

IN THE MATTER OF:  
STEPHEN SMITH

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION

Opinion No. 13-51

## OPINION

### INTRODUCTION

Mr. Stephen Smith, a former teacher in the Prince George's County Public School System (PGCPS), filed a petition for declaratory ruling on his status as a full-time teacher. PGCPS filed a Motion to Dismiss. Mr. Smith opposed the Motion, and PGCPS filed a Reply.

### FACTUAL BACKGROUND

Mr. Smith retired in 1999 and was immediately rehired under the Retire/Rehire Program. His first contract under that Program was the Regular Teacher's Contract. (Ex.2, Petition). In 2002, the contract was changed to a "Retired Teacher Reemployment Contract." (Ex. 3, Opposition). In 2009, due to budget constraints, PGCPS went through a reduction in force. It notified Mr. Smith that his employment with PGCPS "as a Retire/Rehire educator will terminate effective June 30, 2009," but if positions became available, he would be contacted. (Ex. 5, Opposition).

Apparently, a position became available and PGCPS hired Mr. Smith on January 19, 2010 without a contract. (Opposition at 2). He again received a termination notice on May 10, 2010 informing him that his employment would terminate on June 17, 2010, subject to re-employment if positions became available. (Ex. 7, Opposition). It appears that Mr. Smith was not subsequently hired. As PGCPS explained in a letter to Mr. Smith's counsel on June 29, 2010:

This correspondence is sent in response to your recent inquiry dated June 18, 2010 regarding the employment status of Stephen Smith with Prince George's County Public Schools (PGCPS). Mr. Smith retired in 1999 and immediately joined the Retire/Rehire Program with PGCPS. He received a regular employment contract in 1999. In 2000, he signed a Retired Teacher Reemployment Contract which negates the regular employment contract signed previously, and expires on June 30 of that same school year.

Due to the change in the Retire/Rehire legislation, PGCPS discontinued the issuance of yearly teaching contract and only extended employment opportunities to Retire/Rehire educators based on the needs of the school system. These staffing needs

were based on the critical need subject areas identified by the Maryland State Department of Education (MSDE). Mr. Smith possesses a teaching certification which is currently not identified as a critical need area.

Mr. Smith has continued his employment with the system on an as-needed basis and worked for his earning limitation established by the Maryland State Retirement Agency Upon his retirement until January, 2009. For the last two years, Mr. Smith received correspondence informing him that all Retire/Rehire educators were being separated from the school system at the conclusion of the school year due to the anticipated reduction in force and budget constraints.

Upon his retirement, Mr. Smith received all of his entitlements and pay-outs in accordance with the established regulations and policies of the Maryland State Retirement Agency and Prince George's County Public Schools. Therefore, it is our position that Mr. Smith is not due any lost wages or expenses incurred for legal fees.

(Ex. C, Motion to Dismiss)

In his Petition, Mr. Smith asserts that he should have been given a regular contract for his 2009 and 2010 employment and received higher wages. He did not, however, appeal those issues to the local superintendent or to the local board.

#### STANDARD OF REVIEW

On the issue presented here, we exercise our independent judgment in interpreting education law. COMAR 13A.01.05.05E.

#### ANALYSIS

From the Petition it appears that Mr. Smith had a dispute with the school system about his contract and his wages. That dispute arose, at the latest, on June 29, 2010 when PGCPs informed his counsel of its determination concerning his contract and wages. Mr. Smith did not pursue the matter at the local board level. He did not appeal the June 29, 2010 determination to the local superintendent or local board. Mr. Smith argues that he did not need to seek review at the local level but could come directly to the State Board with a request for declaratory ruling. We do not agree.

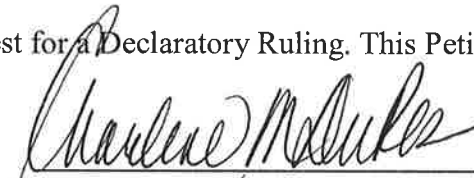
First, this Board consistently declines to rule on a matter that has not been decided by the local board. This case does not present an exception to that rule. The dispute herein falls squarely within the procedures set forth in Md. Educ. Code Ann §4-205(c)(2) which empowers the local superintendent to decide all controversies and disputes about county board rules and

regulations, and the proper administration of the school system. That decision would be appealable to the local board within 30 days and subsequently to the State Board. *Id.* §4-205 (c)(3).

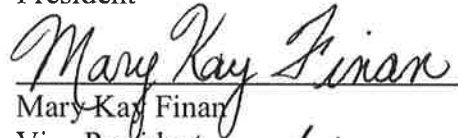
Mr. Smith did not pursue that avenue of appeal. Three years later he attempts to bring his long-standing dispute directly to the State Board. The declaratory ruling procedure is not available to circumvent appeal procedures at the local board.

CONCLUSION

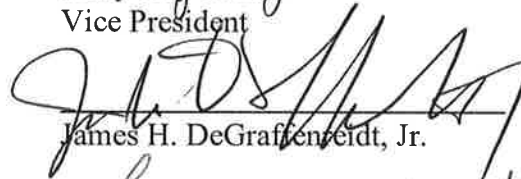
For all those reasons, we decline the request for a Declaratory Ruling. This Petition for Declaratory Ruling is dismissed.



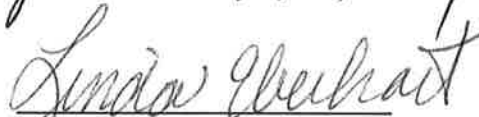
Charlene M. Dukes  
President



Mary Kay Finan  
Vice President



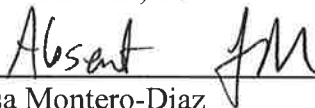
James H. DeGraffenfeldt, Jr.



Linda Eberhart

Absent

S. James Gates, Jr.



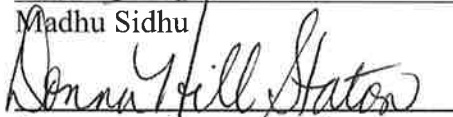
Luisa Montero-Diaz



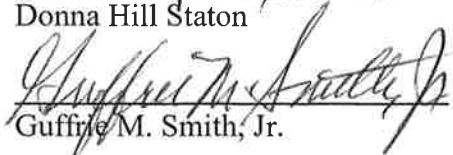
Sayed M. Naved



Madhu Sidhu



Donna Hill Staton



Guffie M. Smith, Jr.

September 24, 2013