

ERIN BOWLING,

Appellant

v.

HARFORD COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-10

OPINION

INTRODUCTION

Appellant appeals the decision of the Harford County Board of Education (“local board”) denying her request to include 15 years of service accumulated during her initial period of employment of her total 31 years of service for purposes of determining the local board contribution towards her retiree health benefits. The local board responded that her years of service were calculated pursuant to the local board’s policy which requires her service for calculation of retiree health benefits to be continuous, and that its decision was not arbitrary, unreasonable, or illegal. The Appellant responded and the local board replied. After the appeal briefing period ended, the Appellant filed a motion to reopen the proceedings, the local board opposed the motion, and the Appellant filed a response to the local board’s opposition.

FACTUAL BACKGROUND

Appellant’s Employment with HCPS

In this case, there are no disputes of material fact. The Appellant was employed as a teacher by Harford County Public Schools (“HCPS”) for two discrete periods of time. The first term of employment was from August 27, 1990, to June 20, 2005. She then had a break in employment service. The second term of employment was from August 21, 2006, to July 1, 2022. HCPS policies provide that only continuous years of service are considered to determine the local board’s contribution for retiree health insurance. The local board determined that the Appellant is entitled to a one-third local board contribution based on her 16 years of continuous service following her return to teach in 2006. Her first term of service was not eligible to be counted towards the local board contribution for her retiree health insurance benefit. The Appellant appeals the decision to deny her credit for the 15 years of service she worked with HCPS during her initial period of employment from 1990 through 2005.

On August 24, 1990, the Appellant signed the regular teacher’s contract to begin her employment effective August 27, 1990. On June 1, 2005, the Appellant submitted her letter of resignation effective June 20, 2005. She stated it was necessary to resign due to family obligations. By letter dated June 7, 2005, HCPS notified the Appellant that her resignation was accepted. The letter also informed the Appellant that her coverage under any health insurance

program would cease at the end of August, and she could continue her coverage under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”) for a limited period by paying the cost of 102% of the premium for her coverage or she could convert her insurance to a non-group program. (Local Bd. Response, Ex. 7). After her resignation, the Appellant worked as a substitute teacher for HCPS until she reapplied for regular full-time employment.

On July 19, 2006, the Appellant reapplied for employment as a regular teacher with HCPS. On July 22, 2006, she signed a second regular teacher’s contract to begin her employment effective August 21, 2006. On January 14, 2022, the Appellant submitted a letter to HCPS stating that she intended to retire effective July 1, 2022. On January 14, 2022, HCPS acknowledged and accepted Appellant’s request to retire.

HCPS’s Retirement Policies

In June 2006, the local board created a tiered eligibility policy for retiree health insurance benefits for employees hired after July 1, 2006. Under the 2006-tiered system policy, only employees with 30 years of continuous service are eligible for the full local board contribution if enrolled in a health insurance plan when retiring. The purpose of this change in policy was a budget containment method in response to growing healthcare expenses. The local board implemented the revised policy effective July 1, 2006.

The tiered continuous service eligibility policy is set forth in several local board documents, which are shared with all HCPS employees via the HCPS Employee SharePoint Site and HCPS website under the “Staff” tab. The HCPS Benefits Enrollment & Reference Guide, effective July 1, 2021 – June 30, 2022 (the “2022 Retirement Guide”) provides as follows:

Retiree Insurance Benefits

Your retiree insurance benefits are provided by Harford County Public Schools regardless of the retirement plan from which you are receiving your pension. ***Please note that the insurance benefits and the Board’s contribution percentages as shown on the following page are subject to change in the future depending upon the Board and its funding authorities.***

While you may be vested in your pension plan, your ability to participate in the retirement insurance plans of HCPS may be limited. In order to be eligible to participate in retiree benefits now or in the future, you must be enrolled for the benefit prior to your retirement date, retire in good standing and begin to receive a monthly pension directly following at least 10 years of continuous service to HCPS immediately preceding retirement. An employee who does not qualify to receive a pension or who elects to defer pension benefits or has not completed the last 10 years of continuous service with HCPS is ineligible for future participation in the Board’s benefit plans....

Health Insurance

The cost of your health insurance is paid by you and Harford County Public Schools. For employees hired prior to July 1, 2006, the Board contributes 85–95 percent of the total cost of your health, dental or life insurance. Employees hired after July 1, 2006 receive benefits based on a tiered structure. Service of thirty years or more receive the full Board contribution, retirees with 20–29 years receive two-thirds of Board contribution and 10–19 years of service receive one-third of Board contribution. (***Only continuous service time with the Harford County Public Schools applies.***)

Health insurance premiums are deducted from a retiree’s monthly pension check....

(Local Bd. Response, Ex. 15 at pp. 66-67, emphasis added in bold italics) (The entire 2022 Retirement Guide is found at <https://www.hcps.org/departments/docs/humanresources/benefits/ActiveEmployeesBenefitsEnrollmentAndReferenceGuide2021-2022.pdf>).

The guide also includes the following chart at p. 68:

Retiree Benefits

HCPS contributes toward health care premiums for employees with 10 or more ***consecutive*** years of service who are approved for retirement from the Maryland State Retirement and Pension Systems. Board contributions are:

Years of <i>Consecutive</i> Service to HCPS	Hired Prior to 7/1/06	Hired After 7/1/06
10 - 19 yrs.	Full Board Contribution	1/3 Board Contribution
20 – 29 yrs.	Full Board Contribution	2/3 Board Contribution
30 yrs. & up	Full Board Contribution	Full Board Contribution

(*Id.*, emphasis added in bold italics).

In addition to the 2022 Retirement Guide, the HCPS 2022 Retirement Handbook (“2022 Retirement Handbook”) provides further guidance on HCPS’s Health Insurance Benefits. In the *Employee Policy Statement*, after the cover page, states:

The contents of this handbook ***are subject to change and do not constitute an express or implied contract.*** It should be reviewed to familiarize yourself with the policies. If you have additional questions after reviewing the Handbook, contact the Human Resources Benefits Office.

(Appeal, Ex. 12).

The next page of the 2022 Retirement Handbook in a letter to employees informs employees that “changes frequently occur and some individual cases may be complex, readers are encouraged to contact your retirement coordinator in Human Resources to ask any questions so that complete answers can be obtained.” (*Id.*) The 2022 Retirement Handbook describes the retiree health benefits and states that:

Employees who retire with ten (10) or more years of continuous service with [HCPS] at the time of retirement and who are under the age of sixty-five (65) years of age may continue to participate in our group insurance. For employees hired before 7/1/06, the [local board] will pay 95% of the HMS, 90% of the PPO Core, and 85% of the Triple Option Premium. For employees hired after 7/1/06, the [local board] will pay 1/3 of their share for 10-19 years of service, 2/3 of their share for 20-29 years of service, and 90% or 85% for 30 years of service.

(*Id.*, at p. 8). This information is repeated on the following page:

For employees hired prior to July 1, 2006, the [local board] will pay 90% of the [various plans]. For employees hired on or after July 1, 2006, the [local board] will pay 1/3 of their share for 10-19 years of service, 2/3 of their share for 20-29 years of service and 90% for 30 years of service.

(*Id.*, at p. 9).

HCPS Retiree Health Insurance Determinations

By email dated April 12, 2022, HCPS’s general counsel, Kimberly H. Neal, responded to Appellant’s counsel’s inquiries about Appellant’s retiree healthcare benefits and summarized their discussions. Ms. Neal provided a link for access to the 2022 Retirement Guide. She explained that the current retiree health care benefits policy has been in effect since July 1, 2006. She also explained that under the terms of the revised policy, employees hired after July 1, 2006, must have 30 years of “consecutive” service to be eligible for the 95% or 90% payments towards the cost of insurance premiums. (Local Bd. Response, Ex. 17). She further explained that although the Appellant was previously hired on August 27, 1990, the Appellant resigned in 2005 and did not return to full-time status until August 21, 2006. She explained that because the most recent hire date is after July 1, 2006, her health care contribution was correctly calculated at the one-third contribution rate based on the Appellant’s consecutive service after the August 21, 2006, date of hire. In response to Appellant’s counsel’s request, Ms. Neal also explained that the older benefits guides were hard to locate and provided the Appellant with the 2008-2009 benefit guide as an example of the older guides¹ noting that the document explained that the service had to be “consecutive years.” (Local Bd. Response, Ex. 17).

¹ Prior to HCPS having the technology to make the retirement policies, including the handbooks and benefit guides, available electronically, HCPS made hard copies of the retirement polices available to teachers at each of its schools.

On May 11, 2022, Appellant appealed to the local Superintendent the HCPS benefits department's decision to deny payment of the full board contribution. On May 31, 2022, Benjamin Richardson, Assistant Superintendent for Human Resources, acting as the Superintendent's Designee, denied the appeal finding that the Appellant's resignation for the 2005/2006 school year and her subsequent rehiring in August of 2006 represented a break in service. He concluded that the break in service reset the continuous service timeline for retiree health insurance. He concluded that per HCPS's retiree insurance policy, the Appellant was eligible for one-third local board contribution. (Local Bd. Response, Ex. 1, p. 68).

On June 2, 2002, Appellant appealed the local Superintendent's decision to the local board. The parties submitted briefs and exhibits in support of their positions. The local board decided based on the record. By decision dated October 25, 2022, the local board denied Appellant's appeal, stating that the Appellant had failed to demonstrate by a preponderance of evidence that the decision of the Superintendent was arbitrary, unreasonable, or illegal. (Appeal, Ex. 16). This appeal followed.

Additional Information and Motion to Reopen the Proceedings

Throughout the local board proceedings, Appellant's counsel requested the pre-July 1, 2006, guides and handbooks. On January 19, 2023, the local board filed its reply to the Appellant's response and explained that hard copies of the HCPS's 1990 Retirement Handbook, HCPS's 2005 Retirement Handbook, and HCPS's 2006 Retirement Handbook were first located in a storage locker on January 17, 2023. (Local Bd. Reply at p. 2, Exs. 1, 2, & 3). The local board included the 1990, 2005, and 2006 retirement handbooks in its reply filed on January 19, 2023. The local board's reply concluded the briefings of the parties for this appeal under our applicable regulations.

On January 17, 2023, local board counsel also provided to Appellant's counsel copies of the following:

- Retirement Handbooks covering the period of 2007 through 2014 and 2018 through 2021;²
- Care First Benefits Enrollment and Reference Guides covering the period of July 1, 2005 through June 30, 2016; and
- Care First Benefits Enrollment and Reference Guide July 1, 2017, through June 30, 2018.

On February 9, 2023, Appellant filed a motion to reopen the proceedings to acquire additional evidence and to present new legal arguments as appropriate upon receipt of the additional evidence. Appellant attached as exhibits a Public Information Act Request to the local board dated January 30, 2023 ("PIA Request")(Appellant's Motion, Ex. 18). Although the PIA is somewhat vague, the request is more fully explained in the Appellant's motion. Pursuant to the motion, the Appellant is seeking information pertaining to the following:

- How changes in the handbooks were authorized;

² The local board has been unable to locate the retirement handbooks for the 2016 or 2017 years.

- Whether teachers were informed of the numerous changes over the years; and
- How the procedures for making the changes in the medical insurance reimbursement are made by the local board or by HCPS.

(Appellant's Motion at pp. 2-3). Also, included as an exhibit to Appellant's motion are extracted pages from the HCPS Retirement Handbook for 2014. (Appellant's Motions, Ex. 17).

On February 14, 2023, the local board opposed the Appellant's motion. On March 10, 2023, the Appellant filed a response.

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. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy, or if a reasoning mind could not have reasonably reached the conclusion of the local board. COMAR 13A.01.05.06B. The Appellant has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.06D.

LEGAL ANALYSIS

Introduction of Additional Evidence and Motion to Reopen Proceedings

Both parties have included documents in their appeal filings that were not before the local board. The local board included HCPS retirement handbooks for the years 1990, 2005, and 2006 in its reply to the appeal. (Local Bd. Reply, Exs. 1, 2, & 3). The Appellant included extracted pages from the HCPS 2014 Retirement Handbook and the January 30, 2023, PIA request in its motion to reopen the proceedings. The applicable regulation provides that the State Board may receive additional evidence if it is "material and that there were good reasons for the failure to offer additional evidence in the proceedings before the local board." COMAR 13A.01.05.04C. Because the handbooks at issue were only discovered after the local board proceedings were concluded in this matter, we find that there is good reason for the failure to include them at the local level. We also find them material to the case, as they confirm the local board's position, that because the Appellant was not eligible to retire in 2005 when she resigned, the Appellant was not vested in any retiree healthcare benefits related to her employment during her initial 15 years of employment. Accordingly, we will receive the handbooks filed by both parties as additional information.

We do not find the Appellant's January 30, 2023, PIA request relevant and thus we will not consider that as part of the record in this appeal. We also find that the controlling documents for the determination of Appellant's retiree health benefits are the 2022 Retirement Guide and the 2022 Retirement Handbook. We do not find the record is lacking in any necessary information to determine the Appellant's retiree healthcare benefits under the local board policy. Thus, we deny the Appellant's Motion to procure additional evidence and present new legal arguments.

Appellant's Health Benefits during Her First Period of Employment

Appellant argues that she was vested in a contractual right to a full board contribution towards her retiree health care coverage when she resigned in 2005. Appellant argues that failure to count her 15 years of service earned during her first period of employment constitutes a breach or impairment of contractual rights conferred by the local board policy, including constitutional claims. We do not agree that the appellant was vested in any contractual retiree healthcare rights when she terminated her service in 2005, as she was not eligible to retire at that time.

The uncontroverted facts in the record before us establish that the Appellant had to retire to be eligible to participate in any retiree healthcare benefits. In 1990, the year the Appellant began her first term of employment, HCPS provided the following retiree health insurance benefits to “[e]mployees **retiring** who have ten (10) or more years of service with [HCPS], and who are under sixty-five (65) years of age”. Local Bd. Reply, Ex. 1 at p. 8, emphasis added. In 2005, the year the Appellant resigned from HCPS, HCPS provided retiree health insurance benefits to “[e]mployees **retiring** who have ten (10) or more **consecutive** years of service with [HCPS], and who are under the age of sixty-five (65) years of age”. Local Bd. Reply, Ex. 2 at p. 8, emphasis added. In 2006, the year the Appellant was rehired, HCPS provided health insurance benefits to “[e]mployees **who retire** with ten (10) or more years of **continuous** service with [HCPS], and who are under sixty-five (65) years of age”. Local Bd. Reply, Ex. 3 at p. 8, emphasis added. All three handbooks make it clear that the employee must be retiring to be eligible to receive retiree health benefits. All three handbooks explain that in order to apply for retirement benefits, members of the Maryland State Retirement System must reach the age of 60; have 30 years of creditable service (years of contribution) regardless of age; or 25 years of creditable service and under the age of 60.

The Appellant argues that because the local board policy makes benefits contingent in part on the number of years of credited service accumulated, that this accumulation must be treated the same as contractual rights accrued under a pension plan. Such an argument is not supported by the language in the policy, our precedent, and the case law in Maryland. In *Johnston v. Howard County Bd. of Educ.*, MSBE Op. No. 10-30 (2010), we upheld the local board's denial of retiree health care benefits to Mr. Johnston. In *Johnston*, the local board rejected Mr. Johnston's request to retire and terminated him from his teaching position following charges of immorality, misconduct in office, and insubordination. In *Johnston*, Mr. Johnston had accrued 30 years of service making him eligible to retire under the under the Maryland State Retirement System, but the local board denied his request to continue healthcare benefits under the policy drawing a distinction between eligibility for retiree healthcare benefits versus pension benefits. The retirement handbook in *Johnston* stated, “employees who retire from employment with Howard County Public School System are eligible for continued membership” in the school system's medical plans. *Id.*, at p. 9. Despite the fact that Mr. Johnston was vested in his retirement benefits, the local board denied his eligibility to participate in retiree health care benefits because his separation from employment was based on a termination as opposed to a retirement.

We recognize, unlike Mr. Johnston, the Appellant resigned in good standing in 2005 and her 2005 resignation was accepted by the local board. Despite these factual differences

regarding the reasons for separation from employment, our decision in *Johnston* illustrates that retirement is a condition precedent for entitlement to retiree health insurance benefits and that the accumulation of years of service alone does not “vest” the Appellant in any retiree health benefits. Rather, the accumulation of years of service must also be combined with actual retirement.

The case law in Maryland is consistent with our precedent. The Maryland Attorney General in 90 *Opinions of the Attorney General* 1995 (2005) summarized the caselaw in Maryland and noted that State health insurance benefits for retirees accrue over the career of an employee, similar to pension benefits, but generally do not result in any contractual right to those benefits. The Attorney General recognized that the State system created contractual rights for certain pension benefits but not for retiree health benefits. *Id.*, at 8. The Attorney General also explained, “there is no contractual right to retiree health care benefits that could be impaired” and that should the legislature intend to extend contractual rights to retirees for healthcare benefits, there must be “an adequate expression of an actual intent” of the State to bind itself. *Id.*, at 6-7.

The language in the handbooks make it clear that HCPS reserved the right to modify its retiree healthcare benefits at any time, and it did in 2006. Such language falls far short of establishing any contractual rights. The introductory letter to employees in all the handbooks has remained unchanged and makes it clear that HCPS was not binding itself to any contractual rights and explicitly stated the health benefits often change.

The Appellant’s various theories that she has contractual and constitutional rights to receive a higher rate of contribution for her retiree healthcare benefits based on her 15 years of service before she resigned in 2005 is not supported by the facts. The Appellant was not eligible to retire following her resignation in 2005. Her resignation was accepted by the local board, and she was notified that her benefits under the health insurance plan would terminate based on her separation from employment unless she converted her insurance to an individual plan or elected COBRA coverage and paid 102% of the premiums. *See* Local Bd. Response, Ex. 7.

Furthermore, even if the Appellant was able to establish that the local board had created a contractual obligation for her service earned before she resigned in 2005, HCPS would be free to modify any such rights prior to her retirement. *See Fitch v. Maryland*, 2021 WL 6197416, *6-7, 9-10, 12 (D. Md. Dec. 30, 2021)(retiree’s contractual rights to certain prescription drug benefits, do not vest, and are subject to modifications, until an eligible retiree fulfills all conditions precedent, including the act of retiring).

Appellant’s Health Benefits during Her Second Period of Employment

We agree with the local board that the determination of the Appellant’s retiree health insurance benefits is governed by local board policy as explained in the 2022 Retirement Guide and the 2022 Retirement Handbook. The policy distinguishes between vested pension rights and the limited ability to participate in retiree health insurance plans. Furthermore, the policy contains explicit language stating that HCPS did not intend to create any express or implied contractual rights. The language of the policy negates Appellant’s arguments that her contractual and constitutional rights were violated. There simply is no contractual right commanding the

local board to include the years of service she accumulated during her initial period of service.

The policy created in 2006, and continues to apply, is service must be continuous to count for the health benefit. The policy is clear that only the Appellant's continuous years of service are counted for purposes of determining the amount of the local board contribution. Even though the policy does not state that a break in service will result in a forfeiture of accumulated service, the requirement that the service must be continuous controls and dictates that any break in service resets the service clock. The local board followed its policy and correctly calculated its one-third contribution rate based on Appellant's 16 years of service she accumulated following her 2006 date of hire. The Appellant has failed to meet her burden to demonstrate that the local board's interpretation of its own policy was arbitrary, unreasonable, or illegal.

CONCLUSION

For the foregoing reasons, we do not find the local board's decision to be arbitrary, unreasonable, or illegal and we affirm the local board's denial of Appellant's appeal.

Signatures on File:

Clarence C. Crawford
President

Gail H. Bates

Charles R. Dashiell, Jr.

Joan Mele-McCarthy

Joshua Michael

Lori Morrow

Warner I. Sumpter

Absent:

Shawn D. Bartley
Rachel McCusker
Holly Wilcox

Dissented:
Susan J. Getty, Vice-President
Chuen-Chin Bianca Chang
Jean Halle

April 26, 2023