

DEBORAH PULLEY, KIMBERLY  
ROOF AND ROBIN WELSH,

Appellant

v.

CALVERT COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 14-37

OPINION

INTRODUCTION

Deborah Pulley, Kimberly Roof, and Robin Welsh (Appellants) have appealed the decision of the Calvert County Board of Education (local board) concerning their employment contracts.<sup>1</sup> The local board filed a Motion for Summary Affirmance maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellants responded and the Local Board replied.

FACTUAL BACKGROUND

This appeal consolidates three cases brought by employees of the Calvert County Public Schools ("CCPS"): Robin Welsh, Deborah Pulley, and Kimberly Roof. In July 2012, Welsh, a Deputy Superintendent, and Pulley and Roof, both Executive Directors, signed separate employment contracts with then-Superintendent, Dr. Jack Smith. The contracts were effective from June 1, 2012 through June 30, 2013. (Pulley Appeal, Ex. 2; Roof Appeal, Ex. 3; Welsh Appeal, Ex. 3). The contracts stipulated that Appellants' salaries would remain the same as they had been for the past two years. Salaries in future years would be "determined on a year-to-year basis."

At issue in this appeal is the provision of the contracts outlining benefits. The pertinent provisions read as follows:

5. Benefits. Employee shall be entitled to benefits consistent with those provided to the Calvert Association of Supervisors and Administrators (CASA) and to include the following benefits:

\* \* \*

- d. CASA contract generated sick leave plus one additional day per month. At time of leaving the Executive Team position, the compensation for any remaining unused sick leave will be a matter of negotiation between Employer and Employee. Additionally, the

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<sup>1</sup> These three cases have been consolidated into one opinion because they all concern the interpretation of the same contract language.

Employee shall not participate, either as a provider or recipient, in the sick leave transfer process provided to all other CCPS employees. One additional day per month will be credited to the Employee for the term said Employee has maintained this position, in lieu of being able to participate in the CCPS sick leave transfer process.

e. Employee shall be entitled to annual leave in accordance with Employer's agreement with CASA based on years of eligible service as determined by the Superintendent, plus ten (10) additional leave days per year. Annual leave shall accumulate without limitation. Employee shall be allowed to cash out unused annual leave upon leaving an executive team position, deposit the value [of] any remaining annual leave days into a personal TSA, or have the value treated as an Employer contribution to Employee's TSA, up to the maximum allowed under the I.R.S. regulations. Such actions may be taken within one year of leaving the executive team position.

(Roof Appeal, Ex. 3).

Because the contracts stated that the employees were entitled to benefits "consistent with" those of CASA, a provision of the CASA contract is also at issue in this appeal:

**7.4 Administrative Transfer.**

- a. Any member transferred to a lower paying position prior to July 1, 2008 will retain his/her current salary scale.
- b. Any member transferred to a lower paying position on or after July 1, 2008 shall:
  - i. retain his/her current salary scale for three years,
  - ii. at the start of the fourth year, be paid at the annual salary step and grade in effect on the last day of the third year (to include COLA), and
  - iii. continue to be paid at the annual salary step and grade in effect on the last day of the third year (to include COLA) until his/her salary on the new grade exceeds this guaranteed salary, at which time the unit member will be placed on the new salary scale.

(Roof Appeal, Ex. 2).

The contracts ended on June 30, 2013. The three employees were reassigned to new positions during the 2013-14 school year. Roof was reassigned to a new role as Director of

Student Services, Welsh became the Principal of Calvert Country School, and Pulley became the Principal of Mill Creek Middle School.<sup>2</sup> Interim Superintendent Nancy Highsmith told Appellants and other members of the executive team that they would now be a part of the CASA bargaining unit and not have individual employment contracts. Highsmith informed Appellants that their salaries would remain the same for one year, but afterwards would be based on the CASA bargaining unit scale, which could result in a reduction in pay. Appellants also learned they would not be able to exercise their rights under their prior contracts to negotiate the sale of unused sick leave or cash out unused annual leave.

On October 4, 2013, Appellants submitted appeal information forms protesting the Superintendent's decision. They argued that they should be able to negotiate the sale of unused sick leave and cash out unused annual leave, as stated in their contracts. They also sought to apply the protections listed in Section 7.4 of the CASA agreement, which allows an employee transferred to a lower-paying position to maintain the same salary level for three years. The Interim Superintendent responded via email on October 24, 2013 and Appellants received a hard copy of the response in the mail on October 26, 2014.<sup>3</sup>

The local board issued its opinion on January 17, 2014. On the question of benefits, the local board concluded that Appellants were not entitled to negotiate sick leave payments or to receive annual leave payments. It based that conclusion on the rationale that the contract Appellants signed was with the prior Superintendent Jack Smith not with the board and that the board had not approved or ratified the contract. The local board explained that Maryland law gives the local board the authority to employ individuals and set their salaries and compensation and that the local board did not approve or ratify the contract provisions dealing with sick and annual leave. The local board further noted that the contracts expired on June 30, 2013, and concluded that the provisions Appellants wished to apply did not extend beyond that date. Additionally, the local board concluded that the sick leave benefits provision was "vague" and that the provision only permitted Appellants to negotiate with their employer as to unused sick leave. The local board decided that the employer in this case was Superintendent Smith and negotiations with any other person would not be permitted.

On the question of salaries, the local board ruled that Appellants were not entitled to the three-year salary protection mentioned in section 7.4 of the CASA negotiated agreement because Appellants were not members of the CASA unit at the time they were transferred to the other positions. In addition, the local board noted that Appellants were "entitled to benefits consistent with those provided" to CASA unit members under the negotiated agreement, but that "benefits" did not include salaries.

One of the five board members dissented from the decision, concluding that the Superintendent's decision was arbitrary and unreasonable. Board member Tracy McGuire wrote in her dissent that the local board was aware that Superintendent Smith entered into agreements

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<sup>2</sup> According to the local board, Pulley has since retired and is no longer employed by the local board.

<sup>3</sup> The Appellants disputed the timeliness of the Superintendent's response and raise the issue again as part of this appeal. We agree with the local board that it has discretion to accept an untimely response.

with the employees, even if the local board never officially ratified the agreements. McGuire stated that if the agreements needed to be ratified by the local board, it was the local board's responsibility to have done so. Additionally, McGuire concluded that the Appellants should receive the same salary protection as was included in the CASA agreements. (Roof Appeal, Ex. 13).

This appeal to the State Board followed.

### STANDARD OF REVIEW

This appeal concerns a controversy or dispute regarding a local board's interpretation of a contract. Accordingly, the local board's decision must "be considered *prima facie* correct" and upheld unless the Appellant proves that the local board's decision was arbitrary, unreasonable, or illegal. See COMAR 13A.01.05.05; *Harford County School Bus Contractors Ass'n v. Harford County Bd. of Educ.*, MSBE Op. No. 14-17 (2014). We exercise our independent judgment in interpreting the education law of Maryland. COMAR 13A.01.05.05E.

### LEGAL ANALYSIS

Appellants seek to enforce the contract terms to negotiate the sale of unused sick leave and cash out unused annual leave up to one year after leaving an executive team position. Additionally, Appellants Roof and Welsh seek to retain their prior salaries with cost of living adjustments for three years as outlined in Section 7.4 of the CASA agreement.

#### *Striking Documents from the Record*

The local board argues that three affidavits submitted by Appellants in this appeal (exhibits 7, 8, and 9) should be stricken because they were not a part of the record before the local board. The local board notes that these affidavits were signed between February 10 and February 12, 2014, after the local board issued its opinion. Appellants argue that the affidavits contain the same information presented to the local board on appeal, except that the information is now sworn to by Appellants.

The State Board has the ability to consider additional evidence on appeal if it is material and there were good reasons for failing to offer the material below. COMAR 13A.01.05.04C. We shall not strike the affidavits, to the extent that the affidavits merely state, under oath, information contained in previous filings with the local board. But in the absence of "good reasons" from Appellants, we shall refrain from considering any new material in the affidavits that was not presented to the local board.

#### *Validity of the contracts*

Before deciding whether the contracts might entitle Appellants to sick and annual leave payments, we must decide whether the employment contracts were valid at all.

The local board asserts that the contracts, at least in part, were not valid. They cite Educ.

Art. § 4-103, which states that the local board shall “on the written recommendation of the county superintendent” appoint all principals, teachers, and other personnel and “set their salaries.” They also cite Educ. Art. § 6-201(a), which states that the local board “shall employ individuals” and § 6-201(f) which states that compensation “shall be determined by the county board.” The local board concludes from these provisions that it was required to approve any contract provisions relating to employee benefits and that those provisions are invalid without its ratification or approval. The local board cites Maryland law for the proposition that a government entity cannot have an obligation to expend public funds “except in the formal manner expressly provided by law.” *Alternatives Unlimited v. New Baltimore City Bd. of School Comm’rs*, 155 Md. App. 415, 425 (2004). The local board maintains that all certificated employees must sign the regular contract at COMAR 13.07.02.01(B) and that any other contracts with its certificated employees are therefore invalid.

Appellants argue that their contracts were valid and point to an affidavit from former Superintendent Smith dated November 1, 2013, in which he states that he briefed the local board about the employment contracts. They note that Educ. Art. § 4-205 requires that contracts made by the local board must be approved by the Superintendent, suggesting that Dr. Smith had final authority to bind the local board to the employment contracts he negotiated.

In the affidavit, Dr. Smith states that the local board never requested or required him to obtain local board approval before negotiating employee contracts. Dr. Smith noted that the decision to enter into written employment contracts with members of the executive team was discussed with the local board prior to the execution of the first of those agreements in the 2009-2010 school year. Dr. Smith stated that new provisions added to these contracts each year were discussed with the local board. According to Dr. Smith, as recently as May 9, 2013, the local board president was part of a discussion concerning compensation packages for executive team members. Dr. Smith stated that the local board never questioned him or asked him to discontinue entering into the employment contracts. He explained that the local board “approved the components of the compensation package and benefits that were identified in each Executive Team member’s employment contract beginning with the 2009-10 employment contract and ending with the 2012-13 employment contract.” He advised that it was his intent in entering into the agreements that the executive team members be able to sell leave after the expiration of the contracts (limited by the one year time requirement) and that the provisions of the CASA negotiated agreement would apply to them. (Roof Appeal, Ex. 14).

In interpreting provisions of the Education Article, “we begin with the normal, plain meaning of the language of the statute.” *Mummert v. Alizadeh*, 435 Md. 207, 213 (2013) (citation omitted). “If the language of the statute is unambiguous and clearly consistent with the statute’s apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction.” “In every case, the statute must be given a reasonable interpretation, not one that is absurd, illogical, or incompatible with common sense.” *Id.* at 214.

We have reviewed the language of the statutes cited by the parties. The plain language of Educ. Art. § 4-103 states that the local board shall “on the written recommendation of the county superintendent” appoint all principals, teachers, and other personnel and “set their salaries.” The

local board's interpretation of this language requires construing the word "salaries" to mean all employee benefits. The plain language only requires the local board to set "salaries" and the local board acknowledges that it did approve the salaries for the employees pursuing this appeal. In our view, the plain language of the statute does not require the local board to "set" benefits other than salaries.

Educ. Art. § 6-201(f) states that the "compensation" of each appointee is determined by the county board. The Education Article does not define "compensation," but the term generally refers to "remuneration and other benefits received in return for services rendered; esp. salary or wages." Black's Law Dictionary 301 (8th ed. 2004). The statute states that compensation "shall be determined" by the local board. According to the affidavit from Dr. Smith, it appears that the local board's practice was to allow the Superintendent to negotiate these benefits and to brief the local board on the result of those negotiations. In our view, this practice was how the local board "determined" employee compensation and it conforms to the requirements of the statute.<sup>4</sup> The local board in its opinion never discussed the regular contract for certificated employees at COMAR 13.07.02.01(B), so we shall refrain from analyzing that provision on appeal.

The local board's argument, that the benefits provisions of the contracts are invalid because they were not approved in accordance with Maryland law, is unreasonable for several reasons. First, it requires us to discount the affidavit of Dr. Smith and presume that he never briefed the board on the benefits provided to Appellants in the contracts. Second, if we accept the local board's argument, we would have to conclude that the local board agreed to salaries for top CCPS administrators, but not other benefits, which appears unlikely. Benefits, such as employee leave, are a routine part of employment contracts. The local board certainly must have known that Appellants would receive more than just a salary as part of their overall compensation. Had the local board been concerned about the other benefits being conferred on employees, it surely would have sought information from the Superintendent about those benefits. Third, the local board's argument is unfair to Appellants. Appellants, all high-ranking administrators for CCPS, negotiated in good faith with a Superintendent who received tacit assurance from the local board that he had the authority to offer certain benefits. Finally, the local board's argument requires us to accept that the local board failed to execute what it claims was a statutorily-defined duty. In the local board's view, it was required to approve any benefits for Appellants and it failed to do so, even though the Appellants clearly worked as top administrators in the school system.

Our review of the record leads us to a different conclusion. The record suggests that the local board tacitly accepted the benefits packages during information sessions with the Superintendent and only decided in hindsight, once the matter of the Appellants' benefits became an issue, that they had never "formally approved" those benefits. We conclude that the local board *did* approve Appellants' compensation packages, even if no formal vote was taken, and that its approval of the compensation packages during information sessions with the Superintendent was not inconsistent with Maryland law. We draw support for our conclusion based on the affidavit from Dr. Smith and the statement from board member McGuire indicating

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<sup>4</sup> Although Appellants are correct that Educ. Art. ' 4-205(d) requires the Superintendent to give "written approval" of all contracts made by the county board, this provision must be read in harmony with Educ. Art. " 4-103 and 6-201(f), which require the local board to set salaries and determine employee compensation.

that the local board knew Dr. Smith entered into agreements with administrators. Accordingly, we conclude that the employment contracts were valid.

### *Sick and Annual Leave*

Having determined that the contracts entered into with Appellants were valid, we must decide whether the contracts entitled Appellants to negotiate the sale of unused sick leave and to cash out unused annual leave after they left their executive team positions. Appellants argue that the contracts allow for both practices to occur. As to sick leave, they point to this passage: “At the time of leaving the Executive Team position, the compensation for any remaining unused sick leave will be a matter of negotiation between Employer and Employee.” As to annual leave, they note the contracts state the following: “Employee shall be allowed to cash out unused annual leave upon leaving an executive team position, deposit the value [of] any remaining annual leave days into a personal TSA, or have the value treated as an Employer contribution to Employee’s TSA, up to the maximum allowed under the I.R.S. regulations. Such actions may be taken within one year of leaving the executive team position.” The local board maintains that once Appellants’ contracts ended, they were no longer entitled to take advantage of these provisions. They also argue that the contracts were made with former Superintendent Smith and that only he could be a part of a negotiation with Appellants as to the compensation for unused sick leave.

Maryland applies the “law of objective contract interpretation” to a negotiated agreement, meaning that “[t]he written language embodying the terms of an agreement will govern the rights and liabilities of the parties, irrespective of the intent of the parties at the time they entered into the contract, unless the written language is not susceptible of a clear and definite understanding.” *Dumbarton Improvement Ass’n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 51 (2013) (quoting *Slice v. Carozza Properties, Inc.*, 215 Md. 357, 368 (1958)). In interpreting contracts, one must “determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated.” *Id.* (quoting *General Motors Acceptance v. Daniels*, 303 Md. 254, 261 (1985)). Parol evidence, meaning evidence outside of the contract itself, may be consulted only if there is “an ambiguity in the actual language used by the parties.” *Id.* at 56; *see also Harford County School Bus Contractors v. Harford County Bd. of Educ.*, MSBE Op. No. 14-17 (2014).

We find unreasonable the local board’s argument that, because Dr. Smith signed the contract, that only *he* was their “employer.” Appellants signed their contracts with Dr. Smith *in his capacity as Superintendent*. The contract begins by stating that it is entered into “by and between Jack Smith, Superintendent, Calvert County Public Schools, hereinafter (“Employer”), and [individual Appellants] hereinafter (“Employee”). Had Dr. Smith left his post midway through the year, the Appellants’ contracts would not have suddenly expired. The contracts would have continued with the new Superintendent, i.e. the Appellants’ “Employer.” To construe the word “Employer” in the contracts to *only* refer to Dr. Smith because he happened to be serving in the role of Superintendent at the time does not align with the plain language of the agreements.

Left unclear is whether the sick and annual leave provisions of the contracts were meant to survive beyond the contracts' one-year term. We note that contract provisions may survive the expiration of a contract under certain circumstances. *See, e.g., Balt. County FOP Lodge No. 4 v. Baltimore County*, 429 Md. 533, 546 (2012) (stating, in the context of a collective bargaining agreement, that an arbitration clause may survive the expiration of an underlying agreement when it involves facts that arose before expiration or where rights accrued or vested during the agreement). The sick leave provision states only that it applies “[a]t time of leaving the Executive Team position.” The annual leave provision also applies “upon leaving an executive team position,” but states that cashing out unused annual leave can be done “within one year of leaving the executive team position.” The plain language could support either interpretation: either the provisions are valid if an employee leaves the executive team only during the life of the contract *or* after its expiration.

Accordingly, we consult other provisions within the contracts and other evidence presented by the parties to aid our interpretation. Unfortunately, the other provisions of the contracts only add to the ambiguity. Paragraph 2, section c of the contracts state that “The provisions of this Paragraph shall survive the expiration and/or termination of this Employment Contract.” This language suggests that other provisions (such as those at issue here) might not survive the expiration of the agreements. But paragraph 5, section c describes one of the benefits to employees as follows: “Cash out of unused annual leave at any time *during the term of the contract* as approved by the Superintendent” (emphasis added). The addition of the phrase “during the term of the contract” suggests that other benefits might extend *beyond* the term of the contract.

Given the ambiguity, we next look to the evidence outside of the contracts provided by the parties. Particularly helpful in this regard is the affidavit of Dr. Smith, which states that he intended for Appellants to be able to take advantage of the annual leave provisions beyond the expiration of their contracts “limited by the one year requirement.” Dr. Smith does not mention sick leave in his affidavit, but both the sick leave and annual leave provisions are triggered by an employee leaving the executive team. Considering the similar wording between the provisions, it is reasonable to interpret them in a similar manner.

In light of the ambiguity in the language of the contracts and Dr. Smith's affidavit, we conclude that the sick leave and annual leave provisions continued to apply after the contracts expired. Although Appellants signed one-year contracts, the fact that the contracts allowed for cashing out annual leave up to a year after leaving the executive team indicates that the contracts' provisions had a life beyond that of the contracts. This interpretation of the contracts is supported by Dr. Smith's affidavit and is consistent with the contracts' language, which ties compensation for unused sick and annual leave to the departure of an employee from the executive team. Such a provision is designed to encourage employees to stay in their jobs, with the promise of future compensation if they limit their use of sick and annual leave. This means that Appellants can cash out unused annual leave up to a year after their having left the executive team and can “negotiate” with CCPS as to compensation for unused sick leave.

## *Salaries*

Appellants Roof and Welsh argue that they are entitled to the three-year salary continuation included in Section 7.4 of the CASA bargaining agreement. That section states, in part: “Any member transferred to a lower paying position on or after July 1, 2008 shall retain his/her current salary scale for three years . . . .” Appellants raise two arguments for why Section 7.4 might apply to them. First, they claim that they were made a part of the CASA bargaining unit *prior* to being transferred to their new positions. Alternatively, they argue that Section 7.4 applied to them because of the section in their contracts that stated they were “entitled to benefits consistent with those provided to the Calvert Association of Supervisors and Administrators (CASA).” The local board argues that Appellants were not a part of the CASA bargaining unit and the “benefits” referred to did not include the salary continuation.

The contracts expired on June 30, 2013, several months before Appellants were transferred to their new positions. Unlike the sick and annual leave provisions, the portion of Appellants’ contracts that states they are “entitled to benefits consist with those provided to” CASA does not suggest that it survives beyond the expiration of the contract. Dr. Smith’s affidavit also is unhelpful in addressing this question. In the words of Dr. Smith, “It was my understanding and intent that the Executive Team’s employment contract was to include the same provisions provided in the [CASA] negotiated agreement to the Executive Team members in addition to the compensation package and benefits outlined in the Executive Team members’ employment contracts.” Although Dr. Smith’s affidavit indicates that all of the CASA benefits (including Section 7.4) were meant to apply to Appellants, he does not say whether these benefits were meant to continue beyond the contracts’ expiration. Accordingly, Appellants are not entitled to the benefits of Section 7.4 of the CASA agreement under their previous contracts.

That leaves the question of whether Appellants were a part of the CASA bargaining unit at the time they were transferred to their new positions. The local board’s opinion states among its facts that Appellants were reassigned to their new positions and advised they were a part of the CASA bargaining unit on September 9, 2013. The affidavits of Appellants (which are consistent with their previous filings with the local board) state that they were informed on July 9, 2013 that they would no longer have employment contracts and that they were being placed with the CASA bargaining unit as of the start of the 2013-14 school year. For Calvert County, the first day of classes for students began on August 20, 2013. Under Appellants’ timeline, they became a part of CASA before being reassigned to new positions.

The record before us contains no written documents, such as letters or emails, from CCPS that would corroborate when Appellants were reassigned to their new positions or placed within the CASA bargaining unit. The only evidence we have of the September 9th transfer date is the conclusory statement contained in the local board’s opinion. We note that under Educ. Art. § 6-401(e) and § 6-505(d)(2), Appellants might have been excluded from membership in CASA until their reassignment because they may have served “in a negotiating capacity” or as “management personnel.” But we are not required to assume, without any documentation in the record, that this was the case.

In short, it is unclear what evidence the local board relied on to conclude that Appellants

became a part of the CASA bargaining unit on September 9, 2013. Accordingly, we conclude that the local board's decision that Appellants were not a part of the CASA bargaining unit at the time they were reassigned was unreasonable because there was no evidence in the record to support its conclusion. In the absence of other evidence to the contrary, Appellants should have been considered members of CASA at the time of their transfer and allowed to invoke Section 7.4 of the CASA agreement. We note that our conclusion is based on the record before us in these particular cases and pertains only to the Appellants herein.

CONCLUSION

For all these reasons, we reverse the decisions of the local board.

*Absent*

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Charlene M. Dukes  
President

*Mary Kay Finan*  
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Mary Kay Finan  
Vice President

*James H. DeGraffenreidt, Jr.*  
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James H. DeGraffenreidt, Jr.

*Linda Eberhart*  
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Linda Eberhart

*S. James Gates, Jr.*  
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Larry Giammo

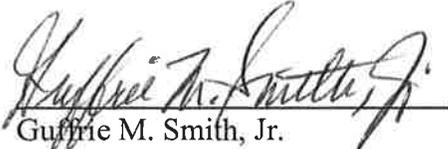
*Luisa Montero-Diaz - MCP*  
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Luisa Montero-Diaz

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*Madhu Sidhu*  
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*Donna Hill Staton*  
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Donna Hill Staton

July 22, 2014

  
Guffie M. Smith, Jr.

IN THE CIRCUIT COURT FOR CALVERT COUNTY, MARYLAND

IN THE MATTER OF  
BOARD OF EDUCATION OF  
CALVERT COUNTY

APR 16 2015  
CIRCUIT COURT FOR CALVERT COUNTY

Case No. C-14-10

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BY: \_\_\_\_\_

OPINION AND ORDER OF COURT

This case is before this Court through Petitioner's, the Board of Education of Calvert County, Petition for Judicial Review of an opinion of the Maryland State Board of Education, on July 22, 2014. A hearing was held on the matter on March 4, 2015. After hearing counsels' arguments, this Court took the matter under advisement. Upon consideration of the pleadings, argument, and applicable law, this Court renders the following opinion and order.

I. BACKGROUND

On July 22, 2014, the Maryland State Board of Education (hereinafter "State Board") issued an opinion in a consolidated case<sup>1</sup> involving three employees of the Board of Education of Calvert County (hereinafter "County Board"), namely Deborah Pulley, Kimberly Roof, and Robin Welsh (hereinafter "Employees"). Each of the three employees entered into Employment Contracts, dated July 23, 2012, with former Superintendent of Schools, Dr. Jack Smith, for a term beginning on July 1, 2012, and ending on June 30, 2013. The Employment Contracts contained provisions, in relevant part, regarding the sale of unused sick leave, the ability to cash out unused annual leave, and whether the employee was entitled to benefits consistent with those provided to the Calvert Association of Supervisors and Administrators (CASA).

Dr. Smith's term as Superintendent of School ended on June 30, 2013. Each Employee continued in her assignments until the Interim Superintendent, Nancy Highsmith, reassigned the Employees to new positions within the school system beginning the 2013-2014 school year. The Employees were advised that they would not be able to enforce the provisions of

<sup>1</sup> The three cases were consolidated because they all concerned the interpretation of the same contract language.

their prior Employment Contracts with Dr. Smith, including the ability to negotiate the sale of unused sick leave, cash out unused annual leave, and salary protection provided by Article 7.4 of the CASA agreement.

The Employees subsequently filed appeals with the County Board, arguing that the terms of the prior Employment Contracts with Dr. Smith should be maintained. On January 17, 2014, the County Board held that the Employees were not entitled to sick leave or annual leave payments, nor were they entitled to the three-year salary protection provided by the CASA agreement.

On February 12, 2014, the Employees filed an appeal with the State Board, seeking enforcement of the Employment Contract terms. The County Board filed a Motion for Summary Affirmance, pursuant to C.O.M.A.R. 13A.01.05.03D.<sup>2</sup> On July 22, 2014, the State Board reversed the decision of the County Board, finding in favor of the Employees. On August 18, 2014, the County Board filed a Petition for Judicial Review before this Court.

## II. STANDARD OF REVIEW

While decisions concerning the administration of Maryland's public schools by the State Board are generally "final and beyond judicial interference," the Court of Special Appeals has noted several exceptions to this rule. *Hurl v. Board of Educ. Howard County*, 107 Md. App. 286, 299 (1995); MD. CODE ANN., EDUC. § 2-205(e)(1)-(3). Judicial review of a State Board decision is available where (1) the matter involves a purely legal question, (2) the State Board has contravened state statute, (3) the State Board exercised its power in bad faith, fraudulently, or in breach of trust, and (4) the State Board exercised its power arbitrarily or capriciously. *Id.* (citations omitted). As the Court of Special Appeals noted in *Martin v. Allegany County Board of Educ.*:

We review the [State Board's] determination to consider whether such a ruling was "in accordance with the law or whether it [was] arbitrary, illegal, and capricious" . . . . Hence, our Court will affirm the [State Board's] decision

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<sup>2</sup> C.O.M.A.R. 13A.01.05.03D: Motion for Summary Affirmance: "A motion for summary affirmance may be filed if there are no genuine issues of material fact and the respondent is entitled to affirmance as a matter of law."

if it was predicated on substantial evidence from the record, and not erroneous as a matter of law.

212 Md. App. 596, 605 (2013) (citations omitted).

### III. DISCUSSION

In Petitioner's Memorandum in Support of Appeal, the County Board argues that the State Board's decision should be reversed based on both substantive, as well as, procedural errors. The County Board claims that the State Board erroneously concluded that the Employment Contracts "were valid and binding even though there was no evidence that the County Board approved or ratified the Contracts." (Pet's Mem. Supp. Appeal, 7). The County Board also argues that the State Board erroneously concluded that the sick and annual leave provisions continued to apply after the employment contracts expired (Pet's Mem. Supp. Appeal, 16), and that the State Board erroneously held that the Employees were protected by the collective bargaining agreement (Pet's Mem. Supp. Appeal, 17). Procedurally, the County Board claims that the State Board should not have reversed the County Board on the County Board's Motion for Summary Affirmance, but rather, should have transferred this matter to the Office of Administrative Hearings. (Pet's Mem. Supp. Appeal 21-23).

Education Article, Section 4-205 delineates the procedure for appealing a decision of a County Superintendent to the County Board.<sup>3</sup> Additionally, COMAR 13A.01.05 provides the procedure for reviewing Section 4-205 appeals. Although COMAR 13A.01.05.06 provides that "[u]pon review of the record, the State Board *may* transfer the case to the Office of Administrative Hearings for the scheduling of a hearing before an administrative law judge" (emphasis added), COMAR 13A.01.05.07A(3) further provides that the "State Board *shall* transfer an appeal to the Office of Administrative Hearings for review by an administrative law judge . . . upon review in which the State Board finds that there exists a genuine dispute of material fact." (Emphasis added).

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<sup>3</sup> MD. CODE ANN., EDUC., §4-205(c)(3) states: "A decision of a county superintendent may be appealed to the county board if taken in writing within 30 days after the decision of the county superintendent. The decision may be further appealed to the State Board if taken in writing within 30 days after the decision of the county board."

Here, once the Employees filed an appeal with the State Board, the *County Board* filed a Motion for Summary Affirmance pursuant to COMAR 13A.01.05.03D, which provides that such a motion “may be filed if there are not genuine issues of material fact and the respondent is entitled to affirmance as a matter of law.” The State Board did not grant the County Board’s Motion for Summary Affirmance and in fact reversed the decision of the County Board, finding that the Employment Contracts were indeed valid, and that “the sick leave and annual leave provisions continued to apply after the contracts expired.” (State Board Op. 14-37, 8). Additionally, the State Board concluded that “the [County] Board’s decision that [the Employees] were not a part of the CASA bargaining unit at the time they were reassigned was unreasonable because there was no evidence in the record to support its conclusion.” (State Board Op. 14-37, 10).

As a result of the findings made, this Court finds that the State Board ignored the County Board’s Motion for Summary Affirmance, and there were indeed genuine issues of material fact in dispute during the appeal before the State Board on July 22, 2014. For instance, there was a question as to whether a valid employment contract existed at all, and if so, there was certainly ambiguity relative to the terms of the contracts. The parties contested whether the sick and annual leave provisions continued to apply after the contracts expired, and whether the Employees were subject to the salary protection pursuant to the CASA bargaining unit. Thus, since there did indeed exist genuine issues of material fact,<sup>4</sup> this Court need not reach the substantive issues raised by the parties, but rather, concludes on procedural grounds that pursuant to COMAR 13A.01.05.07A(3), the State Board was required to transfer the appeal to the Office of Administrative Hearings for review by an administrative law judge. Therefore, this Court reverses the State Board’s opinion, and remands this case to the Maryland State Board of Education so that it may be transferred to the Office of Administrative Hearings for further fact finding pursuant to COMAR 13A.01.05.07A(3).

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<sup>4</sup> Following the Employees’ appeal to the State Board, the County Board filed a Motion for Summary Affirmance, which requires a finding that there are no genuine issues of material fact. Had the State Board agreed that there did not exist a genuine dispute of material fact, it would have granted the County Board’s motion, which it did not. As a result, C.O.M.A.R. 13A.01.05.07(A)(3) mandates that where the State Board finds that there exists a genuine dispute of material fact, it must transfer the appeal to the Office of Administrative Hearings.

IN THE CIRCUIT COURT FOR CALVERT COUNTY, MARYLAND

IN THE MATTER OF

:

BOARD OF EDUCATION OF  
CALVERT COUNTY

:

Case No. C-14-1051

:

ORDER

Based on the foregoing analysis of the issues pending in this case, it is this 8<sup>th</sup> day of April, 2015, by the Circuit Court for Calvert County, Maryland, hereby

**ORDERED**, that the decision of the Maryland State Board of Education in this matter is reversed and remanded to the State Board to transfer to the Office of Administrative Hearings pursuant to COMAR 13A.01.05.07A(3).

True Copy Test

*Gathry P. Smith*

Clerk of Circuit Court

*Mark S. Chandlee*

JUDGE Mark S. Chandlee

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ENTERED 4-13-15 BY RC

COPIES OF ORDER SENT 4-13-15

PLT \_\_\_\_\_

DEF \_\_\_\_\_

PLT ATTY  \_\_\_\_\_

DEF ATTY \_\_\_\_\_

ADA

Mark S. Chandlee #782  
Associate Judge