

MARCIA MARTIN

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-41

OPINION

INTRODUCTION

Marcia Martin (Appellant) appeals the decision of the Baltimore City Board of School Commissioners (local board) to not renew her employment contract. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded to the motion and the local board replied.

FACTUAL BACKGROUND

Appellant began teaching home economics for Baltimore City Public Schools (BCPS) in 1976. During the following years, she taught at several different schools and served as a managing teacher before becoming an assistant principal in 1998. Appellant later spent a year as principal at Francis M. Wood High School before becoming an assistant principal at Mergenthaler Vocational Technical High School in 2005. According to Appellant, she was reassigned to a teaching position at the end of the 2013-14 school year. (Appeal, Ex. H).

Appellant held an Advanced Professional Certificate that was valid from July 1, 2009 until June 30, 2014. Her certification areas were Administration I/II and Family and Consumer Sciences 7-12. (Motion, Ex. 3).

On January 1, 2014, Appellant received an email notification reminding her that her certificate was scheduled to expire in six months. The notice informed Appellant that she was required to hold certification as a condition of employment and that her job could be in jeopardy if she did not complete her certification requirements. The email stated that questions could be sent to the BCPS certification office's email address. (Motion, Ex. 4). Similar reminders about her certificate expiring were sent 90, 60, and 30 days before the certificate's expiration date. (Motion, Ex. 5-7).

Starting March 31, 2014, BCPS began requiring all employees to submit certification renewal requests through an online portal. BCPS published an online step-by-step instruction guide on how to file the electronic requests. (Motion, Ex. 10-11).

On June 26, 2014, Appellant sent an email to the certification office. The email read:

I applied for a renewal of my certification some time ago. Since I applied, the new web site was established. I have been trying to get on the new web site, but I have been having issues with that. I still have the Senior Teacher Status. I wanted to know if I needed to do anything else to renew my certificate at this time.

(Motion, Ex. 8).

Appellant apparently never received a response to this email and did not follow-up with the certification office. Her certification lapsed after June 30, 2014.

The Code of Maryland Regulations (COMAR) 13A.12.01.14B allows renewal requirements for any professionally certificated employee to be waived if the renewal is recommended by the local superintendent of schools and the employee is 55 years old or older or has been employed for at least 25 years in a public school or approved nonpublic school. According to BCPS, the “senior teacher status” waiver only excuses employees from completing required credits towards their certification renewal; they still must submit a request for renewal application, evidence of satisfactory performance evaluations, and a completed Individual Development Plan. There was no record of Appellant submitting any of these documents prior to her certification expiring, according to Tamara Deshields-Burns, certification manager for BCPS. The certification office had no record of Appellant submitting a paper copy of her renewal request or submitting a request online. (Motion, Ex. 9).

On August 19, 2014, Appellant was informed by letter that BCPS “has decided not to continue your employment” effective August 22, 2014. The letter explained that Appellant’s certification lapsed on June 30, 2014 and that she had not submitted “timely and sufficient documentation required for renewal.” (Motion, Ex. 1).

On September 12, 2014, Appellant appealed the decision to the local board. In her notice of appeal, she claimed that on three occasions prior to June 30, 2014, she submitted the necessary documentation to renew her certificate and that it should not have lapsed. Appellant requested an evidentiary hearing. (Motion, Ex. 2).

The case was referred to a hearing examiner who reviewed the case based on documents submitted by the parties without a hearing. On April 6, 2015, the hearing examiner issued her decision recommending that the local board affirm the CEO’s decision not to renew Appellant’s employment contract. The hearing examiner found that no hearing was required because Appellant failed to establish that there was a legal issue that required an oral argument or evidentiary hearing. In addition, Appellant failed to present evidence in support of her claim that she submitted documents to BCPS to renew her certification. As a result, the hearing examiner concluded that Appellant failed to renew her certificate and that BCPS’s decision not to renew her contract was not arbitrary, unreasonable, or illegal. (Appeal, Ex. B).

Appellant filed exceptions to the hearing examiner's recommendation to which BCPS responded. (Response to Motion, Exs. E-F). On May 26, 2015, the local board voted to adopt the hearing examiner's decision and issued its order affirming the CEO's decision on June 8, 2015. This appeal followed.¹

STANDARD OF REVIEW

The decision of a local board concerning a local dispute or controversy is presumed to be *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless the decision is shown to be arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

Appellant argues that there exists a dispute of material fact – namely, whether she timely submitted her certification documents to BCPS – that necessitated an evidentiary hearing. She maintains that the local board's decision not to grant an evidentiary hearing under the circumstances violated her due process rights and was unreasonable and unfair.

Prior to the lapse of her certification on June 30, 2014, Appellant was a certificated employee who could only be terminated for cause based on immorality, misconduct in office, insubordination, incompetency, or willful neglect of duty. *See* Md. Code Ann., Educ. §6-202. Certificated employees are entitled to significant due process protections prior to being terminated. Specifically, the Appellant would have been entitled to an evidentiary hearing and given the opportunity to be heard before the local board. *Id.* Once Appellant's certification lapsed, however, she was no longer entitled to the protections of §6-202.

Instead, the local board's policy concerning hearings applied. Local Policy BLA.III.B.8 states that appeals taken from the decision of the CEO shall be considered based on the documents and arguments submitted by the parties without an evidentiary hearing or oral argument. The policy places the burden on the appealing party to demonstrate that a hearing is required because a constitutionally protected liberty or property interest is at stake or there are specific factual allegations of unlawful discrimination or arbitrariness.

This Board has continually affirmed the principle that an appeal on the record can be decided without a hearing or oral argument if it "does not involve a dispute of material fact." *Brown v. Queen Anne's County Bd. of Educ.*, MSBE Op. No. 13-37 (2013). To show that an issue of material fact exists, "an opposing party must demonstrate that there is a factual dispute" by producing "factually accurate and credible" assertions." *Id.* (quoting *Johnson v. Howard County Bd. of Educ.*, MSBE Op. No. 09-28 (2009)). When such a dispute of material fact exists, an evidentiary hearing is appropriate. *See Mary E. v. Anne Arundel County Bd. of Educ.*, MSBE Op. No. 13-13 (2013).

As part of her appeal before the local board, Appellant alleged that she submitted her certification documentation three times prior to its expiration. The record before the hearing

¹ The local board did not inform Appellant and her counsel of the decision until September 10, 2015. Appellant filed her appeal within 30 days of that notice and the local board has not challenged the timeliness of her appeal.

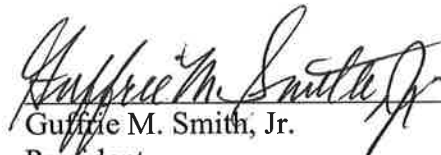
examiner included an email written to the BCPS certification office dated June 26, 2014, in which Appellant stated that she had applied for the renewal of her certification "some time ago." She indicated that she submitted these materials prior to the new website being established, which occurred on March 31, 2014. Appellant further claimed that she had tried to use the new website but had problems getting on the site. She ended by stating, "I wanted to know if I needed to do anything else to renew my certificate at this time." (Motion, Ex. 8). There is no indication in the record whether BCPS received this email or responded to it.

In short, the parties disagree on a material issue in the case - whether Appellant submitted her renewal materials on time. There is evidence in the record that corroborates their respective positions: Appellant's email to the certification office supports her argument and the BCPS affidavit and other documents support its position. Given the conflicting evidence presented, it is hard not to view these facts as still being very much in dispute. A motion for summary affirmance is proper only when no dispute of material fact exists. COMAR 13A.01.05.03D(1). In our view, the evidence demonstrated a dispute of material fact and an evidentiary hearing should have occurred.

We therefore remand the case to the local board so that an evidentiary hearing may take place and a revised decision based upon the evidence from the hearing may be issued. In reaching our decision, we do not otherwise reach any conclusions about the merits of Appellant's claim.

CONCLUSION

For all of these reasons, we reverse the decision of the local board and remand the case for an evidentiary hearing.

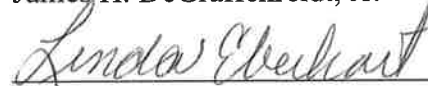

Guffie M. Smith, Jr.
President

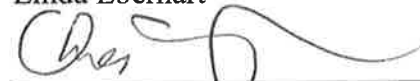
Absent

S. James Gates, Jr.
Vice-President

Absent

James H. DeGraffenreidt, Jr.


Linda Eberhart


Chester E. Finn, Jr.

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Larry Gianmo

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Michele Jenkins Guyton

Absent

Stephanie R. Iszard

Absent

Madhu Sidhu

[Handwritten signature]

Andrew R. Smarick

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Laura Weeldreyer

December 8, 2015