

HARVEY L. BIAS, JR,

Appellant

v.

ANNE ARUNDEL COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-55

### OPINION

In this appeal, Appellant challenges the decision of the Anne Arundel County Board of Education (“local board”) upholding his suspension without pay for engaging in an altercation with another employee. The local board has submitted a Motion for Summary Affirmance maintaining that its decision was consistent with existing policies and practices and was neither arbitrary, unreasonable, nor illegal. Appellant did not file a reply to the Motion.

### FACTUAL BACKGROUND

At the time of the incident triggering the suspension, Appellant was a Custodian I at Crofton Middle School in the Anne Arundel County Public School System (AACPS). On August 15, 2001, Appellant and co-worker Alfreda Johnson had an altercation in and near the office of Mr. Anthony Floyd, Facility Engineer at Crofton Middle School. As noted by the Hearing Examiner:

Mr. Bias testified that his role was to do the floors in the Library, while Mrs. Johnson’s role was to wipe off the table and chairs, etc. He had asked her if she was finished with her work so he could start on the floors, and she replied no and wanted him to assist her in wiping down the desks, which he refused. At that point, she went to complain to Mr. Floyd, and Mr. Bias followed her. While she was complaining about him to Mr. Floyd, Mr. Bias complained that she was lazy, and she slapped him, whereupon he grabbed her and she fell over Mr. Floyd’s desk knocking the computer monitor on the floor, and somehow they ended back up in the hallway, each physically encountering the other, which included Mrs. Johnson biting Mr. Bias, and the altercation continued until a Mr. Tom Rubins came between them, which is when he let her go. Mr. Bias claimed that he was protecting himself. Mr. Bias disagreed with the statement of Mrs. Johnson, and claimed she had not had her anxiety medicine that day.

On cross, Mr. Bias admitted there was nothing to prevent him from turning around and walking away, and that he was holding her by her shoulders, when she fell onto the desk, and held her for about 8 minutes before the altercation was broken up.

(Hearing Examiner's Decision, p. 1-2, June 3, 2002). Mr. Bias testified that Ms. Johnson hit him first and that he was acting in self-defense. (Transcript, pp. 8-9, 31).

Appellant was suspended without pay for 30 days, pending termination. Appellant appealed the suspension and an internal hearing was held on September 26, 2001. Appellant's appeal of his suspension was denied, but he was not terminated. Rather, based upon his good record, he received a letter of reprimand, was required to schedule and successfully complete an anger management course before being reinstated, and upon reinstatement, would be transferred to another employment site. (Letter imposing suspension, October 9, 2001). Appellant returned to work in early December at a different location. (Transcript, p. 15).<sup>1</sup>

Appellant appealed the decision to uphold his suspension to the local board. On June 3, 2002, Hearing Officer, William C. Mitchell, Jr., rendered a decision in which he recommended that the local board dismiss the appeal and affirm the suspension with the other conditions imposed. Specifically he found that there was conflicting evidence as to who was the aggressor and who acted in self-defense. If Appellant were acting in self-defense, he had a duty to withdraw, which he did not. (Hearing Examiner's Decision, p. 3; Transcript, p. 25-26). He therefore found the action taken by the Superintendent supported the evidence and was legal and proper. (Hearing Examiner's Decision, p. 4).

On July 10, 2002, the local board issued an Opinion and Order in which it adopted the Hearing Examiner's Report and Recommendation and denied Appellant's appeal. This appeal to the State Board followed.

## ANALYSIS

The standard of review in an appeal concerning the suspension of non-certificated staff is set forth in COMAR 13A.01.01.03E (1). In such cases, the local board's decision is considered prima facie correct and the State Board will not substitute its judgment for that of the local board unless its decision is arbitrary, unreasonable, or illegal. *See Thomas E. Ervin v. Anne Arundel County Board of Education*, MSBE Opinion No. 99-15 (March 30, 1999); *James Ferguson v. Prince George's County Board of Education*, 7 Op. MSBE 1228 (1998); *Livers v. Charles County Board of Education*, 6 Op. MSBE 407 (1992), *aff'd* 101 Md. App. 160, *cert. denied*, 336 Md. 594 (1994).<sup>2</sup>

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<sup>1</sup>The same sanctions were imposed upon Mrs. Johnson. She also was transferred to a different school. *See* Hearing Examiner's Finding #4.

<sup>2</sup>Effective October 1, 2002, the discipline and discharge of noncertificated employees may be a subject of collective bargaining. *See* Educ. § 6-510(b)(2).

Based upon our review of the record, we find that Appellant’s letter of appeal merely restates what he has argued unsuccessfully before: that he acted in self-defense, did not use excessive force, and that his co-worker was the aggressor in the altercation. He offers no evidence that the local board acted arbitrarily, unreasonably, or illegally. Rather, he just believes the disciplinary action taken against him was “wrongful”.

As its Opinion and Order reflects, the local board considered the entire record in making its decision to uphold the suspension. Part of the board’s deliberative process included making credibility decisions concerning the witnesses and their testimony. From our review of the record in this case, we believe there is sufficient evidence to support the reasonable conclusion that the suspension was warranted for Appellant’s engaging in the altercation. Further, we note there was testimony that the usual disciplinary action for such conduct would be termination, but that Appellant and his co-worker both received lighter punishments based upon their good work records.

CONCLUSION

For these reasons, we do not find that the local board acted arbitrarily, unreasonably, or illegally in this matter. We therefore affirm the discipline and transfer decision of the Board of Education of Anne Arundel County.

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December 4, 2002