

YOLANDA COOPER,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-17

OPINION

INTRODUCTION

Yolanda Cooper (Appellant) appeals the decision of the Baltimore City Board of School Commissioners (local board) to deny her request for compensation. 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 City Public Schools (BCPS) in 2002. She worked year-round as a “12-month employee” in school offices. In November 2015, while working as an office assistant at Federal Hill Elementary/Middle School, Appellant suffered a significant medical injury. This resulted in her hospitalization and a lengthy period of recovery. Appellant ultimately spent 20 months on approved medical leave. (Motion, Ex. 4, Hearing Examiner Decision).

On July 7, 2017, Appellant’s medical provider cleared her to return to work with accommodations. These included: (1) use of a wheelchair or motorized mobility device; (2) use of a walker or cane as needed to assist in standing; (3) no lifting materials that weigh more than 20 pounds; and (4) assignment to an accessible school with an office on the first floor or access to an elevator. Prior to receiving her clearance to return to work, Appellant requested reasonable accommodations in line with her doctor’s recommendations. On July 12, 2017, BCPS approved Appellant’s accommodations. The approval letter informed Appellant that BCPS would contact her “soon” to provide her with a school assignment and start date. (Motion, Ex. 1, 4).

According to Jerome Jones, Director of Labor Relations and Negotiations, there were no office assistant vacancies open in July 2017. At the same time, BCPS began implementing a “reduction of force,” in which it considered whether to lay off employees. The reduction in force included office assistants who belonged to Appellant’s union bargaining group. During the summer of 2017, Mr. Jones reviewed job vacancies to find a position that would be consistent with Appellant’s accommodations. In considering job placement, Mr. Jones gave priority to employees impacted by the reduction in force, which he believed he had to do under the

bargaining agreement with the Baltimore Teachers Union. (Motion, Ex. 4, Baltimore Teachers Union PSRP Agreement (2014-2017), Article XII, Sec. (A)(3)(c)-(d)).

Appellant contacted BCPS numerous times in July and August 2017 to inquire about a position. She informed BCPS that not earning a salary caused her a financial hardship and that she could not collect unemployment benefits while awaiting placement. Every time Appellant called, BCPS staff told her they were working on finding her a position. (Motion, Ex. 4).

On August 22, 2017, Appellant's union filed a grievance on her behalf alleging that Appellant had been cleared for work, but not placed in a job. Appellant claimed that BCPS had open vacancies where they could place her and that not finding her a position amounted to a suspension without pay. She requested approximately seven weeks' worth of her regular salary during the period while she awaited placement. Appellant alleged violations of two provisions of the bargaining agreement, Article XV (discipline and discharge) and Article XIX (compensation). (Motion, Ex. 3).

On September 2, 2017, Appellant received an assignment to New Era Academy.

On October 31, 2017, Appellant and her union representative met with Mr. Jones, the Director of Labor Relations, to discuss her grievance. On November 9, 2017, Mr. Jones denied the grievance. He explained that Appellant became eligible to work during a time when the school system considered layoffs and that BCPS could not immediately place her in a position. Mr. Jones cited to BCPS School Board Rule 404.02, governing leave of absence:

Educational Staff members taking approved leave for less than three months, excluding sabbatical leave, may return to the same position. If the leave exceeds three months, the employee shall be placed in a comparable position, as vacancies occur, in order of leave date.

(Motion, Ex. 2).

Mr. Jones determined that BCPS followed its policies and paid Appellant appropriately once she returned to work. He found that the two bargaining agreement provisions cited by Appellant did not apply to her case because she did not face discipline and BCPS did not deny her compensation for work she completed. (Motion, Ex. 2).

Appellant appealed to the local board, which assigned the case to a hearing officer. On October 30, 2018, the hearing examiner conducted a hearing in which Appellant and Mr. Jones testified.¹

On November 27, 2018, the hearing examiner issued her decision recommending that the local board deny Appellant's request for compensation. She found that nothing in the union agreement or BCPS policies required BCPS to pay Appellant while they looked for a position for her. The hearing examiner faulted BCPS in a few respects. First, she found that BCPS regularly failed to provide notice of vacancies to Appellant's union. This failure had "little to no bearing"

¹ There is no explanation in the record for why the hearing took place nearly a year after Appellant filed her appeal. Appellant did not, however, raise this as an issue before the local board or in her current appeal.

on Appellant's entitlement to compensation, though, because Appellant presented no evidence that BCPS failed to report openings, if any existed, during the summer of 2017. Second, the hearing examiner disagreed with Mr. Jones's interpretation of the union contract, concluding that it did not require prioritizing those affected by the reduction in force above other employees, such as Appellant. There was not, however, evidence that Mr. Jones did prioritize anyone else over Appellant. Ultimately, the hearing examiner concluded that BCPS made sufficient attempts to place Appellant in a job that met her reasonable accommodations within a reasonable amount of time. (Motion, Ex. 6).

On December 11, 2018, the local board adopted the hearing examiner's decision and denied Appellant's request for compensation. (Motion, Ex. 6). 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.01.05.06A.

LEGAL ANALYSIS

Appellant argues that BCPS violated the union contract by (1) not placing her immediately in a position after medical staff cleared her to work and/or (2) failing to compensate her during the time in which she awaited job placement. Contrary to Appellant's argument, the local board's policy is clear that an employee returning from leave is not guaranteed immediate placement in a new position. The policy states that if an employee's leave "exceeds three months, the employee shall be placed in a comparable position, as vacancies occur, in order of leave date." BCPS Board Rule 404.02.² Appellant cites to no provision of the union contract, or any law, that conflicts with this board policy, and we are aware of none. Likewise, Appellant points to nothing in the union agreement or board policies that would entitle her to compensation during the time in which the board attempted to find her a new position. BCPS did not, therefore, violate any of its policies or the union agreement by denying Appellant's request for compensation.

Appellant's remaining arguments lack any support in the record. She asserts that BCPS knew when her doctors would clear her to return to work but "no efforts were made in advance to assist in her placement." The record contains no information about when BCPS knew Appellant would return or whether she contacted them in advance. The earliest correspondence reflects that, as of July 12, 2017, BCPS approved Appellant's requested accommodations. The State Board has consistently held that an Appellant must support allegations with factual evidence. *See Jerry and Jillian Keene v. Washington County Bd. of Educ.*, MSBE Op. No. 04-02 (2004) (citing cases).

For similar reasons, we reject Appellant's remaining arguments. There was no evidence that BCPS's failure regularly to provide vacancies to her union led to her waiting a longer period of time for an open position. The evidence before the hearing examiner showed that no

² BCPS subsequently converted this board "rule" into a board policy, but the substance of the policy remains the same. (Motion, Ex. 6).

vacancies existed in July 2017 and that BCPS worked to find a position for her while it also considered whether it would need to lay off staff. Finally, Appellant alleges that BCPS’s decision demonstrated “bias and prejudice” and reflected an “adverse and even hostile climate regarding her situation.” Appellant does not elaborate on these general allegations, which are undermined by the fact that BCPS did place Appellant in a comparable position by the start of the 2017-18 school year. Allegations of discrimination “must be supported by evidence” and allegations alone are “insufficient to support a claim of discrimination.” *Semere D. & Yehdego K. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 17-09 (2017).

Although it is unfortunate that BCPS could not secure a comparable position for Appellant sooner, BCPS policies do not provide for compensation to employees awaiting a new placement. Given that BCPS did not have any immediate openings once Appellant could return to work, and in fact considered laying off employees during the summer of 2017, we cannot conclude that BCPS acted in an arbitrary or unreasonable manner by applying its policies to Appellant.

CONCLUSION

We affirm the decision of the local board because it was not arbitrary, unreasonable, or illegal.

Signatures on File:

Stephanie R. Iszard
Vice-President

Gail H. Bates

Clarence C. Crawford

Vermelle D. Greene

Jean C. Halle

Joan Mele-McCarthy

Michael Phillips

David Steiner

Absent:
Justin M. Hartings
President

Rose Maria Li

April 23, 2019