

DONNA YOUNG,

Appellant

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-12

OPINION

INTRODUCTION

Donna Young (Appellant) appeals the decision of the Prince George's County Board of Education (local board) affirming her termination as a senior buyer in the purchasing department. 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 in the purchasing department of Prince George's County Public Schools (PGCPS) in June 2011. During her employment, internal audits revealed problems regarding two bids on which Appellant worked. Appellant was accused of altering prospective vendor scores, accepting products from a vendor for personal use, and being an advocate for one company in the procurement process. (Motion, Ex. A, L).

Following the accusations, PGCPS held a *Loudermill* hearing¹ for Appellant on October 31, 2013. On January 14, 2014, Appellant was terminated based on misconduct in office, insubordination, and willful neglect of duty. (Motion, Ex. A). Appellant appealed her termination to the school system CEO. Per PGCPS policy, the CEO assigned the matter to a hearing officer to conduct a hearing. (Motion, Ex. F). Starting in April 2014, counsel for PGCPS began coordinating with Appellant's union counsel to find an acceptable date for a hearing. A hearing date was initially set for July 23, 2014, and later continued to Aug. 27, 2014, at the request of Appellant's counsel. (Motion, Ex. B).

On Aug. 7, 2014, Appellant's counsel informed PGCPS that Appellant "never intended to appeal her dismissal before a hearing examiner; instead, she requests to pursue an appeal of the decision directly to the Board of Education, and would like to schedule an appearance in this forum as soon as possible." (Motion, Ex. B). Appellant's counsel sent a follow-up letter to the local board requesting oral argument and the ability to "submit additional documents and affidavits in support of this appeal." (Motion, Ex. C).

¹ At a *Loudermill* conference, also known as a pre-termination hearing, 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).

On Sept. 3, 2014, the local board denied Appellant's request. The local board noted that the CEO had not yet issued his final decision and that the hearing was a part of the local board's policies and procedures. (Motion, Ex. F). After the board's response, the parties again attempted to set a hearing date. The hearing initially was scheduled for late October, but Appellant's counsel requested a continuance. The matter was then set for December 16 and 17, 2014, with a telephone conference set for Nov. 17. (Motion, Ex. G).

By letter dated Nov. 14, 2014, Appellant's counsel indicated that they would not participate in any hearing and again requested that the appeal be heard directly by the local board. (Motion, Ex. J). On Nov. 17, 2014, the local board reiterated its earlier position that there was no final decision from the CEO and that an evidentiary hearing should occur, leading to a CEO decision, before the local board would review the case. (Motion, Ex. K).

On December 16, 2014, a hearing occurred in which PGCPs's counsel was the only participant. That same day, the hearing officer issued his decision recommending that Appellant's termination be upheld. On December 19, 2014, the CEO adopted the hearing officer's report. (Motion, Ex. L).

Appellant submitted a timely appeal to the local board. On June 25, 2015, the local board heard oral arguments from the parties and also reviewed the record below. During oral argument, Appellant's counsel referenced documents and other information that were not presented to the hearing officer. Counsel for PGCPs argued that Appellant had waived her right to present the materials and that the appeal should be dismissed because she failed to appear for the hearing. In an order issued July 27, 2015, the local board declined to dismiss the appeal, stating that "it is the preference of the Board to issue decisions regarding termination of employees on the merits rather than procedural grounds." The board allowed Appellant to submit any documents and affidavits she wished to have considered within 30 days, along with her legal argument, and provided PGCPs's counsel a chance to respond. (Motion, Ex. N).

Appellant's counsel initially submitted a legal memorandum, with supporting documents, to the board on Sept. 11, 2015. Five days later, Appellant's counsel withdrew from the case. According to Appellant, the withdrawal stemmed from her counsel's refusal to submit certain documents to the local board that she felt were relevant to the appeal. On Sept. 24, 2015, Appellant submitted an amended memorandum in support of her case that included the documents her counsel had not included. In total, she presented the local board with 57 exhibits. (Motion, Ex. O). Appellant argued, in part, that her termination was illegal because it was done in retaliation for her reporting misconduct by her supervisors. (Motion, Ex. O).

On July 5, 2016, the local board issued its decision in the form of an order. The order recounted the procedural history of the case and concluded with the following analysis: "After having reviewed all of the relevant documents submitted by the Appellant and giving consideration to any legal argument in support of the Appellant's position, as well as to the entire record herein, it is" ordered that further hearings of the appeal be denied and the CEO's decision be affirmed. (Motion, Ex. R).

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

Motion to dismiss

The local board argues that Appellant's appeal should be dismissed because of her failure to participate in an evidentiary hearing. It cites our decision in *Tague v. Charles County Bd. of Educ.*, MSBE Op. No. 12-32 (2012), in which we dismissed an appeal after an appellant failed to appear for an evidentiary hearing. Unlike in *Tague*, the local board here issued a decision and did not dismiss the case, stating that it did not wish to dismiss the appeal merely on procedural grounds. Accordingly, we decline to grant the local board's motion.

Lack of a rationale for the decision

Before we can begin to address the merits of Appellant's appeal, we must consider whether the local board has sufficiently explained the rationale for its decision in a way that allows for us to conduct our review. As noted above, the local board declined to dismiss the appeal based on Appellant's failure to participate in a hearing before the CEO. Instead, the local board allowed Appellant to submit additional evidence (more than 50 documents, including affidavits) and legal argument.

The local board's decision recounted the procedural history of the case before succinctly affirming Appellant's termination. The decision makes no mention of the arguments or evidence offered by Appellant. The order states only that the local board reached its decision "having reviewed all of the relevant documents submitted by the Appellant and giving consideration to any legal argument in support of the Appellant's position, as well as to the entire record."

While we could infer that the local board adopted the arguments made by the CEO, the decision does not make this explicit. Nor can we simply assume that the local board adopted the CEO's decision as its own because the local board had the opportunity to examine numerous exhibits offered by Appellant that were not made available to the CEO or the hearing officer. The local board presumably rejected all of Appellant's contentions, but without any explanatory rationale, it is impossible for us to determine whether the local board acted in an arbitrary, unreasonable, or illegal manner by doing so.

We have long held that a local board must convey a basis for its decision in order for the State Board to conduct a meaningful review on appeal. See *Richardson v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 13-29 (2013). "The State Board cannot perform its quasi-judicial function without understanding the basis for the local board's decision." *Mohan G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-15 (2008). In other words, the lack of a rationale makes it impossible to determine if a decision was arbitrary, unreasonable, or illegal. See *Brown v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-18 (2015). In such cases, remand is the appropriate remedy. *Id.*

Accordingly, we shall remand this decision to the local board in order for it to explain its rationale. In doing so, we observe that this case has had a long procedural history, with some of the delay attributable to the Appellant and some of it attributable to the local board. Given that Appellant's termination occurred more than three years ago, we expect that the local board will issue an amended decision explaining the basis for its decision without delay.

CONCLUSION

For all of the foregoing reasons, we remand the case to the local board for the issuance of a decision within 60 days explaining the rationale for its decision.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Laurie Halverson

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February 28, 2017