

WILLIAM HENAGHAN,

Appellant

v.

ALLEGANY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-39

OPINION

This is an appeal of decisions not to renew Appellant's coaching position at Beall High School and to transfer Appellant from Beall High School to Mt. Savage Middle School. Appellant claims that these decisions were based on age discrimination. The appeal was originally before the State Board at its August 28, 2001 meeting. At that time, the Board transferred the matter to the Office of Administrative Hearings for the scheduling of a hearing to determine whether or not unlawful age discrimination was the basis for the coaching nonrenewal and the transfer decisions. On April 25, 2002, the administrative law judge ("ALJ") issued a proposed decision, a copy of which is attached as Exhibit 1. The parties presented oral argument to the State Board on July 23, 2002.

Having reviewed the record in this matter and considered the arguments of the parties, we adopt the Findings of Fact and Conclusions of Law of the administrative law judge who determined that the Appellant failed to present sufficient evidence of age discrimination in his replacement as coach of the varsity girls basketball team at Beall, and that Appellant failed to present sufficient evidence that his involuntary transfer was illegal or in violation of the collective bargaining agreement. For the reasons stated by the ALJ, we affirm the coaching nonrenewal and transfer decisions made by the Board of Education of Allegany County.

Marilyn D. Maultsby  
President

Reginald L. Dunn  
Vice President

JoAnn T. Bell

Philip S. Benzil

Dunbar Brooks

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

August 27, 2002

**EXHIBIT 1**

WILLIAM HENAGHAN,

APPELLANT

v.

BOARD OF EDUCATION

OF ALLEGANY COUNTY

\* BEFORE CATHY A. BARCHI,

\* ADMINISTRATIVE LAW JUDGE,

\* MARYLAND OFFICE OF

\* ADMINISTRATIVE HEARINGS

\* OAH No.: MSDE-BE-01-200100006

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
**PROPOSED ORDER**

**STATEMENT OF THE CASE**

During the school year 1999-2000, William Henaghan ("Appellant") was employed by the Allegany County School System. The Appellant was a physical education teacher at Beall High School ("Beall") and coach of the girls varsity basketball team at Beall. On March 31, 2000, the Appellant was informed that the coaching position had been offered to another teacher following a decision to advertise or "post" the position on or about March 10, 2000. The Appellant had been one of the applicants for the position.

On April 7, 2000, the Appellant received a letter indicating that the applicant who had been offered the coaching position had resigned. The position was again posted and the Appellant reapplied. On May 15, 2000, the Appellant received a letter indicating that the coaching position had been offered to another applicant. The Appellant contested the decision not to rehire him as the girls varsity basketball

coach in a letter to the Superintendent of Schools, John O'Connell ("Superintendent") dated June 9, 2000. In a letter dated July 19, 2000, the Superintendent informed the Appellant that he supported the principal's decision to reassign the coaching position.

On or about June 9, 2000, the Appellant received his new contract for the school year 2000-2001 and discovered that he had been involuntarily transferred to Mt. Savage Middle School. Although the Appellant signed and returned the contract, he contested the involuntary transfer in a letter to the Superintendent dated June 19, 2000. In a letter to the Appellant dated July 19, 2000, the Superintendent affirmed his original decision to involuntarily transfer the Appellant to Mt. Savage Middle School.

On August 2, 2000, the Appellant appealed the Superintendent's decision's regarding the reassignment of the coaching position and his subsequent involuntary transfer to Mt. Savage Middle School. Jeff Griffith, Esquire, a Hearing Examiner for the Board ("Hearing Examiner") conducted an evidentiary hearing on October 23, 2000. Md. Code Ann., Educ. § 6-203 (1999). The Hearing Examiner recommended that the Superintendent's decisions in this matter be reversed. After hearing arguments from both parties on February 13, 2001, and reviewing the record compiled by the Hearing Examiner, the Board decided not to adopt the Hearing Examiner's recommendation but rather affirmed the decision of the Superintendent regarding the non-renewal of the coaching position and the involuntary reassignment of the Appellant. The Appellant appealed the Board's order to the Maryland State Board of Education and the matter was scheduled before the Office of Administrative Hearings. Md. Code Ann., Educ. § 6-202(4) (1999).

A hearing was conducted on March 11, 2002, before Cathy A. Barchi, Administrative Law Judge ("ALJ"), at the Office of Administrative Hearings, ("OAH") located at the District Court Building, 3 Pershing Street, Room 105, Cumberland, Maryland. The Appellant was represented by James R. Whattam, Esquire. Judith S. Bresler, Esquire, represented the Board. Code of Maryland Regulations ("COMAR") 13A.01.01.03P.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board of Education, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1999 & Supp. 2001); COMAR 13A.01.01.03P; COMAR 28.02.01.

### **ISSUE**

The issues on appeal are as follows:

1. Whether the non-renewal of the Appellant's position as coach of the girl's varsity basketball team and his subsequent involuntary transfer to accommodate the new coach was based on age discrimination. Md. Code Ann., Educ. § 6-202(a) (1999), and;
2. Whether the Appellant's involuntary transfer to Mt. Savage Middle School violated the collective bargaining agreement between the school system and the teachers association.

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits**

The following exhibits were admitted into evidence as Joint Exhibits:

- Joint Ex. A. - Transcript of Hearing before Hearing Examiner for Local Board of Education (117 pages).
- Joint Ex. B. - Exhibits before Hearing Examiner consisting of 10 Exhibits.
- Joint Ex. C. - Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendations (24 pages).
- Joint Ex. D. - Opinion of Board of Education of Allegany County (14 pages).
- Joint Ex. E. - Notice of Appeal and Request for Hearing before Maryland State Board of Education (4 pages).
- Joint Ex. F. - County Board of Education's Motion for Summary Judgment and Memorandum in support of County Board's Motion for Summary Affirmance (7 pages).
- Joint Ex. G. - Appellant's Response to Appellee's Motion for Summary Affirmance and Appellant's Motion for Summary Decision (9 pages).

Joint Ex. H. - Order of Maryland State Board of Education  
Joint Ex. I. - Transcript of Oral Argument dated February 13, 2001 (13 pages).

The following exhibits were admitted into evidence on behalf of the Board:

- Bd. Ex. 1 - Notes of the Appellant compiled from Fall, 1999 through June 9, 2000. (7 pages).
- Bd. Ex. 2 - Beall High School Staffing for 2000 – 2001.

Testimony

The Appellant testified in his own behalf

The following witnesses presented testimony on behalf of the Board:

1. James Manning Smith, Director of Personnel, Allegany County Public Schools.
2. Gregory Smith, Principal, Beall High School.
3. Michael Shields Calhoun, Asst. Principal, Fort Hill High School, Acting Supervisor of Athletics, Allegany County Public Schools (former Vice-Principal, Beall High School, 1999-2000 school year).
4. Christena Kreiling, Physical Education Teacher and Athletic Director, Beall High School.
5. Bonnie Hircock, Chair, Health and Physical Education Department, Frostberg State University (Acting Principal, Beall High School, 1990-1991).

**FINDINGS OF FACT**

After careful consideration of the record and the additional testimony presented, I find, by a preponderance of the evidence, the following facts:

1. The Appellant has been employed as a teacher by the Allegany County School System for the past forty (40) years. The Appellant has a tenured position as a teacher and he was fifty-nine (59) years old during the 1999-2000 school year.
2. The Appellant held the position of coach of the girls varsity basketball team (“Team”) at Beall High School for approximately fifteen (15) years. He held that position during the 1999-2000 school year. Coaching positions are not tenured and coaching assignments are made annually by the Superintendent following the recommendations of the school principal.

3. During the Appellant's fifteen (15) years of coaching the Team, the Team had one hundred twenty-six (126) wins and one hundred ninety-three (193) losses. In his years as a coach, the Appellant had three winning seasons and thirteen losing seasons. During the 1999-2000 school year, the Appellant had only eight (8) players on the Team needed to draw players from junior varsity to complete the Team. The Appellant had difficulty motivating his players and was unable to retain players from year to year. The Appellant's record in his last year as coach was ten (10) wins, thirteen (13) losses.
4. Michael Calhoun, the Vice Principal at Beall in the school year 1999-2000, had received complaints from students and parents regarding the Appellant's conduct as a coach. Two of those complaints were in the form of a letter written to the principal, Gregory Smith.<sup>1</sup>
5. Gregory Smith (the "Principal") became the principal of Beall at the beginning of the 1999-2000 school year. On January 14, 2000, the Principal sent a memorandum to the Appellant enumerating some concerns and recommendations regarding the Appellant's teaching and coaching responsibilities. The memorandum cited five areas of concern with respect to the Appellant's coaching of the Team, including poor student participation, parent/student complaints, late posting of the assistant coaching position and a mix up with the assistant coach's contract.<sup>2</sup>

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<sup>1</sup> The first letter received was before the position was posted and was from a parent who had complained verbally about the Appellant several times prior to the Principal's decision to post the position. The second letter was very detailed and was not received until May, 2000 after a new coach had already been selected.

<sup>2</sup> The mix-up regarding the assistant coaching position was not fully developed in the testimony of any of the witnesses. In a memorandum to the Principal dated January 17, 2000, the Appellant indicated that his previous assistant coach told him at the "last minute" that she could not continue and there was some problem with the wrong contract getting to the new assistant coach. At the time of the Appellant's memorandum, the issue about the contract had not yet been resolved.

6. On February 23, 2000, while the Appellant was coaching the Team, a senior player became upset and she walked off the court when the Appellant took her out of the game. The player headed for the shower room and neither the Appellant nor the assistant coach ever went to check on the player during or after the game.
7. Following the February 23, 2000 incident, the Principal prepared another memorandum citing specific incidences to illustrate the problems the Principal identified with the Appellant's teaching and coaching responsibilities.<sup>3</sup> On or about February 24, 2000, the Principal informed the Appellant that he intended to post the coaching position for the upcoming school year, 2000-2001. The position was not posted until March 10, 2000 when the girls basketball season had ended. There were several applicants for the position, including the Appellant.
8. The position was initially offered to John Armstrong, another teacher at Beall. However, Mr. Armstrong resigned from the position a week after being selected. The position was posted again in April, 2000. The Appellant applied for the position following the second posting, but the position was offered to Ray Kiddy, a teacher at Mt. Savage High School.
9. Mr. Kiddy had also been selected to coach the boys soccer team at Beall. Mr. Kiddy indicated that he would accept both coaching positions provided he could also teach at Beall. On or about May 15, 2000, the Principal recommended to the Superintendent that Mr. Kiddy be assigned to teach at Beall High School.

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<sup>3</sup> Although some of the testimony and documentary evidence concerned the Appellant's teaching skills, the ultimate issue in this case involved the coaching position and therefore, I did not focus on that evidence in my analysis.



10. The Principal made the decision to change several other coaching positions at Beall when he became principal of the high school during the 1999-2000 school year. The Principal selected a retired teacher who was in her late sixties (60's) to coach the volleyball team. The Principal replaced a woman in her twenties (20's) with a woman in her early fifties (50's) to coach the girls soccer team. The Principal chose another retired teacher who was in his early sixties (60's) as the assistant girls soccer coach and the assistant girls softball coach. Additionally, Michael Calhoun's father coached at Beall until the age of seventy-two (72).
11. At some point in May, 2000, a decision was made to consolidate Beall High School with Mt. Savage High School. At that time, there were two physical education teachers at Beall, Christina Kreiling, who was also the school's athletic director, and the Appellant. Prior to the consolidation, the Appellant expressed his desire to remain at Beall.
12. On June 9, 2000, the Appellant received a contract to teach at Mt. Savage Middle School. The Appellant had been involuntarily transferred from Beall to Mt. Savage. The transfer was recommended by the Principal in an effort to accommodate Mr. Kiddy, whose ultimate acceptance of the coaching position was contingent upon him receiving a transfer to teach at Beall.
13. The Appellant has been teaching at Mt. Savage Middle School for the past two years. Mr. John Armstrong is now the varsity girls basketball coach at Beall.

### **DISCUSSION**

This case involves a two pronged decision of the Superintendent regarding the Appellant. First the Appellant was replaced as the varsity girls basketball coach after fifteen years of coaching the Team at Beall. It is the Appellant's contention that the decision to replace him was based on his age and is therefore illegal. Second, the Appellant was involuntarily transferred from his teaching position as a

physical education teacher at Beall. The Appellant asserted that the involuntary transfer was inextricably linked to the discriminatory actions of the Superintendent regarding his replacement as coach of the Team. The teacher coach who was hired for the coaching position indicated that he would agree to become the coach if he could also teach at Beall. The Appellant contends that the same illegal reason used to replace him as coach precipitated the involuntary transfer.

The Appellant further contends that the involuntary transfer violated the collective bargaining agreement that was negotiated by the Board and the teachers association, prior to the consolidation of schools in the county.<sup>4</sup> Each issue is discussed separately below.

### **1. The Coaching Position**

The coaching position is employment at will and the Superintendent can replace a coach for any reason provided the motivation is not illegal. That fact was not disputed by the parties. The Appellant contends that the Superintendent acted illegally when he made the decision to hire another coach for the Team for the 2000-2001 school year.

Md. Code Ann. Article 49B, § 16(a) Human Relations Article and the Age Discrimination in Employment Act, (“ADEA”) 29 U.S.C., §§ 621, 623 prohibits an employer from discriminating against an individual in matters of employment, based on the individual’s age. The Appellant has the initial burden of establishing a prima facie case of age discrimination. In determining if the evidence is sufficient for a prima facie case of discrimination, an analysis under the factors enumerated in *McDonnell Douglas Corp. v. Green*, 411 U. S. 793; 93 S.Ct. 1817; (1973) is essential. *McDonnell Douglas* involved a case of racial discrimination but the same scrutiny has been applied to allegations of discrimination based on age. According to *McDonnell Douglas*, the Appellant must demonstrate that 1) he is a member of a

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<sup>4</sup> The Appellant did not focus on this aspect of the appeal in his presentation. Although there was argument and some evidence presented on this issue, the primary issue was the allegation of age discrimination and that the involuntary transfer was a direct result of the alleged illegal actions based on age.

protected class; 2) that he applied for and was qualified for the job or in this instance was performing to the employer's expectations; 3) that despite his qualifications he was rejected and or terminated, and that; 4) the employer continued to seek applicants with the Appellant's qualifications and, in this instance, that younger applicants with the same qualifications were treated more favorably. *McDonnell Douglas*, 411 U.S. at 802.

*Moore v. Reese*, 817 F. Supp.1290, 1299, tailored the *McDonnell Douglas* factors to fit a case of alleged "impermissible consideration of age". According to *Moore*, a prima facie case of age discrimination would consist of a showing by the Appellant that, "he was a member of a protected class; that he was discharged; that at the time of his discharge he was performing his job at a level that met the employer's expectations; and that a person outside the protected class was retained in the same position." *Moore* 817 F. Supp at 1299. Those factors were extracted from the case of *Tuck v. Henkel Corp.* 973 F.2d 371, 375 (4<sup>th</sup> Cir. 1992) citing *McDonnell Douglas*. The Court in *Tuck* further noted that a prima facie case, if established, only creates "an inference of age discrimination". An employer can rebut that inference by presenting "legitimate non-discriminatory reasons for the termination" *Tuck*, at 973 F.2d at 375.

*McDonnell Douglas* employed a burden shifting formula that required a plaintiff to present sufficient evidence for a prima facie case thereafter shifting the burden to the employer to articulate a non-discriminatory purpose for its actions. *McDonnell Douglas* further dictated that the ultimate burden would be on the plaintiff to show that any non-discriminatory reasons put forth by the employer were merely a pretext to obscure its discriminatory purpose.

The facts in this case are relatively simple. The Appellant was the sole witness in support of his allegation of discrimination. The Appellant had been the coach of the Team for approximately fifteen (15) years prior to the decision not to renew his contract for the 2000-2001 school year. The Appellant testified that on at least two occasions the Principal, who was assigned to Beall during the school year 1999-2000,

told the Appellant that he wanted a younger coach for the Team. The first time the Appellant recalls that the Principal made such a statement was on May 4, 2000, after the Appellant learned that Ray Kiddy, a teacher at Mt. Savage High School (approximate age, 45 years) had applied for the coaching position. The Appellant went to speak with the Principal about the position and the Appellant insisted that during this discussion the Principal said that he wanted a “younger coach” for the Team and for boys soccer. The Appellant also asserted that during that meeting, the Principal tried to convince the Appellant to accept a transfer to Mt. Savage Middle School.

The Appellant had another meeting with the Principal on May 11, 2000 during which the Appellant stated the Principal asked him when he was going to retire. The next meeting occurred on May 30, 2000, and the Appellant recalled that the Principal told the Appellant he was trying to get him involuntarily transferred to Mt. Savage Middle School so he could bring in a “younger coach”. The Appellant documented each of these meetings with dates, places, and times and typed his notes for reference during this and the previous hearing. (Board #1.).

The Principal testified that he could not recall the specific meetings described by the Appellant, and he had no recollection of ever telling the Appellant that he wanted a younger coach. The Principal admitted that he asked the Appellant when he planned to retire. However, he insisted that the question was in no way intended to contain a negative reference to the Appellant’s age. The Principal stated that it is a common topic of discussion among those in the county who have worked for over thirty years in the system. The Principal indicated that he himself is fifty-four (54) years old and has worked for the Allegany County School system for thirty-four (34) years.

During his testimony, the Principal articulated the reasons that lead to his determination that it was appropriate to replace the Appellant as coach of the Team. The Principal began receiving information about complaints from students and parents regarding the Appellant’s coaching abilities, although most of the complaints were verbal and not formal written complaints. The Principal observed that the Team

lacked discipline and motivation. The Principal noted that the Appellant had difficulty maintaining good players on the Team. The Team was required to pull players from the junior varsity so the Team would have a sufficient number of players for varsity games. The Principal noted a series of concerns in two separate memorandums to the Appellant dated January 14, 2002 and February 24, 2000. These documents contained issues and problems concerning the Appellant's teaching and coaching responsibilities.

Additionally, the Appellant had only three winning seasons and thirteen losing seasons. The Appellant's overall win/loss record was 123 wins, 192 losses. In the 1999-2000 season the Team won ten (10) games and lost thirteen (13) games. Therefore, the Principal became convinced that the Team needed new direction and, on or about February 24, 2000, he informed the Appellant that he intended to post the position for the 2000-2001 school year. The Appellant was one of the applicants for the position. After the first posting, John Armstrong, another teacher at Beall, was offered the coaching position for the Team. However, Mr. Armstrong resigned one week later. The Principal posted the position again and the Appellant applied. This time Ray Kiddy, a teacher at Mt. Savage High School was offered the position. Mr. Kiddy was about 45 years old at the time.

In addition to seeking a new coach for the Team, the Principal made changes in other areas of the athletic department. The Principal replaced the girls soccer coach, a woman in her mid 20's, with a woman in her mid 50's. The volleyball coach was replaced by a woman in her late sixties (60's) who was a retired teacher. A retired teacher in his early sixties (60's) became the assistant coach of the girls soccer team and the girls softball team.

Applying the facts of this case to the elements necessary for a prima facie evidence of discrimination, I find that the Appellant is a member of a protected class. He was sixty years old at the time of his replacement as coach of the Team. An individual seeking redress under the ADEA must be at least forty years of age. 29 U.S.C. § 631 (a). When the Appellant was replaced as the coach of

the Team, it was not technically a termination since the coaching positions were contracted on a yearly basis. Although the Appellant could have been replaced as coach at the end of each school year as the Board deemed appropriate, I agree with the Appellant that the ultimate reason for the replacement could not be illegal. However, at the time of his discharge the Appellant must have been “performing at a level that met his employer’s expectations” *Moore* 817 F. Supp at 1299; See also *Tuck* 973 F.2d at 375. The evidence strongly supports a finding that the Appellant did not meet the third prong of the *McDonnell Douglas* analysis. As a coach, the Appellant had far more losses than wins. During the 1999-2000 season, the Appellant had ten wins and thirteen losses. The Appellant could not maintain a sufficient number of players on the Team and needed to draw players from junior varsity to complete the Team. The Appellant insisted that the players who left the Team did so to run track instead. That statement raises an inference, not adequately disputed by the Appellant, that the players would prefer to participate in another sport than to play on the Team. In addition, the Appellant admitted to a lack of supervision during the game on February 23, 2000, when a player walked off the court and no one ever checked on her during or after the game.

The Appellant did present some testimony to support his assertion that he was performing adequately as coach of the Team. The Appellant testified that he had gotten a grant from the Wesner Foundation in Baltimore in the amount of \$1,700.00. The Appellant did not specify the purpose of the grant or for what school year it was obtained. The Appellant also said that “years ago” he started the seventh and eighth grade programs and entered teams in the YMCA summer basketball league (Transcript of 3/11/02, p. 28).

Therefore, the Appellant’s only actual evidence that he was currently performing satisfactorily as a coach was that he had held the position for fifteen (15) years. The Appellant had a poor record overall and almost all of the years he coached the Team were losing seasons. There was nothing specific in his testimony or the record that I could extract that would support a finding that the

Appellant was effective as coach of the Team. The aforementioned memoranda documented the Principal's numerous concerns about the Appellant's coaching abilities. The Principal informed the Appellant that he was seeking a coach who could steer the Team in a new direction and motivate the players. Therefore, the evidence does not support a conclusion that the Appellant was performing his coaching abilities to his employer's expectations.<sup>5</sup>

The fourth element required for a prima facie case involves a showing that a person outside the protected class was given the position. Mr. Kiddy, the teacher who was selected for the position, falls within the protected class at forty-five (45) years of age. However, that prong could be met even if the person retained also falls in the protected class, if the person selected for the position is fifteen years younger. (See *Kralman v. Illinois Department of Veterans' Affairs*, 23 F.3d 150 (1994)).

To prevail, it is incumbent upon the Appellant to demonstrate that he would not have been replaced as coach of the Team, but for the Principal's motivation to discriminate against him because of age. The Appellant relied on two comments made by the Principal that he wanted a younger coach as the foundation of his case for age discrimination. The Principal made these statements on May 4, 2000 and on May 30, 2000. The Principal decided to post this position in February 24, 2000 and so informed the Appellant. These comments were made after the decision had already been made to replace the Appellant as coach of the Team. Thus, the Appellant is requesting that I superimpose these stray comment over the legitimate reasons to seek another coach articulated by the Principal months earlier when the position was posted. Based on the Appellant's

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<sup>5</sup> Although the parties agreed that the coaching position was "at will" employment and the Superintendent did not need a reason to replace a coach, the Appellant argued that he was never evaluated as a coach and subsequently given an opportunity to improve, if necessary. However since the Superintendent could replace a coach as he deemed appropriate, there is no obligation to evaluate a coach's performance or to afford the coach another chance if he or she is not successful in the position.

win/loss record, I was convinced that the Appellant was not performing adequately as a coach. The Appellant coached the Team for fifteen years and the results were significant losses and a stagnation of the program. In light of the Appellant's history as coach of the Team, these comments were insufficient to convince me that age was the "determinative factor" in the Principal's, and ultimately the Superintendent's decision, to replace the Appellant. (See *Carter v. Maloney Trucking & Storage Inc.* 631 F.2d 40 (1980); *Goldman v. Sears Roebuck & Co.* 60 F.2d 1014 (1979).)

However, even if I concluded that the Appellant made a prima facie case for discrimination based on the, albeit inappropriate, comments made by the Principal, there is ample evidence in the record of both hearings that the Principal and the Superintendent had sufficient non-discriminatory reasons for seeking to replace the Appellant as coach of the Team.

Michael Calhoun, the assistant principal at Beall in the 1999-2000 school year, attended two thirds of the games played by the Team and had an opportunity to observe the Appellant's coaching skills. Mr. Calhoun noted a lack of discipline and felt the players exhibited a lack of respect for the Appellant as a coach. Mr. Calhoun observed a lack of "spirit" and believed the players were "disillusioned" (Transcript of 3/11/02 hearing p. 154). Mr. Calhoun stated that he received numerous complaints from students and parents regarding the Appellant's coaching abilities. Mr. Calhoun also noted that the players who started with the program often elected not to remain with the program. Hence, the Appellant was unable to retain any older experienced players on the Team. Mr. Calhoun agreed with the Principal that the Team needed a change of direction.

Cristena Kreiling, physical education teacher and athletic director at Beall, attended most of the Team's home games for all of the years the Appellant coached the Team. Ms. Kreiling was the coach of the Team before the Appellant took over. She observed the Appellant over the years and indicated that she felt the Team had regressed, often losing games they should have won. Ms. Kreiling did not believe the players' potential was being maximized. Ms. Kreiling also noted that the Appellant had new assistant



coaches almost every year, adding to a lack of consistency. Ms. Kreiling stated that parents and students were upset that the Team was “constantly having losing seasons”(Transcript of hearing 3/11/02 pp. 184-189).

The Board presented an additional witness regarding the Appellant’s coaching abilities. Bonnie Hircock is now the chair of the health and physical education department at Frostberg State University, but she was the acting principal at Beall in the school year 1990-1991. Ms. Hircock stated that she received complaints about the Appellant’s coaching from parents and students but declined to act on them. Ms. Hircock said the Appellant was a “nice guy” and she did not want to confront him about the problems since she was only the acting principal. She added that the Appellant was a “delightful” person (Transcript of hearing 3/11/02 p. 197.)

I listened very carefully to all the evidence and reviewed all the documents and the transcripts from both hearings thoroughly. I am completely convinced that if the Appellant had been seventy years old, was winning games and had a great Team, the Principal would not have given a second thought to replacing him. The Principal may have said he wanted a younger coach, but I was persuaded that what he really wanted was a more effective coach, regardless of age. I do not doubt that the Principal was not as tactful as he should have been in his dealings with the Appellant, but his misguided comments were not sufficient evidence that his decision was motivated by a discriminatory purpose.

## **2. Involuntary Transfer of the Appellant**

The Appellant contends that his involuntary transfer to Mt. Savage Middle School was a direct result of the decision by the Principal, and ultimately the Superintendent, to hire Mr. Kiddy as the coach of the Team. Mr. Kiddy made it clear to the Principal that he would not accept the coaching position unless he was transferred to Beall as a teacher. It was apparent the Principal’s ultimate decision to transfer the Appellant was motivated by his desire to have Mr. Kiddy teach and coach at Beall.

The Appellant argued that since his replacement as coach of the Team was illegal and based on age discrimination, his involuntary transfer was also illegal. Since I have determined that there is insufficient evidence to conclude that the Appellant was a victim of age discrimination when he was not reassigned to coach the Team, I likewise conclude that the involuntary transfer did not result from an illegal action.

The Appellant advanced an additional argument that his involuntary transfer violated a collective bargaining agreement negotiated between the Board and the teachers association. During the 1999-2000 school year, the Allegany County School System experienced a transformation as a result of budget constraints. A number of schools were consolidated and Mt. Savage High School was merged with Beall. James Smith, Director of Personnel, (the “Director of Personnel”) for Allegany County School System testified that he directed about 160 reassignments during this period. There is adequate evidence in the record to support a conclusion that the Appellant’s involuntary transfer was a direct result of Mr. Kiddy’s assignment to coach two teams at Beall. However, there is also testimony from the Principal and other witnesses that the Appellant most likely would not have been transferred had the consolidation not occurred.

The actual collective bargaining agreement was not submitted in its entirety and only two pages were made a part of the record. (Joint Ex.B). The Appellant argued that the agreement requires that in a consolidation, the “teachers from the sending and receiving schools shall be given first option in filling the positions...based upon seniority...and certification area” (Joint Ex. B). The Appellant expressed a desire to remain at Beall and he has thirty-eight (38) years of service with the Allegany County School System. In spite of his election to remain at Beall and his seniority, the Appellant was still involuntarily transferred.

The Board responded to the Appellant's argument by referencing Md. Code Ann. Educ. § 6-201(b)(2)(ii) (1999) which grants the Superintendent the right to transfer teachers "as the needs of the school requires." The Board asserts that the collective bargaining agreement does not supercede the authority granted to the Superintendent by statute. Further, the collective bargaining agreement allows for the involuntary transfer of teachers, although the agreement also states that the tenured teachers with the fewest years shall be considered first for transfer "provided the needs of the system can be met" (Joint Ex. B). The Superintendent made his decision to involuntarily transfer the Appellant based on the recommendations of the Principal who wanted Ray Kiddy to accept the coaching position at Beall. Although the Principal also documented problems with the Appellant's teaching responsibilities, it was not disputed that the primary motivation for the transfer was the Principal's attempt to accommodate Ray Kiddy.

I agree with the Board that the primary motivation in any decision for an involuntary transfer must be to meet the needs of the school system. It is true that the agreement affords first option to teachers at the schools being consolidated based on seniority. However, the Appellant did not submit the entire collective bargaining agreement into the record and the portions of the agreement submitted to me did not render that criteria absolute. Further, nothing in the sections of the agreement that I reviewed impressed me as superceding any authority granted to the Superintendent by statute. In fact, the agreement provides for tenured teachers to be transferred according to seniority, provided the needs of the school can be met. Consequently, the needs of the school are paramount and override other considerations including a teacher's seniority.

The Appellant was transferred involuntarily with no loss of pay and benefits. The Superintendent articulated the reasons for the transfer based on information provided by Mr. Calhoun and the Principal. Both believed it was in the best interest of the school to have Mr. Kiddy teach and coach at Beall and

have the Appellant transferred to Mt. Savage. Since the Appellant was unable to articulate an illegal motivation or a violation of the agreement, I see no reason to disturb the Superintendent's decision.

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Appellant did not present sufficient evidence of age discrimination in his replacement as coach of the varsity girls basketball team at Beall High School. Further, the Appellant did not present sufficient evidence that the involuntary transfer of the Appellant was illegal or in violation of the collective bargaining agreement.

### **PROPOSED ORDER**

It is proposed that the decision of the Board of Education of Allegany County to terminate the Appellant as coach of the girls varsity basketball team be **UPHELD**. It is further proposed that the involuntary transfer of the Appellant from Beall High School to Mt. Savage Middle School be **UPHELD**. Md. Code Ann. Article 49B, section 16(a) Human Relations Article and the Age Discrimination in Employment Act, ("ADEA") 29 U.S.C., section 621, 623; *McDonnell Douglas Corp. v. Green*, 411 U. S. 793; 93 S. Ct. 1817 (1973).

April 25, 2002  
Date

Cathy A. Barchi  
Administrative Law Judge

CAB/cf  
# 41313

### **NOTICE OF RIGHT TO FILE OBJECTIONS**

Any party adversely affected by this Proposed Decision has the right to file written objections within ten (10) days of receipt of the decision; parties may file written responses to the objections within ten (10) days of receipt of the objections. Both the objections and the responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.01.03P(4). The Office of Administrative Hearings is not a party to any review process.

WILLIAM HENAGHAN,  
APPELLANT  
v.  
BOARD OF EDUCATION  
OF ALLEGANY COUNTY

\* BEFORE CATHY A. BARCHI,  
\* ADMINISTRATIVE LAW JUDGE,  
\* MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH No.: MSDE-BE-01-200100006

\* \* \* \* \*

**FILE EXHIBIT LIST**

The following exhibits were admitted into evidence as Joint Exhibits:

- Joint Ex. A. - Transcript of Hearing before Hearing Examiner for Local Board of Education (117 pages).
- Joint Ex. B. - Exhibits before Hearing Examiner consisting of 10 Exhibits.
- Joint Ex. C. - Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendations (24 pages).
- Joint Ex. D. - Opinion of Board of Education of Allegany County (14 pages).
- Joint Ex. E. - Notice of Appeal and Request for Hearing before Maryland State Board of Education (4 pages).
- Joint Ex. F. - County Board of Education's Motion for Summary Judgment and Memorandum in support of County Board's Motion for Summary Affirmance (7 pages).
- Joint Ex. G. - Appellant's Response to Appellee's Motion for Summary Affirmance and Appellant's Motion for Summary Decision (9 pages).
- Joint Ex. H. - Order of Maryland State Board of Education
- Joint Ex. I. - Transcript of Oral Argument dated February 13, 2001 (13 pages).

The following exhibits were admitted into evidence on behalf of the Board:

- Bd. Ex. 1 - Notes of the Appellant compiled from Fall, 1999 through June 9, 2000. (7 pages).
- Bd. Ex. 2 - Beall High School Staffing for 2000 - 2001