

PUBLIC SCHOOL ADMINISTRATORS
AND SUPERVISORS ASSOCIATION OF
BALTIMORE CITY,

Appellants

v.

NEW BOARD OF SCHOOL COMMISSIONERS
OF BALTIMORE CITY,

Appellant

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-3

OPINION

In this appeal, the Public School Administrators and Supervisors Association of Baltimore City (“PSASA”) appeals the decision of the local board declining to arbitrate grievances filed by several principals who were reassigned to different positions by the Chief Executive Officer (“CEO”). PSASA asserts that the grievances are matters subject to the grievance process under the Memorandum of Understanding (“MOU”) between PSASA and the school system, and are therefore subject to arbitration because they concern matters of salary which are arbitrable pursuant to Article XV of the MOU. In contrast, the local board claims that, as a matter of law, the grievances are not subject to arbitration because they concern the CEO’s statutory authority to transfer personnel as the needs of the school system require under section 6-201(b) of the Education Article.

BACKGROUND

On June 5, 1998, the Interim CEO of the Baltimore City Public Schools (“BCPS”) notified several principals that it was in the best interests of the Baltimore City Public School System to reassign them to positions as assistant principals or to equivalent level positions, effective July 1, 1998. The individuals were reassigned for the 1998-1999 school year and their salaries were adjusted to reflect the new assignments.

Thereafter, PSASA filed grievances on behalf of several of the reassigned principals, claiming that the school system violated the collectively bargained evaluation procedures under Article VII of the MOU between PSASA, and that the school system also violated past practice. By letter dated June 16, 1998, the Interim Executive Officer for the school system advised the PSASA that the claims would not be processed as grievances because (1) the employees had no tenure in their positions as principals; (2) their reassignments were an exercise of the Interim CEO’s statutory authority under 6-201(b) of the Education Article; and (3) the matter was not a lawful subject for a grievance and therefore not arbitrable under decisions rendered by the State Board of Education and affirmed by the Maryland appellate courts.

PSASA appealed the decision of the Interim CEO to the local board, claiming that the refusal to process the grievances was “inconsistent with the parties’ past practice” and did not

“comply with the agreed upon written Performance Based Appraisal Instrument for Principals.” PSASA further claimed that the individuals had the right to grieve the effects of the reassignment, including the status and pay to be given the employees. As relief, PSASA requested that the employees be reassigned as principals or to lateral positions. By letter dated June 29, 1998, the local board refused to process the reports as grievances reiterating that the issues were unlawful subjects for grievances, and that they were not arbitrable.

On June 29, 1998, PSASA filed additional grievances concerning other former principals who had been reassigned to lower level positions. Again, the Interim CEO indicated that the claims would not be processed as grievances based on the same reasons he had stated in his June 16, 1998 letter. PSASA also appealed this decision to the local board. However, before the local board could respond, PSASA referred the grievances to the American Arbitration Association for binding arbitration.

Before arbitration began, the local board advised PSASA that it would consider the employee grievances as 4-205(c) appeals. On September 18, 1998, PSASA agreed to stay the arbitration to allow the local board to consider the appeals. In a thoughtful and well-reasoned decision issued October 27, 1998, the local board denied the appeals. PSASA did not appeal the decision to the State Board of Education, but by letter dated November 24, 1998, reactivated its arbitration demand.

Arbitration was scheduled to begin on July 27, 1999. On June 9, 1999, the local board petitioned the Circuit Court for Baltimore City for a stay of arbitration. The court granted the stay, allowing PSASA additional time to file an appeal to the State Board of Education. This appeal followed. The issue on appeal to the State Board is whether the local board acted arbitrarily, unreasonably or illegally by failing to arbitrate the grievances asserted by PSASA on behalf of the reassigned principals.

ANALYSIS

It is very well established, based on State Board opinions and the Court of Special Appeals’ affirmance of *Hurl v. Board of Education of Baltimore County*, 6 Op. MSBE 602, 605 (1993), *aff’d* 107 Md. App. 286 (1995), that a transfer of a principal to a lateral position or to a position of lower rank is within the discretion of the local superintendent. *See, e.g., Joseph P. Heaney v. New Board of School Commissioners for Baltimore City*, MSBE Opinion No. 99-2 (January 26, 1999; lateral transfer); *Earl Hart v. Board of Education of St. Mary’s County*, 7 Op. MSBE 740 (1997; transfer from assistant principal to classroom teacher); *Chenoweth v. Board of Education of Baltimore County*, 7 Op. MSBE 197 (1995; transfer from assistant principal to director of recruitment); *Cameron v. Board of Education of Baltimore County*, 6 Op. MSBE 814, 815 (1995; transfer from assistant principal to classroom teacher). Specifically, the local superintendent is vested with broad statutory authority to assign professional personnel and transfer them as the needs of the schools require. Md. Code Ann., Educ. § 6-201(b). Moreover, no tenure attaches to administrative positions. Rather, employees in administrative positions acquire and maintain tenure in employment with the school system and not in any particular position. *Cameron*, 6 Op. MSBE at 815-816.

Despite PSASA's attempt to separate matters of salary from that of reassignment to a new position, we believe that these issues are indistinguishable when an employee is transferred pursuant to the CEO's authority under section 6-201(b) of the Education Article. This theory is supported by State Board regulation 13A.07.02.01B which sets out the terms of the regular contract for certificated employees. It provides in relevant part that if a transfer is made during the school year, the salary of the employee may not be reduced for the remainder of that school year. Given this provision, it is axiomatic that by law the employee's salary may be adjusted in following years in accordance with the employee's assignment. *See also Cameron* 6 Op. MSBE at 816.

In *Gerald Einem v. Howard County Board of Education*, 5 Op. MSBE 327 (1989), the State Board held that the transfer of a professional employee (teacher or administrator) to a position of lower rank and salary is an illegal topic of collective bargaining and therefore not subject to arbitration. We believe that opinion is controlling in this case.

Here, certain principals were reassigned for the subsequent school year by the Interim CEO acting properly within the scope of his statutory responsibilities under § 6-201(b) of the Education Article. In accordance with the reassignment, the employees' salaries for the next year were appropriately adjusted to reflect their assignments to lower level positions. This salary adjustment is a necessary part of the CEO's statutory authority to transfer professional personnel as the needs of the schools require.

Because the issue in this case actually concerns the CEO's transfer authority under § 6-201(b) and not a salary dispute, we find that the local board acted properly in declining to process the disputes as grievances and in declining to submit the disputes to arbitration. *See Einem*, 5 Op. MSBE at 329.

CONCLUSION

For these reasons, we affirm the decisions of the New Baltimore City Board of School Commissioners in this matter.

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