

CHRISTINE SMITH,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 16-49

OPINION

INTRODUCTION

Christine Smith (Appellant) appeals the decision of the Baltimore County Board of Education (local board) which left in place the decision of the local superintendent regarding Appellant's salary. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

Appellant began working for Baltimore County Public Schools (BCPS) in 1987, serving as a teacher, assistant principal, and principal. In 2012, in her role as a principal, Appellant was accused of misconduct.¹ During the ensuing investigation, Appellant was temporarily reassigned to the BCPS Department of School Safety and Security. Related to the investigation, Appellant filed a grievance against BCPS and, after exhausting her administrative remedies, filed a petition for judicial review in the Circuit Court for Baltimore County. While that review was pending, Appellant's counsel and BCPS reached a settlement of the case. (Appeal).

In a letter dated May 15, 2014, Appellant's counsel summarized his understanding of the agreement: "It is my understanding that [Appellant] is able to apply for a position, created and posted by [the Department of School Safety and Security]. [Appellant] will apply for that position and presumably will get the position. It is my understanding that the salary will be commensurable with an administrator's salary, and will be frozen for one year. If that is the offer, [Appellant] is agreeable. It is understood that after one year she will revert to COLA one step increases consistent with the scale." (Appeal, App. Ex. 2).

On May 20, 2014, BCPS's counsel sent Appellant's counsel a "confidential settlement offer" that included the following language: "The Superintendent . . . will permit [Appellant] to remain in a position in the Department of Safety and Security, and to retain her current salary for the 2014-15 school year. Following the 2014-15 school year, [Appellant's] salary will revert to the position she holds at that time." (Appeal, App. Ex. 3). In an email sent that same day, Appellant's counsel wrote that Appellant "has tremendous trepidation as to what salary she will revert to once the salary protection is terminated. We do want to confirm that despite her salary

¹ The details of these allegations, which Appellant denies, are not relevant to the resolution of this appeal.

protection that [Appellant] will be in the scale for her new position immediately.” (Appeal, App. Ex. 4). There is nothing in the record showing that BCPS legal counsel responded to this email.

At some point prior to June 11, 2014, BCPS legal counsel forwarded a draft settlement agreement to Appellant’s counsel. On June 11, 2014, Appellant’s counsel responded with a few minor edits. None of the edits were related to Appellant’s salary. (Appeal, App. Ex. 5).

Separate from the settlement agreement discussions, Appellant’s supervisor, Dale Rauenzahn, began creating a new permanent position for Appellant in his department. Mr. Rauenzahn had recently been granted several new positions as part of the school budget process and he wanted to reclassify one of those jobs into an administrator position for Appellant. (T. 78-80). Sometime in May 2014, he showed Appellant a job description for the reclassified position, titled “Principal on Assignment to the Department of School Safety and Security.” The salary was described as “Grade 13.” (Appeal, App. Ex. 7; T. 21-22). According to Appellant, it was her understanding that the position would pay at the “CASE pay scale Grade 13,” or approximately \$120,000 annually. (Appeal, App. Ex. 7). CASE stands for The Council of Administrative and Supervisory Employees, and is the designated bargaining unit for certificated administrators within BCPS.

Mr. Rauenzahn submitted this job description to the BCPS Department of Human Resources. The Department of Human Resources informed Mr. Rauenzahn that the person holding the position could not be designated as a “principal”; that the job would actually be set at Grade 11, rather than Grade 13; and that the position would be part of a different bargaining unit, OPE, which stands for the Organization of Professional Employees and which represents non-certificated administrative and supervisory personnel. Mr. Rauenzahn disagreed with the salary change and submitted the description back to the Department of Human Resources with his edits. After not hearing further, he assumed his proposed changes had been accepted. (T. 83, 88-90).

Appellant signed the settlement agreement on June 30, 2014, and the superintendent signed it on July 3, 2014. The agreement stated the following about “Salary and Assignment”:

Employee will continue to be compensated at her current salary through the end of the 2014-2015 school year but will remain assigned to the Office of School Safety and Security. After July 1, 2015, if the employee chooses to remain in the assignment she occupies in the Office of Safety and Security, she will be compensated based on the grade and step of that position. However, the Employee will be permitted to apply for any available administrative position, including school principal.

(Appeal, Supt. Ex. 3).

In mid-July 2014, after the agreement was signed, Appellant and her attorney met with Herman James, Director of Staffing for BCPS, and Dr. Alpheus Arrington, Executive Director of Human Resources Operations. They informed Appellant that the proposed title for the new job would have to change from “Principal on Assignment” to “Administrator of Special Projects.” When Appellant asked whether the title change would affect her salary, Appellant says she was

told that it would not.² Appellant agreed to the change. (T. 40, 41).

On August 11, 2014, Appellant received a letter from Mr. James informing her that she had been assigned to the position of “Administrator, Special Projects” for the Department of Safety and Security for the 2014-15 school year. Her salary would remain at \$121,264 for the year but would revert to a salary at Grade 10/Step 14 in the amount of \$103,877 on July 1, 2015 unless she accepted another position. (Appeal, Supt. Ex. 4). As part of this move, Appellant would also move from the CASE to the OPE bargaining unit, though the pay scale is essentially identical between the two bargaining units. (T. 57-58).

Appellant replied to the letter on August 19, 2014, indicating that the position “was not written at the level that I reviewed. This is not what was agreed upon in the settlement agreement.” (Appeal, App. Ex. 10). On August 28, 2014, Appellant’s counsel wrote to Mr. James, indicating that “it was expressly represented both to [Appellant] and to me that [Appellant’s] placement would not result in a lower placement on the pay scale, as your letter now indicates.” (Appeal, App. Ex. 11). Mr. James responded on September 23, 2014, maintaining that his letter was consistent with the settlement agreement which froze Appellant’s salary for one year with the salary thereafter “based on the grade and step of that position.” The August 2014 letter informed Appellant what the grade and step of the position were to be for the 2015-16 school year. (Appeal, Supt. Ex. 5).

On March 18, 2015, Appellant appealed the decision regarding her salary to the superintendent’s designee. In the appeal letter, Appellant argued that the change in salary violated the settlement agreement and that she had been promised that her pay grade would not change after the one-year salary protection ended. Appellant maintains that she relied on promises from BCPS about her salary when she entered into the settlement agreement. (Appeal, App. Ex. 14).³

The superintendent’s designee conducted a hearing on June 4, 2015. On July 8, 2015,⁴ the designee issued a decision concluding that Appellant’s salary was not wrongly changed. The designee determined that the settlement agreement made clear that Appellant would only be paid her previous salary for one year and that any future salary would be at the pay scale set for her new position. The designee found that the position’s pay scale was set at grade 10 in July 2014. The designee determined that while Mr. Rauenzahn recommended that the position be at grade 13, that the Department of Human Resources had ultimate authority for the classification of the position and set it at grade 10. (Appeal, App. Ex. 19).

Appellant appealed to the local board and the matter was referred to a Hearing Examiner. He conducted a hearing on February 17, 2016. On April 4, 2016, the Hearing Examiner issued

² The record indicates that Dr. Arrington disputed Appellant’s account and insisted that Appellant had been told the salary *would* change if she remained in the same position. (T. 101).

³ Separately, Appellant, with the support of her supervisor Mr. Rauenzahn, requested a reclassification of her position. (Appeal, App. Ex. 22). On November 30, 2015, BCPS completed a “classification review” in which it concluded that Appellant’s position was appropriately classified as “Administrator, Special Projects” at the appropriate salary grade. (Appeal, Supt. Ex. 8). That decision is not a part of this appeal.

⁴ A revised version of the opinion was issued on July 10, 2015, correcting two minor errors in the opinion.

his decision recommending that the local board uphold the superintendent's decision.

On July 12, 2016, the local board heard oral arguments from the parties. At the conclusion of the arguments, the board members were divided as to whether they should accept or reject the Hearing Examiner's Recommendation. Six members voted to adopt the Hearing Examiner's Recommendation and affirm the local superintendent's decision while five members voted to reject the recommendation and therefore overturn the superintendent. Because the vote of seven members is required for the board to take action, the local board did not have sufficient votes to affirm or reverse. Consequently, the superintendent's decision remained in effect. (Local Board Opinion and Order).

This appeal followed.

STANDARD OF REVIEW

Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations 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.

LEGAL ANALYSIS

Before we can address Appellant's chief argument concerning the interpretation of the contract, we must consider two preliminary issues: (1) the effect of the lack of a majority of the local board voting to affirm or reverse; and (2) whether there is a dispute of material fact that requires a hearing.

Effect of local board decision

The local board failed to garner the seven votes needed to either affirm or reverse the superintendent's decision. We have previously recognized that such an outcome, albeit "rare," still results in a decision. *Fields v. Baltimore County Bd. of Educ.*, MSBE Op. No. 16-05 (2016). The decision is that the appellant has failed to meet her burden to persuade a majority of the local board that the local superintendent's decision merits reversal. In such a situation, the decision of the local superintendent stands and it is the rationale behind that decision that we review.⁵

Dispute of material fact

The provision of the contract at issue is the following:

Employee will continue to be compensated at her current salary through the end of the 2014-2015 school year but will remain assigned to the Office of School Safety and Security. After July 1, 2015, if the employee chooses to remain in

⁵ Appellant and the local board disagree on whether the board's student member was permitted to vote on this appeal. If the student member had not voted, the board would have been split 5 to 5, rather than 6 to 5. In neither scenario would there have been 7 votes to affirm or reject the superintendent's decision. Accordingly, it does not matter whether the student board member's vote was counted or not, and we need not consider that issue to resolve this appeal.

the assignment she occupies in the Office of Safety and Security, **she will be compensated based on the grade and step of that position.**

(emphasis added).

Maryland applies the “objective approach” to contract interpretation, meaning that “unless a contract’s language is ambiguous, we give effect to that language as written without concern for the subjective intent of the parties at the time of formation.” *See Ocean Petroleum, Co. v. Yanek*, 416 Md. 74, 86 (2010); *see also Association of Supervisory and Administrative School Personnel v. Board of Education of Prince George’s County*, MSBE Op. No. 14-26 (2014). A contract, or in this case, a settlement agreement, is ambiguous if, when viewed from the perspective of a reasonable person, the “language is susceptible to more than one meaning.” *Id.* at 87.

In our view, the phrase “compensated based on the grade and step of that position” is ambiguous. Although the agreement clearly envisions Appellant holding a specific position, it does not specify what the grade and step of that position are, beyond noting that Appellant would receive her “current salary” through the end of the 2014-15 school year. A reasonable person could view the phrase “compensated based on the grade and step of that position” as having multiple meanings. It could mean the salary would be based on the “grade and step” of the position as of the time that the agreement was signed; it could also mean that the grade and step would be determined at a future date.

We are aware that the settlement agreement included clauses specifically stating that the agreement contained “the entire agreement” of the parties and that there were no other promises or representations made that were not contained in the agreement. Unfortunately, this language does not clarify the ambiguous meaning of the term “compensated based on the grade and step of that position,” given that a reasonable person could view the phrase in several different ways.

When an agreement is ambiguous, we “must consider any extrinsic evidence which sheds light on the intentions of the parties at the time of the execution of the contract.” *Sy-Lene of Washington, Inc. v. Starwood Urban Retail II, LLC*, 376 Md. 157, 167-68 (2003) (quoting *County Commissioners of Charles County v. St. Charles Associates Ltd. P’ship*, 366 Md. 426, 445 (2001)). There is conflicting evidence in the record regarding what the intent of the parties was concerning the grade and step of Appellant’s position and its relation to the settlement agreement. In particular, there are disputes about whether Appellant viewed a “draft” or “final” position description, whether BCPS made representations to her about her future salary, and what the parties understood about Appellant’s future position at the time they signed the agreement.

This Board has continually affirmed the principle that an appeal on the record can be decided if it “does not involve a dispute of material fact.” *Martin v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 15-41 (2015) (quoting *Brown v. Queen Anne’s County Bd. of Educ.*, MSBE Op. No. 13-37 (2013)). “A material fact is a fact the resolution of which will somehow affect the outcome of the case.” *Williams v. Mayor & City Council of Baltimore*, 359 Md. 101, 113 (2000) (quoting *King v. Bankerd*, 303 Md. 98, 111 (1985)).

Here, the intent of the parties regarding the grade and step of Appellant's position at the time that the agreement was signed is a dispute of material fact because it directly impacts our interpretation of the settlement agreement. Accordingly, we shall deny the Motion for the Summary Affirmance because we find there is a dispute of material fact and refer this case to the Office of Administrative Hearings for a hearing and a recommendation to include findings of fact, conclusions of law, and a recommended decision.

CONCLUSION

For all of the foregoing reasons, we deny the Motion for Summary Affirmance and refer this case to the Office of Administrative Hearings for further proceedings.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice President

Michele Jenkins Guyton

Laurie Halverson

Stephanie R. Iszard

Rose Maria Li

Barbara J. Shreeve

Madhu Sidhu

Guffrie M. Smith, Jr.

Laura Weeldreyer

Absent: Jannette O'Neill González

December 5, 2016