

BALTIMORE CITY BOARD OF SCHOOL
COMMISSIONERS,

Appellant

v.

BALTIMORE TEACHERS UNION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-49

OPINION

INTRODUCTION

The Baltimore City Board of School Commissioners (local board) filed a Request for Declaratory Ruling in which it asked this Board to declare illegal that portion of the Master Agreement that defines matters that are grievable and subject to binding arbitration as including a matter that involves “a policy of the Board . . . which affects terms and conditions of employment.” The Baltimore Teacher’s Union (BTU) filed a Response to which the local board filed a reply. BTU replied to the local board’s filing. The local board responded to the BTU reply.

FACTUAL BACKGROUND

This case arose when BTU filed a grievance on behalf of a teacher who was returning from an extended leave of absence. On December 17, 2009, the hearing examiner for the local board denied the grievance. In doing so, however, the hearing examiner recommended to the local board that it rule as a matter of law that BTU had a right to grieve and arbitrate an alleged violation of “Board policy.” (Request, Ex. 4). On January 12, 2010, the local board accepted the hearing officer’s recommendation to deny the grievance but rejected her conclusion of law that BTU could grieve and arbitrate alleged violations of Board policy. (Request, Ex. 6).

After BTU moved to begin binding arbitration of this legal issue, the parties agreed to stay the arbitration to seek a declaratory ruling from this Board. The local board asks this Board to declare illegal the portion of Section 4.2 of the Agreement that defines an arbitrable grievance as including a policy of the Board that affects terms and conditions of employment. (Request at 9).

STANDARD OF REVIEW

The State Board exercises its independent judgment on the record before it when it explains and interprets public school law and State Board regulations. COMAR 13A.01.05.05.

LEGAL ANALYSIS

Jurisdiction

In a Memorandum dated June 23, 2010, this Board asked the parties whether this case should be retained by the State Board for final decision or transferred to the newly created Public School Labor Relations Board for handling.

The Labor Relations Board was established by the Fairness in Negotiations Act, House Bill 243/Senate Bill 590, Acts of 2010. The Act provides in Section 3:

AND BE IT FURTHER ENACTED, that this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any negotiations requested or entered before the effective date of this Act.

A review of the record shows that the matters given rise to the request for declaratory ruling arose prior to July 1, 2010, which is the effective date of the Act. Thus, the State Board retains jurisdiction of this case for a final decision.

Merits

For about twenty years the Master Agreement with BTU stated in Section 4.2:

A grievance is a violation, misapplication or misinterpretation of a specific provision of this Agreement or of a policy of the Board of School Commissioners which affects the terms and conditions of employment.

(BTU Response at 2, Master Agreement 4.2).

For twenty or so years, the BTU apparently grieved and arbitrated alleged violations of Board policy which affected terms and conditions of employment. The local board now asserts that it was illegal to include "Board policies" as a topic for negotiation on arbitrable matters. Illegal topics for negotiation are the school calendar, class size, "or any matter that is precluded by applicable statutory law." Md. Educ. Code Ann. §6-408(b)(3). The local board asserts that there is a statute that precludes the inclusion of local board policies that affect terms and conditions of employment as the subject of binding arbitration of grievances. The Board points to Section 6-408(b) of the Education Article which states:

The agreements may provide for binding arbitration of grievances arising under the agreement that the parties have agreed to be subject to arbitration.

It is the local board's position that this statute authorizes local boards to agree to binding arbitration of only those grievances that "arise under the agreement" - - and that it does not authorize a local board to agree to binding arbitration of disputes "arising under" local board policies. (Request at 5). Thus, focusing solely on the words "arising under the agreement," the local board argues that §4.2 of the Agreement contains an illegal topic of bargaining, and it must be declared null and void.

In our view, the statute should not be so severely parsed. Indeed, the rules of statutory construction advise to the contrary:

Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology.

In construing plain language, "[a] court may neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute; nor may it construe the statute with forced or subtle interpretations that limit or extend its application." Statutory text "should be read so that no word, clause, sentence or phrase is rendered superfluous or nugatory." The plain language of a provision is not interpreted in isolation. Rather, we analyze the statutory scheme as a whole and attempt to harmonize provisions dealing with the same subject so that each may be given effect.

Bowen v. Annapolis, 402 Md. 587, 613-14 (2007) (citation omitted).

Thus, we look at all the words of §6-408. Section 6-408(a) defines negotiation to include several duties - - one of which is to "reduce to writing the matters agreed on as a result of negotiations." In §4.2, the parties reduced to writing their agreement on matters that were arbitrable. They agreed that an arbitrable grievance can be based on "any provision of this Agreement or [on] a policy of the Board . . . which affects the terms and conditions of employment."

The local board would strike as illegal the phrase about Board policy because, they assert, Board policies do not come into existence through the Agreement. While that is a true statement, it ignores the fact that the parties set forth in the Agreement itself that arbitrable grievances could be based on violations of certain Board policies. While such agreement alone does not necessarily establish that §4.2 is legal, when it is read in context with Section 6-408(b) we believe, the appropriate conclusion is that §4.2 is a legal provision of the Agreement.

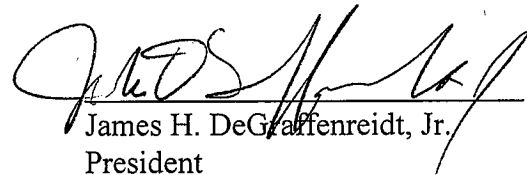
Section 6-408(b) is a non-mandatory provision allowing the parties, if they choose, to provide for binding arbitration of grievances. Section 6-408(b) states, "The agreements may

provide for binding arbitration of the grievances arising under the agreement that the parties have agreed to be subject to arbitration.” In our view, the proper reading of the statute must encompass the whole phrase, “grievances arising under the agreement that the parties agreed to be subject to arbitration.” When the local board agreed that violations of Board policy were subject to arbitration, they essentially incorporated Board policies that affect terms and conditions of employment into the Agreement itself. Thus, in our view, a grievance based on a violation of Board policy does “arise under the agreement” because the parties wrote into the Agreement that such grievances would be subject to arbitration.

We do not read §6-408(b) to preclude such an agreement as being an illegal topic of bargaining. We agree with BTU that it is a permissive topic of bargaining subject to mutual agreement.

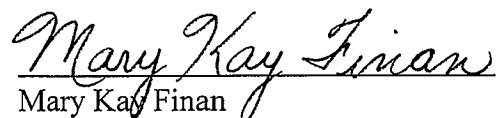
CONCLUSION

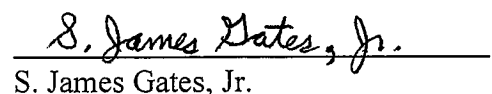
For the reasons stated herein, the State Board declines to declare that the disputed portion of §4.2 is illegal.


James H. DeGraffenreidt, Jr.
President

ABSENT

Charlene M. Dukes
Vice President


Mary Kay Finan


S. James Gates, Jr.

ABSENT

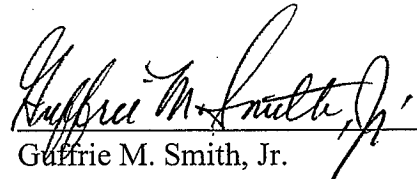
Luisa Montero-Diaz



Sayed M. Naved



Madhu Sidhu



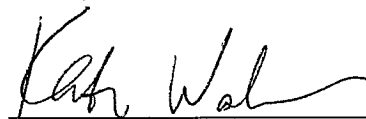
Guffrie M. Smith, Jr.



Donna Hill Staton



Ivan C.A. Walks



Kate Walsh

December 14, 2010