 6 Op. MSBE 602, 605 (1993), *aff’d*. 107 Md. App. 286 (1995), that a transfer is within the discretion of the local superintendent. *See, e.g., Earl Hart v. Board of Education of St. Mary’s County*, 7 Op. MSBE 740 (1997)(affirming transfer of an assistant principal to a position as classroom teacher);

²On June 16, 2000, ASASP advised the local board that it would not arbitrate Appellant’s grievance over her “removal from a math supervisor position.” *See* Letter from ASASP attorney.

Chenowith v. Board of Education of Baltimore County, 7 Op. MSBE 197 (1995)(affirming transfer of assistant principal at one school to position as director of recruitment at the Milford Mill Academy); *Cameron v. Board of Education of Baltimore County*, 6 Op. MSBE 814, 815 (1995)(affirming transfer of assistant principal at a middle school to that of a classroom teacher.) 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) (1999 Repl. Vol.). 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.

Appellant claims that the reassignment decision is arbitrary and capricious and not supported by the evidence. However, the affidavit of Dr. Tompkins indicates that Appellant was removed from her position based on legitimate and rational reasons. These reasons included a lack of or inability to apply the requisite leadership and interpersonal skills to the position and a failure to interact appropriately with principals and teachers within the schools. Additionally, Dr. Tompkins believed that the needs of the schools necessitated a change in the Supervisor of Mathematics position given the perceived lack of Appellant’s leadership abilities and the system-wide changes being made in mathematics which included implementation of a new curriculum and instructional design.³

Appellant further claims that the reassignment decision is actually a disciplinary action which violates the negotiated agreement between ASASP and the local board.⁴ We believe this argument lacks merit. As stated above, it is well established in State law that 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).

Discipline for which “cause” must be demonstrated, as defined in section 6-202 of the Education Article, relates to suspension and dismissal, as does “discipline” addressed in section 3.08 of the Negotiated Agreement.⁵ Moreover, the Negotiated Agreement states that “[u]nless **so explicitly advised by the Superintendent of Schools or his designee, a unit member’s**

³The fact that Appellant may have had good performance evaluations in the past does not preclude the superintendent from transferring her to a new position. As stated above, a superintendent may transfer employees as the needs of the schools require. Thus, Appellant’s transfer is legally sufficient even if Appellant had been performing at a satisfactory level. *See Clarke v. Board of Education of Baltimore County*, 7 Op. MSBE 3 (1195).

⁴Section 3.08 of the Negotiated Agreement between ASASP and the local board states that “[n]o unit member shall be disciplined without cause.”

⁵In fact, section 3.08 of the Negotiated Agreement cites section 6-202 of the Education Article.

transfer from one position in the unit to another shall not be deemed to be disciplinary action.” (Emphasis added). Here, there is no evidence in the record that Appellant was so advised. Since Appellant’s transfer was not a disciplinary suspension or dismissal, the local superintendent was not required to demonstrate “cause.” See *Chenoweth v. Bd. of Educ. of Baltimore County*, 7 Op. MSBE at 198 (a local superintendent does not have to establish just cause for “transferring or reassigning a professional tenured employee to a lower position.”). We therefore find no basis for reversal on these grounds.

Due Process Issues

Appellant maintains that her due process rights were violated because she was not provided with notice and the opportunity to be heard regarding the reassignment, including the opportunity to advise the local superintendent of her preferences for a new position. We again note that this is not a suspension or dismissal case governed by section 6-202 of the Education Article. Rather, this case involves the reassignment of a professional employee pursuant to 6-201(b)(2)(ii). The statute on assignment and transfer does not require notice or the opportunity to be heard, nor does it contain a qualifier as to which position a professional employee may be reassigned. The only condition is that the transfer relate to the “needs of the schools.”

However, section 3.04 of the Negotiated Agreement between ASASP and the local board provides as follows:

When an involuntary transfer of a unit member is deemed necessary, the unit member in such a position will be afforded an opportunity to advise the administration of his/her preferences concerning reassignment. The unit member may also request and shall be granted a conference with the Superintendent or his/her designee for the purpose of reviewing the reasons for the transfer.

Pursuant to this provision, Appellant was entitled to indicate her preferences regarding a new position and review the reasons for the transfer with the Superintendent or his designee if so requested. Here, on December 1, 1998, Appellant met with the Deputy Superintendent as the designee of the Superintendent and others regarding the decision to transfer her to a position as Special Projects Specialist. Appellant promptly filed a grievance which remained outstanding for over a year. Then, in March, 2000, Deputy Superintendent Rishel met with Appellant’s representatives to review the reasons for the transfer and provided them with the opportunity to present Appellant’s preferences concerning reassignment. Despite the fact that this meeting occurred some time after Appellant was initially informed of the transfer, it did take place and is sufficient to satisfy the requirements of section 3.04 of the Negotiated Agreement.

Moreover, Appellant suffered no harm from any delay in resolving the matter. A combination of factors appears to have delayed this case, including Appellant’s sick leave status, a change in the administration of the school system, and the longstanding grievance. As previously

noted, Appellant initially went on sick leave on September 25, 1998 and has remained out on sick leave since that time. Her earnings have been based upon her prior position as the Supervisor of Mathematics, and consequently, she has not lost any salary or benefits as a result of her transfer from that position. Thus, we do not believe that Appellant has been prejudiced by any delay in resolving the dispute.

CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Prince George's County.

Philip S. Benzil
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June 20, 2001