

LILLIAN NELSON,

Appellant

v.

BOARD OF LIBRARY TRUSTEES OF
BALTIMORE COUNTY,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-10

OPINION

This is an appeal of the decision of the Board of Library Trustees of Baltimore County (“the Board”) to terminate Appellant from her employment with the Baltimore County Public Library for misconduct based on multiple incidents of inappropriate behavior including harassing and threatening phone calls by Appellant from the workplace to a county resident over a lengthy period of time. The Board of Library Trustees has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has filed a response in opposition to the Motion.

FACTUAL BACKGROUND

Appellant began employment with the Baltimore County Public Library (“BCPL”) on August 26, 1987, as a part-time staff member. She resigned on December 3, 1990, but was later rehired as a part-time staff member on June 7, 1997. On July 6, 1998, Appellant was promoted to a full-time position as a Processing/Catalog Support Staff. At the time of her termination, Appellant was employed in the Processing Section as a Technical Services Assistant.

Prior Counseling and Corrective Actions

On November 1, 2000, Lillian Nelson was verbally counseled by Ms. Eickhoff and by her supervisor, Colleen Campbell, for inappropriate behavior at work.

On December 21, 2000, Ms. Nelson received oral and written counseling by Ms. Eickhoff and by her supervisor for numerous instances of inappropriate behavior which began in October, 2000. The counseling meeting was attended by Ms. Eickhoff, her supervisor, and the Human Resources Manager, Jean Mantegna. In the written memorandum, Ms. Nelson was required to take the following corrective steps: treat others (co-workers and supervisors) with respect; control impulses and think before speaking; and guard against angry outbursts. Ms. Nelson was warned that if her behavior continued, it would result in further corrective action, including counseling, suspension, and the possibility of release from her position.

On February 14, 2001, Ms. Nelson received further oral and written counseling by Ms. Eickhoff and her supervisor for continued unacceptable work behaviors. The counseling meeting was attended by Ms. Eickhoff, her supervisor, and the Human Resources Manager. The required

corrective steps were: must meet behavior expectations stated in the December 21, 2000 counseling; conform to the behavior expected of all Baltimore County Public Library staff; and a mandatory referral to the Employee Assistance Program. Ms. Nelson was also warned that there must be progress or further corrective action would occur, including release from her position.

On July 9, 2001, Ms. Nelson again received oral and written counseling by Ms. Eickhoff and her supervisor for her work performance, specifically lateness and inaccuracy. The counseling meeting was attended by Ms. Eickhoff, her supervisor, and the Human Resources Manager. The required corrective steps were for Appellant to pay attention to performance of her job assignments. Further, she was warned that, if she were unable to perform her duties in an acceptable manner, she would face other corrective action, including release from her position.

Situation with Harassing Phone Calls

The final incident leading to Appellant's termination came to light on October 3, 2001, when Appellant's supervisor, Jane Eickhoff, answered a phone call at the library from a county resident, Margaret Norris. Ms. Norris told Ms. Eickhoff that she had been receiving threatening phone calls from Lillian Nelson on the line Ms. Eickhoff had answered.¹ On that day alone, Ms. Norris claimed to have received at least two calls from Appellant on that line. Ms. Norris reported that Appellant had been harassing her with phone calls since August, 2000, sometimes calling several times a day. During those calls, Ms. Norris claimed that Appellant would use profanity and make threats, including death threats to Ms. Norris and her dog. Appellant also made harassing calls to Ms. Norris' son. Ms. Norris claimed to have waited such a long time to contact the library because she was afraid of Appellant. *See* Affidavit of Jane Eickhoff.

Based on the information provided by Ms. Norris, Jean Mantegna, Human Resources Manager, contacted the Baltimore County Police Department. The police investigated the matter as a potential criminal offense involving "harassment/stalking in the workplace." The Report of Investigation discloses that Appellant had dated Ms. Norris' son approximately 20 years ago, and that Appellant had lived with Ms. Norris for about a year at one point. Ms. Norris and her son had not spoken to Appellant since that time. The pattern of harassing phone calls started in August, 2000, shortly after the death of Ms. Norris' husband when Appellant contacted Ms. Norris and began talking in a bizarre manner. Appellant then continuously called Ms. Norris leaving bizarre and threatening phone messages on her answering machine.² Appellant admitted making the phone calls to Ms. Norris when questioned by police. The Report also noted Appellant's long history of psychiatric problems.

¹The library phone number showed up on Ms. Norris' caller I.D. The number was for the phone on Colleen Campbell's desk. Colleen Campbell is Appellant's immediate supervisor.

²Attached to the Report of Investigation is a transcript of the messages Appellant left on Ms. Norris' answering machine.

On October 5, 2001, Ms. Eickhoff and Ms. Mantegna met with Appellant and gave her a letter terminating her from employment with the Baltimore County Public Library. The letter states in part:

A serious violation of Baltimore County Public Library (BCPL) work policies has occurred. We were informed this week that you repeatedly telephoned and harassed Baltimore County residents, over the past 15 months while on duty and using the BCPL phone system. Upon further investigation, we have confirmed that these calls did occur during your working hours. The mission and values of BCPL clearly prohibit abusive behavior toward customers. In addition, BCPL has clearly-stated policies, found in your Employee Handbook, which prohibit verbal abuse, harassment, and inappropriate use of BCPL business systems. These policies must be interpreted to protect staff and customers. Due to the seriousness of these actions, we have no choice but to immediately release you from your position with Baltimore County Public Library. You will not be eligible for reemployment with the Library System.

The letter also mentioned Appellant's work history which consisted of a pattern of poor work performance and poor behaviors since November, 2000, oral and written counseling, and a mandatory referral to the Employee Assistance Program.

Appellant appealed her termination to the Board of Library Trustees for Baltimore County. The Board conducted a hearing where Appellant spoke on her own behalf. Appellant's physician, Dr. Daniel Safer, also spoke on Appellant's behalf. By a vote of 5 to 1, the Board upheld the termination decision.

Section 23-406(e)(3) of the Education Article, Annotated Code of Maryland, provides that if a library employee termination decision is not unanimous, "the employee may appeal to the State Board through the State Superintendent." Accordingly, Appellant appealed her removal from employment to the State Board of Education.

ANALYSIS

Although we have not found any prior opinion involving State Board review of the termination of a library employee, we believe that the standard of review for decisions of local boards of education is applicable. Under this standard, the decision of a board of library trustees is considered prima facie correct, and the State Board may not substitute its judgment for that of the board of library trustees unless the decision is arbitrary, unreasonable, or illegal. *See* COMAR 13A.01.01.03E(1).

Section 23-406 of the Education Article provides that each board of library trustees may dismiss any library employee under its jurisdiction for any of the following reasons: (1)

misconduct in office; (2) insubordination; (3) incompetency; and (4) willful neglect of duty. Here, the Board maintains that the basis of Appellant's dismissal is misconduct.

The BCPL Staff Handbook sets forth a number of policies related to the conduct and behavior of library staff members.³ These include the fact that an employee is expected to conduct herself in a business-like manner at all times. (App. 11.) There is also a Workplace Violence Policy which states that all aspects of library employment shall be free from intimidation, harassment, or coercion in any form. (App. 12). It provides for investigation of all threats or acts of violence and corrective action, including release from employment. Additionally, there is a policy against verbal abuse under which any employee who verbally abuses a customer is subject to dismissal. (App. 13-14).

There is no dispute that Appellant made threatening and harassing phone calls to a county resident using the library phone during work hours. This behavior occurred over a period of several months during the course of Appellant's employment and resulted in a police investigation. Moreover, the record discloses a pattern of poor work performance and poor behaviors that continued from November, 2000 forward.

Appellant admits to making the phone calls to Ms. Norris and her son during the course of her employment. She explains that "a combination of undue stress placed on [her] by management at BCPL, as well as medication changes by her doctor . . . pushed her over the edge and caused her to behave in a manner [she] is not accustomed to."⁴ See Appellant's reply at 12.⁵ Appellant believes that she should have been placed on sick leave because of her heightened emotional difficulties.⁶

While the record reflects that Appellant has been suffering emotional problems throughout the past year, there is no evidence that either Appellant or her doctor ever requested

³There is no dispute that Appellant received the Staff Handbook and was aware of its contents.

⁴Documentation submitted by Appellant's physician indicates that Appellant had an increase in emotional difficulties since October, 2000, and that she was receiving medical treatment.

⁵To the extent that Appellant has raised new issues on appeal in her reply to the Library Board's Motion for Summary Affirmance, those matters are deemed waived. *See, e.g., Carol Pence v. Harford County Board of Education*, MSBE Op. 00-24 (May 24, 2000)(Failure to raise an issue before a local board constitutes a waiver of the right to raise the issue before the State Board.)

⁶Appellant also states that she has filed a complaint with the Human Resources Commission of Maryland based on her belief that she was discriminated against due to her emotional problems. That is the appropriate avenue for redress of such allegations.

her employer to place her on sick leave as a result of those problems. Furthermore, prior to the discovery of Appellant's conduct in this case, Appellant was referred to the Employee Assistance program in July 2001, where she could have easily sought help for her difficulties.

Based upon our review of the entire record in this matter, we believe that Appellant's pattern of inappropriate behaviors over a lengthy period of time constitutes misconduct for which termination is the appropriate sanction. *See, e.g., Resetar v. State Board of Education*, 284 Md. 537, 561 (1979)(whether a particular course of conduct constitutes misconduct is determined from the nature of the conduct and not from its consequences.)

CONCLUSION

For these reasons, we find that the decision of the Board of Library Trustees of Baltimore County was not arbitrary, unreasonable, or illegal, and we affirm the decision to terminate Appellant from employment with the Baltimore County Public Library.⁷

Marilyn D. Maultsby
President

Reginald L. Dunn
Vice President

JoAnn T. Bell

Philip S. Benzil

⁷Because Educ. § 23-406(e)(3) provides that this type of appeal is to the State Board through the State Superintendent, Dr. Grasmick has reviewed the record in this matter and has advised that she concurs with our analysis and conclusion.

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

March 27, 2002