HARFORD COUNTY SCHOOL BUS CONTRACTORS ASSOCIATION, *et al* ,	BEFORE THE
	MARYLAND
Appellant	STATE BOARD
v.	
	OF EDUCATION
HARFORD COUNTY BOARD OF EDUCATION,	Opinion No. 14-17
Appellee.	

OPINION

INTRODUCTION

The Harford County School Bus Contractors Association and one dozen school bus contractors[1] have appealed the decision of the Harford County Board of Education (Local Board) to eliminate certain bus routes. The local board filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellants responded and the local board replied.

FACTUAL BACKGROUND

Appellants are bus contractors who provided bus service to students attending Harford County Public Schools. On June 10, 2013, the local board approved an operating budget that reduced the amount of funding for student transportation. Transportation officials informed all of the county's bus contractors of these cuts in a June 18, 2013 memorandum. The memorandum stated that a number of bus routes would need to be altered or eliminated and requested that anyone who wanted to voluntarily relinquish a bus route contact the school system. (Appeal, Ex. B).

Individual bus contractors were verbally informed between July 16 and July 25, 2013 that their routes would be altered or eliminated for the coming school year. Written notice was provided on or about July 24, 2013. Contractors were told in the letters that the elimination of bus routes was one of several cost-cutting measures employed in response to a roughly $20 million shortfall in the local board's previously approved budget. (Appeal, Ex. C-3). Appellants appealed the decision directly to the local board.

The local board issued its decision on September 20, 2013. The local board

[1] The contractors are: Evelyn and James Anderson, E & J Anderson, Inc.; Kevin Bearsch, Bearsch Transportation, Inc.; Beverly Cochran, Cochran Bus Company, Inc.; Carol Day, Day Bus Company, Inc.; Rick Ensor, Corbin Bus Co., Inc.; William Gunther, B & T Transportation, LLC; Anthony Harris; Denise Lawson, O.H.D. Transportation Services, Inc.; Robert Livezey, Livezey Transportation, Inc.; Sandy Lucich, Sandy's Transportation, Inc.; Charles Morkosky, C & J Bus Company, Inc.; M. Coy Moxley, Moxley Bus Service, Inc.

acknowledged that it was required to give bus contractors sixty days' written notice prior to terminating a bus contract. The local board noted, however, that no notice was required if the local board merely changed or altered bus schedules, but did not eliminate all of a contractor's bus routes. The local board conceded that one of the bus contractors was entitled to compensation because all of the contractor's routes were eliminated. The local board concluded that the remaining contractors still retained at least one of their routes and were not entitled to notice or any additional formal process before the changes were made. The local board further concluded that the bus contractors were not entitled to compensation for the loss of some of their routes. (Appeal, Ex. C).

This appeal to the State Board followed.

STANDARD OF REVIEW

The local board's decision must "be considered *prima facie* correct" and upheld unless the Appellant proves that the local board's decision was arbitrary, unreasonable, or illegal. *See* COMAR 13A.01.05.05; *Weeks v. Carroll County Bd. of Educ.*, MSBE Op. No. 13-44 (2013).

LEGAL ANALYSIS

Standing

As a preliminary matter, the local board argues that the Harford County Bus Contractors Association does not have standing to participate in this appeal. The local board argues that the members of the Association have not been identified, that no one claiming to represent the Association signed the initial letter of appeal in the case, and that it is unclear what interest the Association has that would give it standing. The local board does not dispute the standing of any of the individual bus contractors. Appellants in turn do not challenge the assertion of the local board that the Association lacks standing.

The Court of Appeals has recognized that a "generalized interest" in an issue before an administrative agency is sufficient to establish standing before the agency. *See Sugarloaf Citizens' Ass'n v. Dep't of Env't*, 344 Md. 271, 286-87 (1996); *Kurth v. Montgomery County Bd. of Educ.*, MSBE Op. No. 11-38 (2011). In this case, the administrative agency would be the local board. But having standing before the local board "does not automatically confer standing at further levels of review." *Id.* A party must be aggrieved by the final decision in a way that is different from the general public. *Id.* Appellants do not state how the Association itself is aggrieved for purposes of the current appeal. As a result, we dismiss the Association from this action. The remaining bus contractors, all of whom have had bus routes altered or eliminated, are clearly aggrieved by the local board's decision and have standing to pursue their appeal.

Notice

Appellants signed contracts that automatically renewed annually, but could be terminated if the parties did not agree on a schedule of rates or if the contractor committed a material breach of the contract. The local board could also terminate the contracts for any reason provided that it

gave the contractors prior notice: "The Board shall have the right to terminate this contract for any reason provided that the Board provides Contractor sixty (60) days written notice prior thereto." (Appeal, Ex. A).

The dispute between the local board and Appellants concerns not only the termination provision, but also the first clause of the contract:

> 1. Contractor shall furnish transportation in accordance with the terms of this agreement for the Board students as specified on Exhibit A attached hereto. Board may change the schedule set forth on Exhibit A to meet the transportation requirements of the Board. Contractor shall accept any reasonable change of schedule and route upon notice thereof from the Board and shall accept such adjustment of the compensation as the Board may deem proper by reason of the change of schedule or route. Contractor shall not deviate from the designated route without the written consent of the Board.

(Appeal, Ex. A).

Appellants argue that each of the bus routes should be considered separate contracts. As a result, they contend that the written notice of July 24, 2013 was insufficient because it was given about a month before the start of the school year and not within the sixty-day window required by the contract.[2] The local board, meanwhile, argues that each bus contractor has only a single contract covering multiple routes, which are detailed as part of an exhibit to each contract.

In support of their argument, Appellants point to two informational reports issued by the local board on January 28, 2013 concerning the transfer of school bus routes between contractors. (Appeal, Exs. E and F). The language in these reports suggests that the local board used the word "contract" in the reports to mean the same thing as "bus route" because the documents discuss the number of "bus contracts" being transferred between parties. Appellants argue that this means that each bus route should be considered a separate contract and notice must be given if the route is ended.

The local board argues that the informational reports should not be considered by the State Board because they were not raised before the local board and they constitute parol evidence (evidence outside of the four corners of the contract). The local board cites *McLain v. Pernell*, 255 Md. 569 (1969) for the proposition that when a contract is clear and unambiguous, parol evidence may not be considered. Appellants characterize the informational reports as being offered to "support the basis" of their appeal, not as new evidence. They argue that the informational reports should be considered because they were a part of the board's policy, they

[2] Prior to that, Appellants received a June 18, 2013 memorandum that warned all contractors of the potential that their routes could be modified or eliminated. This memorandum did not give any individual contractors notice that their routes would be cut. Appellants argue, and we agree, that the June 18 memorandum did not provide notice that any particular routes would be eliminated.

are not a "new argument or issue," and Appellants generally raised the argument below that the local board treated each route as a separate contract.

The State Board has the ability to consider additional evidence on appeal if it is material and there were good reasons for failing to offer the material below. COMAR 13A.01.05.04C. But even assuming the State Board considers the informational reports as additional evidence, the reports would still be subject to the parol evidence rule. Before considering evidence that is outside the contract itself, one must first determine whether the contact is ambiguous. *See Dumbarton Improvement Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 56 (2013) ("[A]n ambiguity in the actual language used by the parties should be identified before consulting and introducing extrinsic evidence."). If the language is ambiguous, extrinsic evidence may be used to resolve the ambiguities, but not to contradict unambiguous terms. *Id.*

In reviewing the record before the local board, we note that each bus contractor signed a single contract for all of his or her bus routes, not a separate contract for each route. The contract states that the contractor "shall furnish transportation in accordance with the terms of this agreement for the Board students *as specified on Exhibit A* attached hereto." (emphasis added). It goes on to state that the "Board may change *the schedule set forth on Exhibit A* to meet the transportation requirements of the Board." (emphasis added). The fact that each contract contains an attachment with a list of bus routes (subject to annual change) supports the argument that there is only one overall contract in place for each bus contractor. Moreover, the termination provision of the contract states that "The Board shall have the right to terminate *this contract* for any reason provided that the Board provides Contractor sixty (60) days written notice prior thereto." (emphasis added). The use of the phrase "this contract" rather than "these contracts" indicates that the document is meant to be a single contract, not several, separate contracts.

This interpretation of the contract by the local board is not ambiguous. Accordingly, extrinsic evidence may not be used to contradict the contract's clear terms. *See Dumbarton*, 434 Md. at 56. The local board had the ability under the contract to modify or eliminate any of a bus contractor's routes, so long as not all of the routes were eliminated. Because Appellants each signed only one contract, as long as they each have at least one bus route still in place, their contracts have not been terminated.

Open Process

Appellants next argue that the local board should have eliminated the bus routes in a more transparent manner. Appellants maintain that the local board should have followed a process similar to that in Carroll County, where the local board issued a bus reduction plan in advance, sought input from bus contractors, and attempted to mitigate contractor losses. (Appeal, Ex. G). Appellants tout the fairness of this approach, but do not point to any language in the contract or in local board policy that requires that such a process be followed. The only requirement in the contract is that contractors be provided with sixty days' notice prior to the elimination of a bus route. Although an open, transparent dialogue with bus contractors might be a beneficial method of operating, we are aware of no contractual or legal requirements mandating that the local board adopt such an approach.

Compensation

Appellants contend that they should be compensated for the loss of their bus routes because they were not given adequate notice. Appellants note that Cecil and Carroll counties have both compensated bus contractors for the loss of routes even though they were not contractually required to do so. Appellants state that school buses are expensive and that contractors enter into finance agreements to purchase them, expecting that they will be able to make future payments based on the income generated by servicing bus routes. Losing a bus route can cause a contractor significant financial problems.

There appears to be no contractual or legal principle that would require the local board to compensate the bus contractors for the elimination of certain bus routes. We have already concluded that the local board did not act in an unreasonable, arbitrary, or illegal fashion by not providing more advance notice of the termination of the routes. The approach taken by Cecil and Carroll counties may certainly be preferable, as it attempts to minimize the financial harm to bus contractors, but it is not required.

Appeal rights

As an aside, Appellants claim that they were informed verbally that the local board's decision was final and could not be appealed. This directly contradicts the language of the contract, which states that if a contractor is aggrieved by a decision of the local board "concerning the interpretation or implementation of this Contract," the contractor may appeal under § 4-205(c) of the Education Article. Appellants did timely file an appeal, which means that even if they received erroneous advice, they did not follow it and were therefore not harmed. As a result, Appellants' claim does not affect our overall conclusions.

CONCLUSION

For all these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

Charlene M. Dukes
President

Mary Kay Finan
Vice President

Absent
James H. DeGraffenreidt, Jr.

Linda Eberhart
Linda Eberhart

S. James Gates, Jr.

S. James Gates, Jr.

Larry Giammo

Luisa Montero-Diaz

Sayed M. Naved -MCP

Sayed M. Naved

Madhu Sidhu

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Donna Hill Staton

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Guffrie M. Smith, Jr.

Guffrie M. Smith, Jr.

April 22, 2014