

KARL PERRY, *ET AL.*

Appellants

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 25-07

OPINION

INTRODUCTION

This is an appeal regarding a grievance of an alleged breach of the collective bargaining agreement based upon the failure of the Baltimore City Public Schools (“BCPS”) to pay Public School Administrators & Supervisors Association (“PSASA”) central office employees (“Appellants”) a paid holiday on December 22, 2023. The Baltimore City Board of School Commissioners (“local board”) filed a motion to dismiss. PSASA responded and the local board replied.

FACTUAL BACKGROUND

This appeal is brought by the Karl Perry, President of the PSASA, on behalf of all Unit II personnel who work in the central office, regarding a grievance of the start date of the 2023-2024 winter break holiday. PSASA alleges that central office staff should have been given a paid holiday on December 22, 2023, like school-based staff were, because BCPS published conflicting information as to whether that day was a paid holiday for central office staff in various calendars including those calendars distributed to employees with the employee handbook and payroll information. PSASA alleges that BCPS’s failure to pay central office staff a paid holiday on December 22, 2023 is a violation of Article 7, Section H, of the Memorandum of Understanding between PSASA and BCPS (“MOU”). PSASA requests that BCPS credit central office staff a vacation day or pay Appellants the equivalent of one day’s salary that was in effect on December 22, 2023.

Article 7, Section H of the MOU states that “all employees should be entitled to the following non-operational days:… Winter Holiday (December January)(Shall conform to school calendar).” (R. 63). Article 16 of the MOU provides the grievance and arbitration procedures for an employee or PSASA to pursue a violation of the MOU. (R. 64 – 68). Article 16, Section B of the MOU defines a grievance as “any claim by an employee or PSASA that there has been a violation of this Agreement or of the Board policy pertaining to wages, hours, conditions of employment, or other established policies of [BCPS].” (R. 64). Article 16, Section C provides a four-step process for resolution of any grievance and Section D provides that if the grievance is not resolved at the Step 4 level before the local board, PSASA “may refer such a dispute or

difference to arbitration by mailing a written notice to submit to arbitration to the [local board] within ten (10) school days after receipt a written decision on Step 4.” (R. 64 – 67).

On December 12, 2023, PSASA, initiated the grievance process under the MOU and grieved the issue of the alleged violation of the MOU to the Chief Executive Officer. The grievance was forwarded to Jerome Jones, Executive Director, Office of Employee & Labor Relations because it involved interpretation of the MOU. (R. 163).

Mr. Jones responded that schools would be closed on December 22, 2023, but that day was designated as a “wellness day” in the “official calendar” and that school-based bargaining members would receive a holiday, and district office bargaining members would be required to work because the district office was open and operational. (R. 163).

On December 21, 2023, counsel for PSASA pursued the next step of the grievance and arbitration procedures and contacted Emily Nielson, Chief Human Capital Office, to request that all PSASA members, be entitled to paid leave for Friday, December 22, 2023. (R. 163). On December 21, 2023, Chief Nielson denied the request indicating only school-based PSASA members were entitled to a paid holiday on December 22, 2023. *Id.*

On January 4, 2024, counsel for PSASA pursued the next step of the grievance and arbitration procedures and filed the grievance with Dr. Sonja Santelises. (R. 92 – 93, 165). Step 3 of the grievance procedures provides that the CEO or her designated representative “shall meet with the grievant within five (5) school days of receipt of the appeal” and provides the “CEO or [her] representative shall communicate his/her written decision together with supporting reasons to the grievant and to the Step 1 administrator as soon as possible, but no later than ten (10) school days after such meeting.” (R. 65-66). The CEO never responded to the grievance. (Appeal, p. 2).

Article 16, Section E of the MOU provides that, “[f]ailure at any step of this procedure to provide for a meeting or hearing or to communicate the decision on a grievance within the specified time limits shall permit the aggrieved employee to proceed to the next higher step.” (R. 67). Article 16, Section C, Step 4 of the grievance and arbitration provisions provides as follows:

The decision of the foregoing step may be appealed in writing by the aggrieved party to the Board within five (5) school days after the decision of the CEO or his/her designated representative has been received. The Board may hear the appeal or it may refer the matter for hearing to a Hearing Officer to be designated by said Board. The grievance shall be heard fifteen (15) school days after the receipt of the appeal by the Board. Alternatively, PSASA may elect at the time of filing an appeal at Step 4 to proceed through the submission of documents and without an evidentiary hearing, in accordance with procedures (if any) established by the Board for such review. In all matters referred to a Hearing Officer, within ten (10) school days after the completion of the hearing or receipt of documents submitted by Appellant and Appellee, the Hearing Officer shall submit a written response to the Board within (5) five school days after receipt of the findings. The Board shall render a its final decision within (5) school days after it has heard the grievance, or, if the matter has been referred to a Hearing Officer, within five (5)

school days after it has received the responses to the Hearing Officer's findings. If no responses are received, the Board shall render its final decision within five (5) school days after receipt of the Hearing Officer's findings.

(R. 66).

On or about January 26, 2024, PSASA, through counsel, filed a Step 4 grievance with the local board. (R. 1 – 9). The appeal was submitted by counsel on BLA Form 1¹ and states that the nature of the appeal is for, “[v]iolation of Memorandum of Understanding between PSASA and City Schools.” (R. 1). In an attachment to the appeal, PSASA explains the basis for the appeal as follows:

PSASA filed this grievance with Dr. Sonja Santelises, CEO of City Schools, via email on the evening of January 4th, 2024. To date, PSASA has not received any response to this grievance from Dr. Santelises or her team. Article 16, C, 3 of the PSASA MOU states that “[t]he CEO or his designated representative shall meet with the grievant within five (5) school days of receipt of the appeal.” Article 16, E states that the “failure at any step of this procedure to provide for a meeting or hearing or to communicate the decision on a grievance within the specified time limits shall permit the aggrieved party to the next higher step.” Accordingly, since the CEO has not held a meeting or even acknowledged this grievance within five school days, PSASA is proceeding with filing this appeal to the Board.

(R. 5). In accordance with the Step 4 procedures, PSASA elected to proceed through the submission of documents and without an evidentiary hearing. (R. 2). The grievance and arbitration procedures provide that the Step 4 grievance shall be heard within fifteen (15) school days after the receipt of the appeal by the Board. (R. 66).

The grievance and arbitration procedures provide that if a grievance has not been resolved at Step 4 of the grievance procedure, PSASA may refer such a dispute to arbitration by mailing written notice to submit to arbitration to the Board within ten (10) school days after receipt of the written decision on Step 4. (R. 66). On March 13, 2024, counsel for PSASA inquired as to the status “PSASA Winter Break Grievance” that was filed in January and reminded the local board of the MOU requirement that the local board’s requirement to hear the grievance within fifteen (15) school days and requested an update on the case as the time period had lapsed. (R. 191). Having received no response from the local board on its Step 4 grievance within the requisite time frame, counsel for PSASA filed a demand for arbitration to the local board on April 10, 2024. (R. 96-97, 165). On April 11, 2024, the CEO filed a response to the grievance. (R. 165).

Eventually, the local board appointed a hearing examiner who issued a decision in this matter on June 3, 2024. (R. 159 – 169). The hearing examiner recommended to the local board that the local board deny PSASA’s request to credit non-school based PSASA members a vacation day or pay such members the equivalent of one day’s salary that was effective on December 22,

¹ Local Board Policy BLA provides for the *Procedures in Appeals and Hearings Under Section 4-205 of the Education Article*.

2023. PSASA filed exceptions to the hearing examiner’s recommendation and argued that BCPS and the local board have repeatedly ignored the bargained for timeline for addressing grievances contained in the MOU and created confusion preventing the resolution of the grievance. (R. 170 – 181). The CEO filed an opposition to PSASA’s exceptions and argued that because PSASA filed the grievance on a BLA form,² that PSASA abandoned the grievance process in favor of the process pursuant to Board Policy BLA and “because the Hearing Examiner could have required [PSASA] to pursue the next step in the grievance process but, instead, determined to address the merits, any procedural concern is cured by the [Hearing] Examiner’s review.” (R. 183-184). The Hearing Examiner’s report states, “[t]he issue of [PSASA’s] demand for arbitration of April 10, 2024 is a separate legal issue not addressed in this decision.” (R. 168).

On July 23, 2024, the local board issued a decision in this matter by written Order adopting the Hearing Examiner’s recommendation and denying PSASA’s request to credit the Appellants the additional vacation day at issue. (R. 187-88). The local board advised PSASA of their right to appeal this matter to the State Board within 30 days of the decision. *Id.* On August 22, 2024, PSASA filed this appeal to the State Board.

On September 19, 2024, the local board filed a motion to dismiss arguing in part that this appeal should be dismissed because a violation of the MOU is not a valid basis for a BLA appeal. (Local Bd. Motion, p.4). Alternatively, the local board argues that the decision of the local board should be affirmed because this case involves the quasi-legislative decision of the local board as it relates to construction, approval, and interpretation of the school year calendar. *Id.*

On October 4, 2024, counsel for PSASA filed an opposition to the motion to dismiss arguing that this appeal has resulted in not only a violation of the vacation rights provided under the terms of the MOU, but that BCPS has consistently denied the central office employees their procedural due process rights bargained for under the terms of the MOU.

STANDARD OF REVIEW

The State Board exercises its independent judgment on the record before it in the explanation and interpretation of the public-school laws and State Board regulations. COMAR 13A.01.05.06E.

LEGAL ANALYSIS

In its filing before the State Board, local board counsel concedes that this matter started as a grievance under the MOU in January 2024 and that the MOU, provides the exclusive processes available to PSASA for resolution of a grievance. (Local Bd. Motion, pp. 4-5). The local board then argues that:

Appellant originally filed a grievance on this issue in January 2024. (BCBSC Ex. B (CEO Ex. 1)). The grievance lay dormant as Mr. Jones and [Karl Perry], in their communication throughout the month, never set a date for the hearing. *Id.* Because the grievance was not addressed to his attention and the issue was not pressed at the time, it was not clear to Mr. Jones whether PSASA intended to

² Local Board Policy BLA provides *Procedures in Appeals and Hearings Under Section 4-205 of the Education Article*.

have a hearing on the matter at Step 3 or Step 4 of the grievance process. *Id.* If Appellant was concerned that the grievance had not received a response at Step 3, pursuant to the PSASA Agreement, Appellant could have escalated the grievance to Step 4 before the Board. (BCBSC Ex. B (CEO Ex. 7)). Instead, Appellant filed an appeal pursuant to Board Policy BLA (Procedures in Appeals and Hearings Under Section 4-205 of the Education Article), and the Board ultimately determined to review this appeal.

(Local Bd. Motion, p. 5).

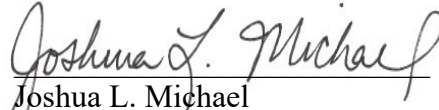
The local board argues that because Appellants' counsel used a BLA form to file the issue with the local board, that the Appellants "functionally abandoned the grievance process in favor of the BLA appeal process." (Local Bd. Reply, p. 2). We find this argument has no merit because it is contradicted by the clear language on the form which states counsel is filing a grievance based upon a "[v]iolation of Memorandum of Understanding between PSASA and City Schools" and that because the Appellants have "not received any response to the grievance from Dr. Santelises or her team" they were pursuing the next step in the grievance process. (R. 1). We do not find that there is any ambiguity in the record before us that Appellants were and continue to pursue the grievance and arbitration process to resolve an alleged violation of the MOU and the MOU grievance and arbitration process is the exclusive avenue for Appellants to seek redress.

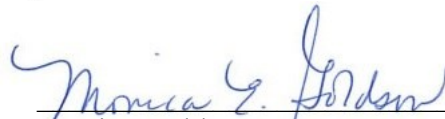
Local board counsel then argues that "[t]o the extent that [Appellants were] in any way impacted by these procedural irregularities ...the Hearing Examiner's review and recommendation, effectively cured any such issues." (Local Bd. Motion, p. 5, citations omitted). The fatal flaw to this argument is that the parties bargained for final and binding arbitration as the final and exclusive process available to PSASA for resolution of a grievance if it was not resolved before the local board. The hearing examiner in this matter stated that the Appellants', "demand for arbitration of April 10, 2024 is a separate legal issue not addressed in this decision." *See*, R. 183-184. Any confusion as to the appropriate path of review for Appellants was created by BCPS and the local board's actions treating this matter as an appeal under §4-205 of the Education Article.

Consistent with our prior decisions on similar matters, we conclude that the State Board does not have jurisdiction to review Appellants' claim of a breach of the MOU as the written language embodying the terms of the MOU govern the rights and liabilities of the parties. *See Association of Supervisory and Admin. Sch. Pers. v. Bd. of Educ. of Prince George's Cnty.*, MSBE Op. No. 14-26 (2014)(Dismissing the claim for a breach of the MOU for lack of jurisdiction and remanding the case to the local board so that Appellant may seek arbitration). The record before us demonstrates that the Appellants sought to redress an alleged violation of the MOU in accordance with the grievance and arbitration provisions of the MOU. Because this matter was not resolved at Step 4 of the grievance process before the local board, Appellants filed a demand for binding arbitration to resolve this matter. In accordance with the terms of the MOU, this matter should proceed to binding arbitration without any further delay. *See Cooke v. City Bd. of Sch. Comm'rs*, MSBE Op. No. 12-46 (2012)(Because the matter was controlled by the MOU Appellant's avenue of redress was to have it taken to binding arbitration pursuant the grievance procedures.)


CONCLUSION

For the reasons stated above, we dismiss the claims before the State Board for lack of jurisdiction and remand the case to the local board so that this matter may be resolved through binding arbitration.



Joshua L. Michael
President

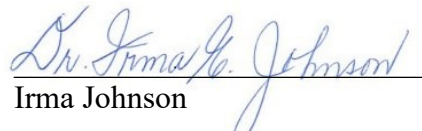

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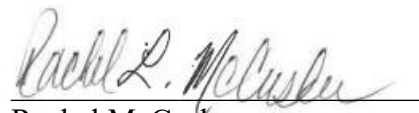

Kenny Clash

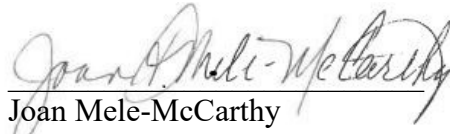

Clarence C. Crawford


Niek Greer



Irma Johnson


Kim Lewis


Rachel McCusker


Joan Mele-McCarthy


Xiomara Medina


Samir Paul

Absent:
Chuen-Chin Bianca Chang

January 28, 2025