

RETTAKUDI NAGARAJAN,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-17

### OPINION

This is an appeal of the local board's decision to uphold the removal of Appellant from his position as acting supervisor of the internal auditing unit and return him to a staff auditor position; as well as the denial of extended paid sick leave benefits. The local board has submitted a motion for summary affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has submitted a reply opposing the motion.

### FACTUAL BACKGROUND

#### Chronology of Events

Appellant has been employed by Montgomery County Public Schools ("MCPS") since 1973. He became Director of Procurement in 1979. In 1987, Appellant was removed from his job as Director of Procurement and assigned as an internal auditor in the MCPS Internal Auditing ("IA") Unit. He later applied for but was unsuccessful in obtaining several promotional positions.<sup>1</sup> In December 1998, he was named as the acting supervisor of the IA Unit when the then supervisor retired.<sup>2</sup>

As a result of difficulties finding people to fill vacant positions, Appellant supervised only one other full time auditor until the spring of 2000. Two new full time auditors were then hired and friction arose between the new auditors and Appellant. At the time, Appellant's immediate supervisors were Dr. Marlene Hartzman, Director of the Office of Shared Accountability, and Dr. Pamela Hoffler-Riddick, Associate Superintendent for the Office of Shared Accountability. Dr. Hartzman suggested that Appellant make his expectations of the two auditors clear, put those expectations in writing, and conduct a pre-evaluation conference with them.

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<sup>1</sup>See *R.G. Nagarajan v. Montgomery County Board of Education*, 6 Op. MSBE 639 (1993) where the State Board affirmed local board decisions not to promote Appellant to Director of School Support Operations or to a position of Chief Financial Officer.

<sup>2</sup>Appellant retained a salary at the level of Director of Procurement up to his retirement.

Appellant did not do as suggested; rather, in September 2000, Appellant wrote a memorandum to each of the two employees detailing various criticisms and giving specific instructions on how to perform several audits. Both employees complained to Dr. Hoffler-Riddick, believing the criticisms to be unjustified and unlawfully based on racial discrimination. On Friday, September 29, 2000, Dr. Hoffler-Riddick sent an internal e-mail to Appellant directing him to rescind the memoranda.<sup>3</sup> The following Monday, Appellant was out of the office on training. On Tuesday, October 3, Appellant called in and requested sick leave due to Dr. Hoffler-Riddick's e-mail to him which he claimed aggravated his health. Appellant never again reported for work.

On October 6, Appellant wrote to Dr. Hartzman, indicating that he would not withdraw his memoranda of September 8 to the new auditors as ordered by Dr. Hoffler-Riddick.<sup>4</sup> He wrote, "This is an unjustified order and I will not do so." Dr. Hartzman responded, in part:

Dr. Riddick gave you a directive based upon her review of written statements. You do not have the final authority of what goes into the personnel record of an employee. Your comments below are insubordinate, as is this email to me, Mr. Bowers and Dr. Williams. You should consider this response from me as a formal reprimand for your insubordinate behavior and for your refusal and failure to follow MCPS personnel guidelines with respect to personnel evaluations. . . .

Further, your behavior (as evidenced by the notes you've left this week, our phone conversation and this email) indicates to me that you are not capable of serving as a supervisor at this time. When you return from sick leave, you will return to your position as a staff auditor and will take direction from Mr. Krieger until the unit supervisor position is advertised and filled.

Appellant then wrote to the Associate Superintendent for Human Resources, Elizabeth Arons, asking that Dr. Hartzman's e-mail be rescinded. He also wrote to Mr. Bowers requesting that he be granted sick leave for the remainder of the year 2000, and severance benefits applicable to someone losing a position due to a reduction in force.<sup>5</sup> Appellant indicated his

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<sup>3</sup>Among other things, the e-mail from Dr. Hoffler-Riddick also requested a schedule for all the work to be performed by each of the internal auditors and a copy of the pre-evaluation notes for the two new full time auditors.

<sup>4</sup>Appellant also sent the e-mail to James Williams and Chief Operating Officer, Larry A. Bowers.

<sup>5</sup>RIF benefits include payment for all sick and annual leave and 12 months' salary.

intention to retire as of December 31, 2000; however, Appellant did not retire at that time.

On October 18, 2000, Mr. Bowers advised Appellant that he needed to work with his supervisor and the human resources specialist regarding his request to be placed on sick leave until December 31, 2000, indicating that long term leave requests must be submitted to the Office of Human Resources and must be supported by documentation from a physician that Appellant was unable to complete his work assignments during that time period. Mr. Bowers further advised that he was denying Appellant's request for approving a reduction in force as of January 1, 2001, because the circumstances failed to meet the contractual definition for a RIF.

In addition, Mr. Bowers alerted Appellant that upon his return to work he would be placed in the internal auditor position that was held vacant while he was assigned as the acting supervisor of the IA Unit. Mr. Bowers noted, however, that if Appellant's leave went beyond 60 days, the internal auditor position would become vacant. Because Appellant had indicated to Mr. Bowers that he did not wish to return to the internal auditor position in his October 12 letter, Mr. Bowers advised Appellant to work with the human resources specialist regarding his assignment and placement since the school system did not have a comparable position in which to place him. Paid sick leave was extended through January 8, 2001.

Thereafter, Appellant asked for another extension of sick leave which was granted to February 27, 2001. *See* letter of 2/9/01 from Arons. On March 14, 2001, Dr. Arons wrote to Appellant to address issues that were discussed at their March 12 meeting, stating as follows:

Again, I offered you the position of internal auditor, a position you have held in the past. I also agreed to allow you to remain on personal illness leave until March 31, 2001. Therefore, if you choose to retire on April 1, 2001, you will not lose any pay.

Montgomery County Public Schools has assessed the medical information available and determined that based on the independent medical examination and a telephone conversation with Dr. Gustav Weiland, your doctor, you are able to return to work.<sup>6</sup> If you choose not to return to work by April 1, 2001, or not to retire, based on the medical information I have available you will be placed on leave without pay.

Appellant responded with a request to have his sick leave extended to July 1, 2001. He submitted a doctor's certificate that stated that Appellant "does not feel able to return to work this school year." The request for additional sick leave was denied and on April 1, 2001,

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<sup>6</sup>An independent physician who examined Appellant determined that he was suffering from an adjustment disorder exhibiting anxious symptoms stemming from changes in his department, including a new superior and new subordinates, and from Dr. Hoffler-Riddick's letter of September 29.

Appellant was placed on leave without pay status.

In June, 2001, another request for sick leave was received asking for leave until September 30, 2001. The doctor's note stated that the "employee feels totally unable to perform in previous position." Sick leave was denied. Appellant eventually retired effective April 1, 2001.

Meanwhile, the position of supervisor of the IA Unit was advertised while Appellant was out on sick leave; applications were solicited in November 2000; and the vacancy was filled in February 2001. Appellant applied for the permanent position, but his application was not considered since he was on long term leave.

### Administrative Process

Appellant filed several administrative complaints at the local level claiming a myriad of violations against him arising from his interactions with his supervisors in September and October 2000; his removal from the acting supervisor position; and the denial of his sick leave request as of April 1, 2001. These complaints were reviewed first by Mr. Bowers and then by Robert S. Shaffner, acting as the superintendent's designee, who both found no basis for Appellant's claims and denied the appeals.

Appellant appealed to the local board and the matter was referred to a hearing examiner for further review. A two day hearing was conducted at which Appellant was provided the opportunity to present evidence, testimony, and argument. Hearing Examiner Sickles recommended that the local board uphold the letter of reprimand and removal of Appellant from the acting supervisor position; uphold the denial of sick leave benefits from April 1, 2001 forward; and uphold the denial of RIF benefits. In a unanimous decision issued December 11, 2001, the local board adopted the findings and recommendations of the hearing officer and affirmed the decisions of the superintendent's designee.<sup>7</sup>

### ANALYSIS

Appellant's makes four specific claims on appeal to the State Board: (1) that his removal from an acting supervisor position to a staff auditor position was arbitrary and capricious; (2) that the denial of sick leave beginning April 1, 2001 to November 30, 2001, was arbitrary and capricious; (3) that the denial of his reassignment from the internal auditing unit was arbitrary and capricious; and (4) that the rejection of his application for the permanent position of Internal Audit Supervisor was arbitrary and capricious.

#### Acting Supervisor Position

Appellant argues that his removal from the acting supervisor position was in essence a

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<sup>7</sup>Local board president Nancy J. King did not participate in the appeal.

disciplinary action for which Dr. Hartzman had no authority. Appellant's permanent position was as an internal staff auditor. He was named acting supervisor when the individual in that position retired. Although Appellant remained in the acting supervisor position for approximately 22 months, there is no evidence to suggest that the appointment was intended to become permanent. Appellant did not have tenure in the acting supervisor position nor was cause required to return him to his permanent assignment as staff auditor.

Moreover, even if cause were a prerequisite to his removal as an acting supervisor, the record reveals that Appellant was insubordinate. Dr. Hoffler-Riddick, Appellant's supervisor, directed him to rescind the memoranda to the two new full time auditors. Appellant refused to carry out the order. While Appellant was entitled to disagree with the lawful directive and pursue administrative remedies, he was not entitled to disregard the directive of a superior and refuse to carry it out. Additionally, Appellant's supervisors perceived that he was unable to manage effectively the recently expanded staff in the IA Unit.

As stated by Hearing Examiner Sickles:

Whether or not Hartzman gave the Appellant adequate training and guidance and whether or not his performance was superior in May 2000, MCPS management had the right and authority to remove him from the acting position. Dale Horos, a team leader for supporting services in the Department of Human Resources, testified that assignments to acting positions may be terminated at any time, for any reason, without consulting Human Resources. She stated that disciplinary regulations would not apply, because the ending of an acting position is not an adverse action – it is simply the end of an assignment for whatever reason management wants it to end.

Horos was called as a witness by the Appellant. There was no testimony by any witness to support the Appellant's assertions that his removal as the acting supervisor was without authority. I must conclude, therefore, that Hartzman and Riddick were free to return the Appellant to his permanent position as a staff auditor, based on nothing more than their feeling that he was "not capable of serving as a supervisor at this time."

Report at 13. (Emphasis in the original).

#### Denial of Sick Leave

As to the denial of sick leave, Appellant has presented no evidence to support his claim that he was entitled to such leave beyond April 1, 2001. To the contrary, Appellant's own physician, as well as a physician conducting an independent exam, concluded that Appellant was able to return to work. No health professional specified that Appellant was unable to work in the

IA Unit in his permanent position as an internal auditor. As stated by Hearing Officer Sickles:

Even the Appellant's own doctor made it clear that the only reason the Appellant could not return to work was because the Appellant chose not to. The Appellant repeatedly stated that he was fully capable of returning to work immediately – provided it was to a position he considered suitable. Despite the fact that the Appellant asserted that his illness was caused by the hostile environment working for Hartzman and Riddick, in November 2000, he applied for the job of permanent supervisor of Internal Auditing, which would have meant returning to work for Hartzman and Riddick.

He was not incapacitated. He simply intended to dictate the terms for his return to work and wanted MCPS to pay for the time he remained off of work while he negotiated for favorable conditions for his return.

Report at 14. (Emphasis in original).

#### Request for Reassignment

Appellant maintains that his numerous requests to be reassigned to another position outside the IA Unit based on his health and his interactions with his supervisors should have been granted. A school system employee, however, does not have a right to be reassigned to another position upon request. Thus, while Appellant was certainly within his rights to make the requests, there is nothing arbitrary, unreasonable, or illegal in the fact that those requests were not granted. Furthermore, Appellant was advised that he needed to confer with the human resources specialist regarding his assignment and placement if he chose not to return to his permanent position as staff auditor. Appellant did not avail himself of this opportunity.

#### Application for Permanent Supervisor Position

Finally, Appellant maintains that his application for the position of permanent supervisor of the IA Unit was improperly denied. Testimony from the MCPS Personnel Department discloses that school system practice is not to process applications for positions from individuals on long term sick leave because such individuals are not then capable of working. Appellant fell within this category of employees. Additionally, Appellant claimed that he was unable to return to work based on problems having to do with the same position in the same department for which he was applying. We find it disingenuous for Appellant now to claim that the school system should have considered him throughout the hiring process for the position of supervisor of the unit to which he refused to return as a staff auditor. Given the record in this case, we do not believe that the decision to deny Appellant's application for permanent supervisor of the IA Unit was arbitrary, unreasonable, or illegal.

CONCLUSION

Based upon our review of the record, we adopt the report of Hearing Examiner Sickles and affirm the decisions made by the Board of Education of Montgomery County in this matter.

Marilyn D. Maultsby  
President

Reginald L. Dunn  
Vice President

JoAnn T. Bell

Philip S. Benzil

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

April 24, 2002

Dunbar Brooks, a newly appointed member of the State Board of Education, did not participate in the consideration of this case.