

ANTHONY SHUMATE

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 10-02

OPINION

INTRODUCTION

In this appeal, the Appellant requests retroactive pay for the two years the he was demoted from the position of Building Supervisor at Francis Scott Key Middle School to the position of Full-Time Day Cleaner at High Point High School. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellant did not respond to the Motion.

FACTUAL BACKGROUND

The Appellant has been employed by the school system for approximately 27 years. Although he has always had satisfactory performance evaluations, he has had performance issues over the years, mainly poor work performance and insubordination. (Admin. Exhs. 2 – 3, 5 – 8, 10 – 11). It is the Appellant's performance in May – July 2007 that is the issue here.

On May 17, 2007, Eric Walker, then Acting Chief Administrator for Supporting Services, made an unannounced visit to Francis Scott Key Middle School (FSK). Mr. Walker asked to tour the school with Appellant, who was the Building Supervisor. Ms. Gilchrist, the Principal, called the Appellant several times, but he did not respond. Mr. Walker then asked Samuel Stefanelli, then Acting Director of Plant Operations, to meet him at FSK because the Appellant could not be located. Mr. Stefanelli eventually found the Appellant in the boiler room in a jumpsuit covered in grass. (Tr. 106-107). The Appellant told Mr. Stefanelli that he had been outside weeding. (Tr. 107).

Mr. Walker was displeased with the poor condition of FSK. The cafeteria, hallways, bathrooms, floors, walls and baseboards were not clean. (Tr. 59-62; App. Exh. 4). Mr. Stefanelli also observed that many portions of the school were dirty. (Tr. 107).

To bring the school up to standard, Mr. Walker directed a special team to do a thorough cleaning of the school over the weekend. Mr. Stefanelli directed the Appellant to report to the school on Saturday, May 19, 2007 in order to open it for the cleaning team. He advised the

Appellant that he would be compensated for his time (Tr. 107-108). The Appellant refused to report for work that day because it was on the weekend. Mr. Stefanelli reminded the Appellant that as Building Supervisor he was on call 24 hours per day and that his refusal to report would be insubordination. (Tr. 108). The Appellant did not report for work on May 19th, nor did he engage in any discussion with management about an alternative arrangement.

As a result of Mr. Walker's May 17 visit to FSK and Appellant's failure to report on May 19, Mr. Stefanelli issued several memos. In one memo, dated May 18, Mr. Stefanelli informed the Appellant that the condition of the school building was "unacceptable" and that leaving the building without permission and signing out was also unacceptable. (App. Exh. 4).

The Appellant wrote in response that the dirty areas of the school were the responsibility of the night foreman, and that he had raised this issue with Mr. Walker on April 30, 2007, prior to his unannounced visit to FSK. (App. Exh. 4). Appellant also claimed that he did not leave the school building. *Id.*

After meeting with the Appellant on May 18, 2007, Mr. Stefanelli imposed a plan of action to address Appellant's presence at school during work hours and his supervisory responsibilities. (Admin. Exh. 12a). He directed the Appellant to sign a log sheet at the main office, to speak with Ms. Gilchrist personally when entering and departing the school, and to carry a radio at all times. (Admin. Exh. 12a).

In a separate memorandum dated May 22, 2007, Mr. Stefanelli wrote up the Appellant for insubordination for his failure to report for duty on Saturday, May 19. (Admin. Exh. 13). On May 29, Mr. Stefanelli suspended the Appellant for four days for failure to perform effectively as a supervisor and failure to follow instructions/insubordination. (Admin. Exh. 14).

Thereafter, on July 13, 2007, Appellant failed to follow leave procedures, reporting late to work without advising the school principal as required. (Admin. Exh. 16). On July 27, the Appellant did not respond to a call from the Assistant Principal, Willie Hagans, to take care of a water leak in the building. Another custodian took care of the problem. Based on the statements from that custodian, Mr. Hagans believed that the Appellant had stepped out of the building without the permission of an administrator. Mr. Hagans reminded the Appellant that failure to get permission from an administrator before leaving the building is insubordination. (Admin. Exh. 17).

In response, the Appellant claimed that he was in the custodial closet at the time of Mr. Hagans' call and was only able to hear the intercom alert beep, not the announcer's voice. The Appellant claims that he did not immediately respond because he knew that other custodians were in the building and would respond. When the Appellant emerged from the closet several minutes later, another custodian advised that the call was for the Appellant but that he had taken care of the water leak and there was no need for the Appellant to reply. (Tr. 78-79). The Appellant claims that he then went to see Mr. Hagans, but he was busy registering a child at the

time so they did not get to speak. (App. Exh. 5).

Thereafter, on July 16, Mr. Stefanelli requested Appellant's demotion from Building Supervisor VI to Building Equipment Operator I for insubordination and failure to report to work at the designated time. (Admin. Exh. 15).

Randy Thornton, Director of Human Resources, conducted a *Loudermill* conference¹ on July 25, 2007 concerning Appellant's work performance.² (Admin. Exh. 18 & 19). Thereafter, Mr. Thornton demoted the Appellant to the position of Full-Time Day Cleaner at High Point High School effective July 30, 2007. (Admin. Exh. 18). Mr. Thornton also placed the Appellant on an action plan for 60 days which addressed his responsibilities for reporting to work, taking leave, performing his job functions, responding to emergencies, and following the instructions of his supervisors. (Admin. Exh. 19).

Appellant appealed the demotion to the Interim Superintendent who referred the matter to a Hearing Officer for review. The Hearing Officer found that a demotion was warranted. Despite this conclusion, the Hearing Officer determined that the Appellant should have been demoted to the position of Building Equipment Operator rather than to the position of Full-Time Day Cleaner because the Building Equipment Operator position was the position immediately preceding the Building Supervisor position on the salary scale, and there was no evidence that a Building Equipment Operator position was unavailable at that time. (Hearing Officer Decision).

On February 2, 2009, the Hearing Officer recommended that Appellant's position be converted to Building Equipment Operator and that the Appellant be paid the salary difference between the two positions back to the original demotion date. He also recommended that the Appellant be allowed to seek promotional positions within the school system to allow him to work back towards his former position and pay grade. (Hearing Officer Decision at 15-16). On February 4, 2009, the Interim Superintendent concurred with the Hearing Officer. (*Id.* at 17).

The Appellant appealed the Interim Superintendent's decision to the local board which heard the case in May, 2009. In a June 15, 2009 decision, the local board concurred that a demotion was warranted but rejected the recommendation that the Appellant should have been assigned to a Building Equipment Operator position. The local board found the Appellant's reassignment to the position of Full-Time Day Cleaner at High Point to be reasonable in light of the Appellant's failure to comply with the requests of the FSK principal to follow leave

¹At a *Loudermill* conference the employee is given notice of the charges against him and provided with the opportunity to respond to those charges. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

²The Appellant, Ms. Gilchrist, Mr. Hagans, Mr. Stefanelli, the Area Coordinator of Plant Operations, a Human Resources Specialist, Appellant's Union representative, and the Union President were all present at the *Loudermill* conference. (Admin. Exh. 18).

procedures, failure to be responsive to calls from the administration while on duty, and failure to ensure that the school building met the school system's cleanliness standards. The local board noted that the Appellant had previously received similar counseling and warnings on these types of matters. In addition, the local board determined that because the Appellant had now satisfactorily served two years in the Full-Time Day Cleaner position, the school system should return him to the position of Building Supervisor at the appropriate pay. (Local Board Decision).

This appeal followed.

STANDARD OF REVIEW

Because this case involves a local policy or dispute regarding the rules and regulations of a local board, the standard of review is that the decision of the local board shall be 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.

ANALYSIS

In his appeal, Appellant states that he "is dissatisfied with the [local board's] decision not to compensate [him] with retroactive wages for the past two years." (Letter of Appeal). He makes no arguments to support his position. He offers no reason why the local board's decision was in error. *Id.*

It is the Appellant's burden to show that the local board's decision was illegal or unreasonable. While we recognize that the Appellant presented evidence at the local hearing level that he should not have been demoted at all, we are not required to parse through the record to make the Appellant's arguments for retroactive pay for him. *See Van Meter v. State*, 30 Md. App. 406, 408 (an appellate court "cannot be expected to delve through the record to unearth factual support favorable to appellant and then seek out law to sustain his position.").

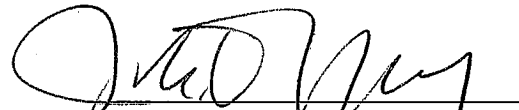
In fact, such parsing would not produce the Appellant's desired result, because we find that the local board's decision was neither arbitrary, unreasonable or illegal. The record discloses that the Appellant's reassignment was triggered by his failure to follow leave procedures, his failure to respond to calls from the administration while on duty, and his failure to ensure that the school building met cleanliness standards. Even the Hearing Officer, who had the opportunity to observe the witnesses and their testimony in support of the Appellant's position, found that the Appellant did not sufficiently explain his failure to report to Ms. Gilchrist on May 17. The Hearing Officer also found that, even if the Appellant was not guilty of each and every infraction for which he was charged, that he was responsible for failing to comply with some of the directives of his supervisors. (Hearing Officer Decision at 12, 14).

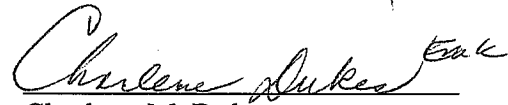
Although the Hearing Officer and Interim Superintendent believed that the Appellant should have been demoted to the position of Building Equipment Operator rather than Cleaner,

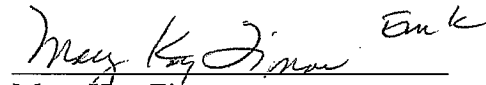
the record is devoid of any evidence that such a position was available at the time of the Appellant's demotion. It is well established that there is no entitlement to any position within a school system. The school system has broad discretion to assign personnel and transfer them as the needs of the school require. See Md. Code Ann., Educ. §6-201. See also *Hurl v. Baltimore County Bd. of Educ.*, 6 Op. MSBE 602, 605 (1993), aff'd. 107 Md. App. 286 (1995); *Britner v. Washington County Bd. of Educ.*, 7 Op. 946 (1998). Such assignment may include a demotion to a position of lower rank and salary. See *Martin v. Baltimore City Bd. of School Commissioners*, MSBE Op. No. 06-25 (2006) (demotion of personnel to position of lower rank is a reassignment); *Coleman v. Howard County Bd. of Educ.*, MSBE Op. No. 01-40 (2001) (reassignment of registrar to instructional assistant).

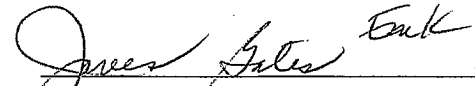
CONCLUSION

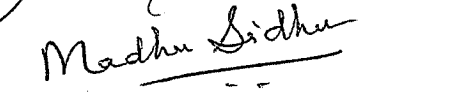
Because the Appellant has failed to meet his burden of proving that the local board's decision is arbitrary, unreasonable or illegal, we affirm the local board's decision.

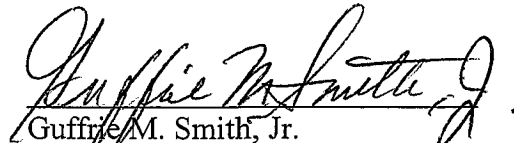

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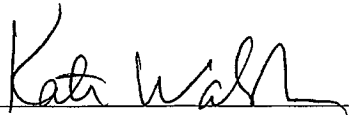

Guffie M. Smith, Jr.



Donna Hill Staton

ABSENT

Ivan C.A. Walks



Kate Walsh

January 26, 2010