

RICHARD J. LEARY

Appellant

v.

WICOMICO COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-24

OPINION

INTRODUCTION

The Appellant has challenged the decision of the Wicomico County Board of Education (local board) denying the Appellant's grievance alleging employment discrimination and violations of the negotiated agreement between the local board and the Wicomico Education Support Personnel Association.

The State Board previously considered whether or not this case should be dismissed based on untimely filing. In *Leary v. Wicomico County Bd. of Educ.*, MSBE Opinion No. 11-52 (2011), the State Board denied the local board's motion to dismiss, finding that the Appellant timely filed his appeal to the State Board by placing his letter of appeal in the Fed Ex delivery system prior to the expiration of the thirty day time period for transmitting an appeal to the State board as set forth in COMAR 13A.01.05.02B(1). The Board determined that transmission of the appeal by Fed Ex rather than by "registered or certified mail" as required by the regulation, was a "distinction without a difference" and that the Board's prior interpretation of the regulation requiring the filing to be by certified or registered mail could not stand. *Leary*, Op. No. 11-52. Thereafter, this Board revised COMAR 13A.01.05.02B(1)(3) to reflect the acceptability of mailing and delivery options other than certified or registered mail.

The local board has asked the State Board to reconsider its decision in Opinion No. 11-52. It is within the discretion of the State Board to reconsider a decision. COMAR 13A.01.05.10D. We decline to exercise that discretion here. We proceed, therefore, to the merits of the appeal.

## FACTUAL BACKGROUND

Appellant was employed with Wicomico County Public Schools since September 2003. He worked as an Adult Learning Coach, assigned to the Adult Education Program since April 2007. Effective July 1, 2010, the local board eliminated the Adult Education Program because grant funding for the program had ceased. The school system advised employees that they would no longer hold a position with the school system. It encouraged them to apply for vacant positions after June 30, 2010.

On or about July 26, 2010, the school system posted a vacancy announcement for a Grants Specialist position. Appellant applied for the position but was not selected.

Appellant filed a grievance pursuant to the negotiated agreement between the local board and the Wicomico Education Support Personnel Association (Agreement). Appellant alleged that the school system violated Article 6.2 of the Agreement because he was not placed on a "priority recall list" and was not recalled when the Grants Specialist job became available. Appellant also alleged that his age and gender may have played a role in the decision.

Appellant's grievance was denied at all levels, including the local superintendent and the local board because (1) the recall provisions of Article 6.2 did not apply; (2) even if the recall provisions had applied, the vacancy at issue was not an appropriate placement because it was not in the same classification as Appellant's prior position; and (3) Appellant provided no evidence of age or gender discrimination. (Local Board Decision; Superintendent's Memorandum).

This appeal followed. Appellant seeks appointment to the Grants Specialist position with back pay and all benefits as of July 27, 2010, and refund of his COBRA payments.

## STANDARD OF REVIEW

Because this appeal involves the decision of the local board involving local policy, the local board's decision is 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 maintains that he was subject to a "Reduction in Force" and that the provisions for recall in Article 6.2 of the Agreement required the school system to place him on a priority recall list. Article 6.2 requires the school system to place those employees laid off in a "Reduction in Force" on a priority recall list for a period of one year to be recalled when appropriate positions become available. An employee on the priority recall list is to be notified of vacancies in the employee's job classification and is given 7 days to accept or reject the position.

The local board maintains that no "Reduction in Force" took place. Pursuant to the Agreement, a "Reduction in Force" takes place when the local board decides to reduce the number of employees in a given job classification. (Article 6.1). The local board did not reduce the number of employees in a given job classification. Rather, the local board completely eliminated one of its instructional programs due to the loss of grant funding and separated from service all employees who were associated with that program. Because there was no "Reduction in Force", the recall provisions of Article 6.2 were not triggered.

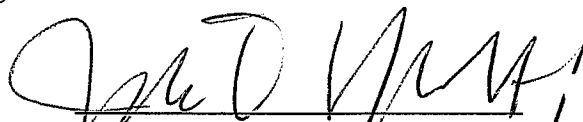
Even if we were to find that a "Reduction in Force" was in effect triggering Article 6.2 of the Agreement, Appellant would still not prevail. Article 6.2 explains that an appropriate position for recall is a position in the same job classification as the employee's prior job. Here, the Grants Specialist position was not in the same job classification as the Appellant's prior position.

Appellant also maintains that he failed to receive the Grants Specialist position due to age and gender discrimination. He alleges that the Grants Specialist position description was altered to fit the educational credentials of a particular female employee who was promoted several levels to the new assignment. Appellant has presented no evidence of discrimination through affidavit or otherwise. Mere allegations of discrimination without supporting evidence are insufficient for an Appellant to sustain a claim of illegality. *See Johnson v. Howard County Bd. of Educ.*, MSBE Op. No. 07-35 (2007).

Appellant also alleges that the local board failed to provide him with certain information that he requested. There is no discovery process or subpoena power in an appeal before the local board. To the extent the Appellant is claiming a violation of the Maryland Public Information Act, Md. Code Ann., State Gov't 10-611 *et seq.*, the State Board is not the appropriate avenue to redress such claims. *See George and Thaviphone B. v. Howard County Bd. of Educ.*, MSBE Op. No. 09-01; *D.H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 07-14 (2007).

CONCLUSION

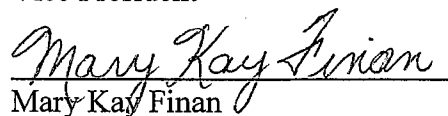
The local board's decision was not arbitrary, unreasonable or illegal. Accordingly, we affirm the local board's denial of Appellant's grievance.



James H. DeGraffenreid, Jr.  
President



Charlene M. Dukes  
Vice President



Mary Kay Finan

*absent*

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S. James Gates, Jr.

*Luisa Montero-Diaz*

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Luisa Montero-Diaz

*absent*

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Sayed M. Naved

*absent*

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Madhu Sidhu

*Donna Hill Staton*

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Donna Hill Staton

*all*

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Ivan C.A. Walks

*Guffie M. Smith, Jr.*

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Guffie M. Smith, Jr.

*Kate Walsh*

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Kate Walsh

July 24, 2012