

KEITH GOINES,

Appellant

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-16

OPINION

INTRODUCTION

Keith Goines (“Appellant”) appeals the decision of the Prince George’s County Board of Education (“Local Board”) terminating him from his position as a night custodian. The local board submitted a Motion for Summary Affirmance, maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant responded to the motion and the local board replied.

FACTUAL BACKGROUND

Appellant began working for Prince George’s County Public Schools (“PGCPS”) as a night custodian in October 2008. Appellant first worked at Avalon Elementary School (“Avalon”) from 2008 to 2010, then moved to Crossland High School (“Crossland”) from 2010 to 2011, transferred to Skyline Elementary (“Skyline”) from 2012-2014, and then returned to Crossland for the remainder of his time as an employee. (Local Board Decision).

Appellant had no record of disciplinary problems while at Avalon or during his first assignment at Crossland. Beginning in 2013, while assigned to Skyline, Appellant received frequent warnings, reprimands, and other discipline due to failure to complete his work, incompetent performance, insubordination, and other unprofessional behavior. In March 2013, he received two “unsatisfactory performance” letters for failure to complete assigned cleaning tasks, unprofessional behavior, and taking an unauthorized break. He also received a suspension warning for failure to remain on duty, unauthorized absences, and failure to complete assigned cleaning tasks. (Motion, Ex. A9-A10).

On August 8, 2013, Appellant received a letter of reprimand for unprofessional behavior and insubordination. Later that same month, he was informed that a request for his termination had been sent to human resources based on his being late to work, leaving his job without permission, not following the assigned work schedule, and being rude and insubordinate to supervisors. (Motion, A11). A *Loudermill*¹ conference occurred on September 10, 2013. Appellant was not terminated at that time, but continued to receive warnings. These included a

¹ A *Loudermill* conference, also known as a pre-termination hearing, is a conference where employees are given notice of the charges against them and provided with an opportunity to respond. The conference is named for the Supreme Court’s decision in *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

suspension warning in October 2013 for failure to remain on duty during assigned hours and taking an unauthorized absence. PGCPS suspended him for 10 days in November 2013 for those same issues. (Motion, Ex. A7; A9-A10).

In April and May 2014, Appellant received a letter of reprimand, request for disciplinary action, and a suspension warning for failing to complete assigned tasks, failing to remain on duty, repeated instances of insubordination, and allowing unauthorized individuals in the school. On May 7, 2014, PGCPS placed Appellant on administrative leave for “conduct unbecoming an employee.” He remained on leave from May 2014 until August 2014, when he returned to work. (Motion, A9; Feb. 10, 2016 T. 42).

PGCPS transferred Appellant to Crossland for the 2014-15 school year. Between August 2014 and May 2015, Darren Smith was the Assistant Building Supervisor at Crossland and Appellant’s direct supervisor. Mr. Smith gave Appellant assignments during his shift and would inspect the building afterwards to see if Appellant had completed his work each night. Initially, Mr. Smith attempted to improve Appellant’s work performance by talking to Appellant informally about his shortcomings. When Mr. Smith found that informal discussions were not sufficient, he began to give Appellant formal written complaints. Mr. Smith initially cleaned up Appellant’s assigned work areas if he found Appellant had not done a satisfactory job, but he began to suspect that Appellant was deliberately not completing his work with the expectation that Mr. Smith would finish it for him. (Feb. 10, 2016, T. 48-51; 93-97).

Mr. Smith alerted his supervisor, Michael Simon, the Building Supervisor at Crossland, about Appellant’s inconsistent work habits. Mr. Simon instructed Mr. Smith to leave Appellant’s work areas exactly as he found them so Mr. Simon could personally confirm whether the work was being completed. Mr. Simon took photos documenting how Appellant failed to complete his assigned cleaning tasks. (Feb. 10, 2016, T. 48-51; 93-97).

Between August 2014 and May 2015, Mr. Smith and Mr. Simon issued multiple complaint notices and other forms of discipline to Appellant. These are summarized as follows:

- September 2014: Appellant received two custodial work complaint notices² and a letter of reprimand for failure to mop and sweep satisfactorily, failure to follow and complete assignments, insubordination, and using profanity in speaking with a supervisor.
- October 2014: Appellant received two custodial work complaint notices and a letter of reprimand for failure to mop, stock restrooms, discard trash, and vacuum as assigned; failure to complete cleaning assignments; and insubordination. This resulted in a warning that continued unsatisfactory performance would result in disciplinary action, up to termination.
- November 2014: Appellant received a custodial work complaint notice for failure to mop as needed.
- December 2014: Appellant received a custodial work complaint notice, a letter of reprimand, and a suspension warning for failure to complete assignments,

² These letters constitute warnings that are one step below a formal reprimand. (Feb. 10, 2016, T. 77).

insubordination, unprofessional behavior, and failure to follow instructions or school board procedures. On December 22, 2014, Appellant received a one-day suspension for conduct unbecoming a PGCPs employee, failure to follow instructions or procedures, and failure to complete cleaning assignments.

- January 2015: Appellant received two custodial work complaint notices for failure to clean as required, including failure to mop, sweep, vacuum, and remove trash as assigned.
- February 2015: Appellant received two custodial work complaint notices for failure to mop, dust, and sweep, among other assignments.

(Motion, Ex. A2-A3; A-10; Feb. 10, 2016, T. 76-86).

As a result of these incidents, Appellant was again recommended for termination. A *Loudermill* conference was held on March 17, 2015. During the meeting, Appellant's union representative requested that Appellant serve a three-day suspension and be placed on a 90-day trial period to improve his performance. As part of the agreement with PGCPs, Appellant would receive reviews every 30 days within the 90-day trial period to help improve his performance. If at any of the 30-day reviews, Appellant's work reflected a "needs improvement" rating, the school system would immediately recommend his termination. (Motion, A12; Feb. 10, 2016 T. 118-119).

Following the March *Loudermill* conference, Appellant received several performance reviews within the 90-day trial period that resulted in a "needs improvement" or "unsatisfactory" rating. The recorded deficiencies were:

- March 2015: Appellant received three custodial work complaint notices for failure to dust, sweep, and clean as required; failure to follow and complete cleaning assignments; and failure to report to work on time.
- April 2015: Appellant received two custodial work complaint notices and a letter of reprimand for failure to sweep, mop, dust, and clean; failure to follow and complete cleaning assignments; and unsatisfactory work performance. On April 3, 2015, he received a three-day suspension for unsatisfactory work performance and failure to complete assigned cleaning duties.

(Motion, A13).

On April 28, 2015, Appellant's supervisor again requested that Appellant's employment be terminated for unsatisfactory work performance and failure to complete assigned cleaning duties. (Motion, A11). A new *Loudermill* conference occurred on May 5, 2015. Appellant had union representation and was allowed to respond to the charges, which were explained during the conference. He generally disputed the school system's documentation and complained that a new cleaning system was to blame for his poor performance. (Motion, A6). On May 15, 2015, Robert Gaskin, the Chief Human Resources Officer, terminated Appellant based on his continued unsatisfactory work performance and failure to complete assigned cleaning duties.

(Motion, A12).

Appellant appealed the termination decision and the matter was assigned to a hearing officer. An initial hearing date was scheduled for December 18, 2015. During the hearing, Appellant indicated that he had legal counsel, but that she was not present. When the hearing officer contacted his counsel on the phone, she explained that she was not yet representing Appellant. She requested additional time to meet with Appellant to discuss the representation. As a result, the hearing officer postponed the hearing without objection in order to give Appellant more time to secure counsel. (December 18, 2015, T. 8-15).

The rescheduled hearing took place on February 10, 2016, during which Appellant represented himself. The Appellant generally disputed the allegations of unsatisfactory performance and argued he did not receive proper notice of the charges. On September 16, 2016, the Hearing Officer recommended that Appellant's termination be affirmed, concluding that Appellant received due process through the *Loudermill* conferences, and that there was sufficient evidence to find Appellant was incompetent, performed unsatisfactorily, and was insubordinate. (Motion, Ex. 3). Chief Executive Officer Kevin Maxwell concurred with the Hearing Officer and affirmed Appellant's termination. (Motion, Ex. 3).

Appellant appealed the decision to the local board. On October 25, 2016, the local board heard oral argument in the case. It issued its decision on November 23, 2016, affirming the CEO's termination decision. The local board found that Appellant had a two-year record of poor performance and that he had been provided ample opportunities to correct his performance, without success. The local board found that Appellant was provided due process through his two *Loudermill* conferences and through the evidentiary hearing before the hearing officer. Finally, the local board concluded that Appellant was incompetent and insubordinate and that his termination was supported by the record. (Motion, Ex. 4).

This appeal followed.

STANDARD OF REVIEW

A non-certificated employee is entitled to administrative review of a termination pursuant to § 4-205(c) of the Education Article. *See Homesley v. Prince George's County Bd. of Educ.*, MSBE Op. No. 14-56 (2014). The decision of the local board is presumed to be *prima facie* correct and the State Board will not substitute its judgement for that of the local board unless the decision is shown to be arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

LEGAL ANALYSIS

Due process

Appellant argues that he was denied due process because he did not receive proper notice of the reasons for his termination. In support, he cites to *Loudermill*, in which the Supreme Court ruled that the "essential requirements of due process" prior to termination are "notice and an opportunity to be respond" at an informal hearing. 470 U.S. at 546.

According to the record, Appellant received multiple notices of his deficiencies and knew of the reasons for his termination. In fact, he was given an opportunity to address the allegations in two separate *Loudermill* conferences, during which he had union representation. At the post-termination hearing, Appellant testified on his own behalf, presented evidence, and cross-examined witnesses. Even if Appellant's due process rights were violated during the *Loudermill* process, and we do not conclude that they were, the State Board has consistently held that the opportunity for a full evidentiary hearing serves to cure any deficiencies that occurred in prior administrative proceedings. *See Sandra A. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 13-60 (2013) (citing cases). Accordingly, we find no due process violation.

Violation of PGCPs Regulations

Appellant argues that he did not receive appropriate warnings that poor performance could lead to termination in violation of the local board's regulation. The regulations state that "[when] the duty performance of a permanent employee is considered to be unsatisfactory he/she will be notified of his/her deficiencies in writing and warned that failure to correct these deficiencies and improve his/her performance of duty may result in termination or other disciplinary action." PGCPs Regulations for Supporting Personnel, at 7. If "an employee does not take immediate action to remedy his/her deficiencies and improve his/her performance of duty, he/she may be terminated." *Id.* Termination is "the most severe of penalties and shall be based on grave or repeated offenses." (*emphasis added*).

Appellant received multiple warnings regarding his performance and insubordinate behavior between March 2013 and April 2015. The discipline is documented in custodial work complaint notices, reprimand letters, and suspension notices. The record demonstrates that Appellant's supervisors gave him multiple opportunities to correct his mistakes and improve his performance. We conclude that Appellant had adequate notice of the consequences of his poor performance and that PGCPs did not violate its regulations.

Delay in holding hearing

Appellant objects to the delay in holding a hearing in his case. Because Appellant never raised this issue before the local board, he has waived that issue on appeal. *See Murphy v. Prince George's County Bd. of Educ.*, MSBE Op. No. 16-19 (2016) (declining to reach issues not first raised before the local board). Even if the issue were not waived, however, the record indicates that the delay in holding a hearing was because Appellant was still attempting to secure legal counsel. In light of those circumstances, we find nothing unreasonable or illegal about the delay.

Other claims

Appellant suggests several other issues in his appeal, including that the school system violated his rights as a union member, violated his union agreement, violated the Fifth Amendment prohibition against double jeopardy, retaliated against him, failed to act on an earlier appeal request, ignored evidence that supported his claim, and disregarded a harassment complaint he filed. He fails to elaborate on any of these claims within his appeal. We have repeatedly stated that Appellants must support allegations of illegality with evidence. *See King v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 14-19 (2014). But even had Appellant

offered support for these arguments, they were not argued before the local board. Accordingly, we decline to consider them now. *See Murphy*, MSBE Op. No. 16-19.

Finally, Appellant disputes the factual basis for the local board's termination decision. He points out that, prior to the discipline he received in 2013, that he had positive performance evaluations and training certificates. Hearing officers are not required to give equal weight to all of the evidence and their failure to agree with an Appellant's view of the evidence does not mean their decisions are arbitrary, unreasonable, or illegal. *See Karp v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-39 (2015). The record demonstrates that Appellant had a long history of unsatisfactory performance: neglecting cleaning duties, taking unauthorized breaks and missing work, being insubordinate, and otherwise acting unprofessionally. Appellant's disagreement with the local board's decision does not render it arbitrary, unreasonable, or illegal.

CONCLUSION

We affirm the local board's decision to terminate Appellant because it was not arbitrary, unreasonable, or illegal.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Stephanie R. Iszard

Rose Maria Li

Madhu Sidhu

Guffrie M. Smith, Jr.

David Steiner

April 25, 2017