DELISCIA CASEY-PACK,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS,	OF EDUCATION
Appellee.	Opinion No. 15-31

OPINION

INTRODUCTION

Deliscia Casey-Pack (Appellant) appeals the decision of the Baltimore City Board of School Commissioners (local board) terminating her as a paraprofessional based on misconduct in office. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded to the motion. The local board did not reply.

FACTUAL BACKGROUND

Appellant began working for Baltimore City Public Schools (BCPS) in June 2007 as an independent contractor. She was hired full-time as a paraprofessional in October 2007. Appellant worked as a "parent educator" for Partners for Success, a program created by the Maryland State Department of Education to provide information and resources to parents of children with disabilities. (T. 18, 222, 258-59, 262). Her work included arranging training for parents, answering questions from the public, and referring complaints to other departments within the special education office. (T. 22-23, 222). Appellant had access to several databases containing student information and often received confidential data as part of her work. (T. 72-74, 266). She also filed reports with MSDE related to grants received by BCPS. (T. 268).

During the 2012-13 school year, school officials reorganized the Office of Special Education. (T. 110). Appellant was assigned a new supervisor, who redefined Appellant's job duties. (T. 323). Appellant and the new supervisor clashed at times and her supervisor reported concerns about Appellant's accounting for her time, completion of work, and ability to follow directions from her superiors. (T. 62, 70, CEO Ex. 2). Appellant, in turn, felt that she was being tasked with running the entire Partners for Success program and was expected to handle many duties outside her job description.[1] (T. 262, 286-87, 324).

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[1] Appellant filed an internal grievance with BCPS on May 13, 2013 against her supervisor and the head of the Office of Special Education alleging that she was asked to lie on reporting forms to MSDE, that she was working outside her job description, and that she was not compensated for overtime work. (T. 285-88). On Aug. 19, 2013, BCPS issued a report finding that the allegations of misconduct were unsubstantiated. (CEO Ex. 16). Appellant also filed a complaint with the Equal Employment Opportunity Commission. On Aug. 29, 2013, the EEOC closed the complaint because it was unable to conclude that violations of the law occurred. (CEO Ex. 17).

Appellant regularly spoke with another director in the Office of Special Education, Charles Brooks, who served as the interim director for Data Reporting, Monitoring & Compliance. Brooks did not supervise Appellant but they regularly spoke about the office. (T. 185-188). In particular, Brooks and Appellant discussed the "lack of morale" in the office and the feeling that employees were not appreciated by their supervisors and were being set up to fail. (T. 188-89).

In late October or November 2012, Appellant and another employee informed Brooks and other supervisors of a concern they had about whether young children were receiving required special education services. (T. 192, 194-95). Appellant and the other employee became aware of the issue because of calls and emails they received from the public, including from parents and community service providers. (T. 194-95).

On May 27, 2013, Brooks and Appellant discussed how the office continued to receive complaints concerning the provision of special education services to young children. (T. 201). In response, Brooks asked Appellant and another employee to forward to him emails detailing the complaints. (T. 202). Many of those emails contained confidential information related to specific students and their disabilities. (CEO Ex. 11). On May 29, 2013, Appellant began forwarding the emails to Brooks. Later, she printed out emails and provided them to him. (T. 284).

After she provided Brooks with the emails, he instructed her to delete them from her computer. (T. 203). He explained that he did so because Appellant "was under tremendous pressure regarding her job position" and he feared that the content of the emails would be used against her because she was "bringing to light a problem" that others did not want to discuss. (T. 203). Appellant forwarded a copy of the emails to two of her personal email accounts. (T. 284-85). She did this in order to "protect herself" so that she would have proof that the emails existed after she deleted them. (T. 291-92). It was her understanding that it was not improper so long as she did not disclose the information to an outside entity. (T. 292). Although Brooks did not supervise her, Appellant felt that she could not say no to his request for the emails. (T. 311).

Brooks explained that he did not instruct Appellant to forward the emails to Appellant's supervisor because Brooks believed her supervisor was already aware of the issue and he felt it would get Appellant in trouble. (T. 210-211). Brooks ultimately did nothing with the emails because he was afraid for his job and had other responsibilities. (T. 211).

Around this same time, Kimberly Hoffman, executive director of the Office of Special Education, became concerned that Appellant was providing incorrect information to MSDE as part of the reports she prepared. As a result, she investigated Appellant's email to see what kind of information Appellant was sending. (T. 83-84). Hoffman found no problem with Appellant's communications with MSDE, but she did discover a number of unusual emails between Appellant and another employee regarding special education issues. (T. 84-85). The next day, when Hoffman went back to review those emails, she found that Appellant had deleted them. (T. 85). The BCPS information technology department was able to retrieve the deleted emails and also discovered that more than 100 emails had been forwarded to a private email address. (T. 85-86, CEO Ex. 11). Hoffman became concerned because many of the forwarded emails

contained confidential information about students with disabilities, including student names, identification numbers, parent names, references to student disabilities, and details of education plans and required services. (T. 85-86, CEO Ex. 11).

On May 31, 2013, Appellant was placed on leave with pay while BCPS further investigated. (T. 225-226, CEO 9). A pre-termination hearing was held on June 26, 2013 and Appellant was granted additional time to respond to the accusations against her in writing. (T. 228). In a letter dated July 3, 2013, Appellant explained that she forwarded the emails to Brooks at his request and deleted them per his instructions. In order to protect herself, she decided to forward the emails to her personal accounts in case she was ever asked to retrieve the deleted emails. Appellant claimed no one else had seen the emails. (T. 228-229, CEO Ex. 10). On Aug. 9, 2013, Appellant was terminated. (CEO Ex. 11).

Appellant appealed her termination to the local board, which assigned the case to a hearing examiner. A hearing was held on March 5, May 15, and May 28, 2014. On December 5, 2014, the hearing examiner issued her report, recommending that Appellant's termination for misconduct in office be affirmed. The hearing examiner concluded that Appellant violated Board Rule EDG and Board Regulation EGD_RA when she forwarded the emails to her personal account. *See* EGD_RA.II.C.1(c)(iii) and (iv) (prohibiting employees from sending confidential information via Internet email services). The hearing examiner further found that Appellant attempted to cover up her misconduct by deleting the emails. (Hearing Examiner Report, at 22-23). The hearing examiner found no evidence to support a charge of willful neglect of duty and also determined that Appellant did not violate the Family Educational Rights and Privacy Act (FERPA). (Hearing Examiner Report, at 22).

On February 24, 2015, the local board adopted the hearing examiner's recommendation, concluding that Appellant's forwarding of emails to her private accounts violated board policy. The board found that this behavior was troubling because the school system would have no way to track the confidential student information once it was in Appellant's personal accounts to ensure it was not improperly shared in violation of FERPA and local board policies.[2] (Local Board Opinion and Order).

This appeal followed.

STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

Appellant presents multiple arguments against her termination, relying first on the

[2] The local board issued a separate opinion in which it corrected a statutory citation error made by the hearing examiner and provided additional reasoning to support its decision.

language of the collective bargaining agreement. Appellant was a member of the Paraprofessional and School Related Personnel (PSRP) bargaining unit and subject to its agreement. (Joint Exhibit 1). Regarding employee terminations, the agreement states:

> Article XV Discipline and Discharge
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> B. The CEO shall impose a disciplinary action no later than thirty (30) days after the CEO or designee acquires knowledge of the misconduct for which the disciplinary action is imposed; except in those cases where the employee(s) involved may be charged with criminal offenses, or with offenses related to suspected violations of civil statutes that require specific forms of investigation, and in those cases the CEO (i) must give notice when appropriate to the employee(s) that the CEO's investigation is ongoing, and (ii) impose a disciplinary action no later than thirty (30) days after its investigation is completed. In any event, the Board's investigation of and disposition on an alleged infraction shall occur with reasonable dispatch.

(Joint Exhibit 1).

Appellant argues that her termination was illegal because it occurred more than 30 days after BCPS became aware of her misconduct. In support, Appellant cites to Md. Code, State Personnel & Pensions Article §11-106, which contains a similar 30-day time requirement on employee discipline. Section 11-106 requires that "an appointing authority may impose any disciplinary action no later than 30 days after the appointing authority acquires knowledge of the misconduct for which the disciplinary action is imposed." The Maryland Court of Appeals has held that the statute prohibits discipline beyond the 30-day time period and has voided terminations that occur outside that window. *See Western Correctional Institution v. Geiger*, 371 Md. 125, 151 (2002). In *Geiger*, the Court concluded that allowing terminations to occur beyond the 30-day window would make the time requirement "meaningless." *Id.*

The local board counters that the 30-day time limit did not apply to Appellant. The board reasons that "[b]ecause Appellant was placed on paid administrative leave during the pendency of the CEO's investigation, this action was not disciplinary in nature, and the Board finds that there was no prejudice to Appellant as result of any alleged delay by the CEO in investigating the charges and imposing disciplinary action." (Local Board Opinion and Order, at 3). On appeal, the local board stands by its assertion that because Appellant was placed on paid administrative leave, there was no violation of the bargaining agreement.

Maryland applies the law of "objective contract interpretation," meaning that the "written language embodying the terms of an agreement will govern the rights and liabilities of the parties at the time they entered into the contract, unless the written language is not susceptible of a clear and definite understanding." *Dumbarton Imp. Ass'n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 51 (2013). Courts do not attempt to determine the mindset of the parties at the time they entered into the contract, but rather "what a reasonable person in the position of the parties would have meant at the time it was effectuated." *Id.* at 52.

The agreement states that "The CEO shall impose a disciplinary action no later than thirty

(30) days after the CEO or designee acquires knowledge of the misconduct for which the disciplinary action is imposed" (emphasis added). A reasonable reading of this language leads us to conclude that the CEO must impose discipline within 30 days of becoming aware of misconduct. Contrary to the local board's interpretation, the agreement contains no "tolling" of the 30 day time limit if the employee is placed on paid administrative leave. We find the Court of Appeals' reasoning in *Geiger* to be persuasive on this point, particularly given the similarities between the language in the negotiated agreement and §11-106 of the State Personnel and Pensions Article.

The negotiated agreement does, however, include an exception to the 30 day time limit for instances where an employee "may be charged with criminal offenses, or with offenses related to suspected violations of civil statutes that require specific forms of investigation." In those circumstances, the CEO must alert the employee that an investigation is ongoing and impose a disciplinary action no later than thirty days after the investigation is complete. This investigation and disposition "shall occur with reasonable dispatch." In our view, the "reasonable dispatch" language does not allow for an indefinite amount of time to pass before the school system terminates an employee. Rather, it requires the school system to investigate and reach a conclusion on discipline "with reasonable dispatch" so that employees are not left in limbo for an extended period of time wondering whether or not they will be fired. The 30-day time limit for imposing discipline once an investigation is complete still applies. To conclude otherwise would render the time limit provision meaningless. *See Dumbarton*, 434 Md. at 52 ("[T]he contract must be construed in its entirety and, if reasonably possible, effect must be given to each clause . . .").

The local board did not consider whether this exception applied to Appellant's case because it concluded her being placed on administrative leave "tolled" the 30-day time requirement. In our view, this was an error of law and contrary to the plain language of the negotiated agreement. Had the local board applied the language of the negotiated agreement, it would have had to consider whether an exception to the 30-day time limit applied to Appellant's case.

From our review of the record, it is unclear whether the exception applied. The exception requires that the CEO inform an employee of an ongoing investigation into the violation of a criminal or civil statute. The record reveals that Appellant was put on notice that the CEO was investigating the allegations against her and BCPS could reasonably have suspected that there may have been a violation of a civil statute (FERPA). This would have allowed BCPS to terminate Appellant more than 30 days after it became aware of the misconduct so long as the termination occurred within 30 days of the investigation's end. The record, however, does not indicate when the investigation ended.

Accordingly, we shall remand the case to the local board to determine (1) whether the exception to the 30-day time limit in the negotiated agreement applied in Appellant's case; (2) if so, when the local school system's investigation was "completed;" and (3) whether Appellant's termination occurred within 30 days of the end of the investigation. Because we remand to the local board on this basis, we need not consider the remainder of Appellant's arguments against her termination at this time.

CONCLUSION

For all of these reasons, we remand the decision of the local board for further action consistent with this opinion.

Guffrie M. Smith, Jr.
President

Absent
S. James Gates, Jr.
Vice-President

Absent
James H. DeGraffenreidt, Jr.

Linda Eberhart

Chester E. Finn, Jr.

Absent
Larry Giammo

Michele Jenkins Guyton

Stephanie R. Iszard

Madhu Sidhu

Absent
Andrew R. Smarick

Laura Weeldreyer

September 22, 2015