JAMES B. JOHNSTON,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
NEW BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS,	OF EDUCATION
Appellee	Opinion No. 01-19

OPINION

In this appeal, a teacher contends that his due process rights were violated when the local board dismissed him from his position for incompetency and willful neglect of duty without holding a hearing. The local board has submitted a motion for summary affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the motion.

FACTUAL BACKGROUND

Appellant, a tenured teacher with the Baltimore City Public School System ("BCPSS"), was assigned to Chinquapin Middle School, No. 46.[1] Appellant had received a statement of charges recommending his termination in case number 99-27. That statement was issued against Appellant in September, 1999. *See* 9/2/99 letter of transmittal with attached statement of charges. In that case, Appellant was represented by legal counsel and a representative from his collective bargaining unit, the Baltimore Teachers Union ("BTU"). Appellant requested a hearing, but the hearing was postponed first due to snow, then at Appellant's request because of U.S. Army Reserve duty. The hearing was never rescheduled by the local board and no action was taken against Appellant based on the statement of charges. The local board has stated in its motion that the statement of charges in case number 99-27 was withdrawn, but has not submitted any documentation to that effect.

On July 24, 2000, Cecil A. Ramsey, the Area Executive Officer, recommended that Appellant be dismissed from his position for failing to improve his performance during the 1999-2000 school year. *See* 7/24/00 memo from Ramsey. The recommendation was approved by Carmen V. Russo, Chief Executive Officer ("CEO"). On September 19, 2000, the local board sent to Appellant a second statement of charges recommending his dismissal for incompetence and willful neglect of duty in case number 00-15. The second statement of charges reads:

---

[1]Appellant initially started his employment with BCPSS in December 1979 and had two breaks of service, from 1983 to 1985 and 1989 to 1990. He had been in the continuous employment of the BCPSS from 1991 to 2000, and was elected to tenure on December 20, 1993.

- On June 19, 1998, Ms. Almenta Bell, principal of Chinquapin Middle School, recommended to her area executive officer that Mr. Johnston be terminated for less than satisfactory performance, failure to improve in identified weak areas, and poor attendance.

- Mr. Johnston received a 'does not meet expectation' evaluation rating for school year 1997-98.

- On August 1998, Chief Executive Officer Robert Booker notified Mr. Johnston that his teaching certificate was reduced to 'second class' and was ordered to improve in the area of teaching efficiency.

- For school year 1998-1999, Mr. Johnston was placed on an improvement plan, but again failed to improve due to his inability to control students and his poor attendance. Mr. Johnston left school April 1999 and did not return for the remainder of that school year. The principal, Almenta Bell, contends that his performance was unsatisfactory up to April 1999.

- On April 12, 2000, new principal, Esther M. Oliver, rated Mr. Johnston 'Unsatisfactory' for school (sic) 1999-2000, and on April 14, 2000, recommended to her area executive officer, Cecil Ramsey, that Mr. Johnston be dismissed.

Appellant did not request a hearing or otherwise respond to the notice. Accordingly, on November 14, 2000, the local board unanimously affirmed the CEO's decision to dismiss Appellant for incompetence and willful neglect of duty. A final order was issued on December 18, 2000.

ANALYSIS

Appellant raises two threshold procedural issues. First, he argues:

> Despite the fact that Mr. Johnson is represented by both the Baltimore Teachers Union and [his attorney], and despite the fact that a hearing had been scheduled, but never re-set with regard to the first Statement of Charges, the New Board issued an Order dismissing Mr. Johnston without giving him a hearing. This violates Mr. Johnston's due process rights as guaranteed by Education Article §§ 6-202 and 6-203 of the Annotated Code of Maryland. Mr. Johnston seeks an appeal of this unwarranted and

> unjustified decision and asks that he be restored to his position with full back pay and benefits.[2]

The Appellant also argues that the second statement of charges was not sent to the Baltimore Teachers Union in violation of the local board policy on notice.

With regard to the claim that the local board failed to notify the Baltimore Teachers Union of the statement of charges, Appellant refers to a provision in the Baltimore City Public School System Policy for Disciplinary Actions, Circular No. 22, Series 1999-2000. That policy states the following, in pertinent part:

> The statement of charges will be sent by the Board Executive to the affected employee via certified mail **with a copy of said notice to the employee's bargaining unit**. The letter will indicate that the employee has ten (10) days from the date of receipt in which to indicate their (sic) desire for a Board hearing. The Board Executive will assign a case number to each statement of charges regardless of the employee's request for hearing. (Emphasis added).

See Policy at page 1, paragraph A.4. In opposition, the local board responds that section 6-202 of the Education Article does not require a copy of the statement of charges to be sent to the Appellant's union representative.[3] Rather, section 6-202 only requires that the local board send

---

[2]This same issue is raised in *Aaron Davis, Sr. v. New Baltimore City Board of School Commissioners*. It is noteworthy that Carmen Russo was the CEO for BCPSS on September 19, 2000 when the second statement of charges was issued in this case. In *Davis*, Robert Booker was the CEO for BCPSS at the time the statement of charges was issued against Mr. Davis.

[3]Section 6-202 of the Education Article governs the suspension and dismissal of teachers, principals, and other professional personnel. In the event of termination, the provision requires that an individual receive notice of the charges against him and the opportunity to be heard. As stated in section 6-202(a)(2) and (3):

> (2) **Before removing an individual, the county board shall send the individual a copy of the charges against him** and give him an opportunity within 10 days to request a hearing.
> (3) If the individual requests a hearing within the 10-day period:
> (i) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and
> (ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing. (Emphasis added).

Appellant a copy of the charges against him.

We concur with the local board that section 6-202 does not require that a copy of the statement of charges be sent to Appellant's union representative. Further, although the plain language of the BCPSS Policy for Disciplinary Actions cited by Appellant requires the board executive to send a copy of the statement of charges to the employee's bargaining unit, it is our understanding that a different policy was in effect at the time the second statement of charges was issued in this case. We have been advised that the new policy was set out in the Rules of the New Baltimore City Board of School Commissioners that were approved by the local board on June 13, 2000. The new policy states as follows, in pertinent part:

> The CEO shall provide the employee with written notice of the charges being brought against the employee and advise the employee whether s/he is being recommended for suspension without pay and/or termination. The notice shall also provide an explanation of the employee's rights to challenge the recommended disciplinary action. The notice shall be provided by certified mail. An employee is entitled to request a hearing to challenge the recommended disciplinary action within 30 business days from the receipt of the notice from the CEO. (Emphasis added).

See Rules of the New Baltimore City Board of School Commissioners, section 407.04 - Suspension and/or Dismissal of Professional Employees, paragraph A.1 (August 2000). Thus, the revised Rules merely require that notice be provided to the employee. There is now no requirement that notice be sent to an employee's union representative or attorney.

Here, in compliance with the new policy, the board executive sent Appellant a copy of the second statement of charges in case number 00-15 on September 19, 2000. In his affidavit, Appellant admits receiving notification of the statement of charges, but indicates that he did not request a hearing because he believed that a copy of the charges was sent to both his attorney and to the BTU, and he expected one of them to request a hearing. *See* Affidavit of James B. Johnston.

However, we believe that Appellant failed to exercise due diligence in this case. At a minimum, after Appellant received the second statement of charges and was not thereafter contacted by his attorney or his union representative, Appellant should have contacted one or both of them to follow up on his case. Although the statement of charges in both 99-27 and 00-15 concern Appellant's termination, they are different cases with different case numbers. Neither State law nor the revised BCPSS policy requires the local board to send the charges in case number 00-15 to Appellant's attorney or union representative and it does not appear that Appellant had a reasonable basis for assuming the local board would do so.

On the other hand, Appellant may have thought that the second statement of charges was

a continuation of the earlier case and expected his attorney to file the appropriate response. Under this premise there would be a due process issue regarding the right to a hearing that would necessitate remanding the appeal for the scheduling of a hearing.

CONCLUSION

Because there is no evidence in this record that the local board had notified Appellant that it had withdrawn the first statement of charges, we find that Appellant had a reasonable basis to believe that his attorney would file the appropriate response to the second statement of charges. For these reasons, we are remanding the case to the New Baltimore City Board of School Commissioners for the scheduling of a hearing on the merits of Appellant's termination.[4]

Philip S. Benzil
President

Marilyn D. Maultsby
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Reginald L. Dunn

George W. Fisher, Sr.

Walter S. Levin, Esquire

Judith A. McHale

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

May 23, 2001

---

[4]The State Board is taking this action solely because of due process concerns. The State Board has taken no position on the substantive merits of this appeal.