

CHRISTINE SMITH

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-43

OPINION

INTRODUCTION

Appellant appeals the decision of the Baltimore County Board of Education (“local board”) reducing her salary. We initially reviewed the case at our December 5, 2016 board meeting and found there was a dispute of material fact about the intent of the parties regarding the grade and step of the Appellant’s salary. MSBE Op. No. 16-49. We referred this case to the Office of Administrative Hearings (OAH) to resolve that dispute of fact as required by COMAR 13A.01.05.07A(2).

On July 26, 2017, the Administrative Law Judge (ALJ) issued a Proposed Decision recommending that the State Board uphold the decision of the Superintendent’s Designee. The ALJ found no evidence that the parties agreed to approve a position outside the normal vacancy reclassification process or salary scale. The ALJ, therefore, found the Designee’s interpretation of the settlement agreement provisions to be reasonable.

Appellant filed exceptions to the ALJ’s Proposed Decision. The local board has responded to the Appellant’s exceptions. Oral argument was held before the State Board on December 5, 2017.

FACTUAL BACKGROUND

Appellant began working for Baltimore County Public Schools (“BCPS”) in 1987, serving as a teacher, assistant principal, and principal. In 2012, while serving as principal, Appellant was accused of misconduct. During the ensuing investigation, BCPS temporarily assigned the Appellant to the Office of School Safety and Security (“OSS”) pending an investigation. The position at OSS was an alternative service assignment and was not a pre-existing position.

In a matter related to her employment, Appellant filed a grievance against BCPS and, ultimately, she filed a Petition for Judicial Review of the matter in the Circuit Court for Baltimore County. While that Petition was pending, Appellant’s counsel and BCPS negotiated a settlement of “all matters regarding the [Appellant’s] employment with BCPS” in which the Appellant would dismiss her case against BCPS in exchange for a permanent position in the OSS. During this time there were various communications between Appellant’s counsel and BCPS counsel about the position/salary issue, and discussions between Appellant and her

supervisor, Dale Rauenzahn. On or about June 30, 2014, Appellant and BCPS entered into a Settlement Agreement (“Agreement”) that contained the following language regarding salary and assignment:

Employee will continue to be compensated at her current salary through the end of the 2014-2015 school year but will remain assigned to the Office of School Safety and Security. After July 1, 2015, if the employee chooses to remain in the assignment she occupies in the Office of Safety and Security, **she will be compensated based on the grade and step of that position.** However, the Employee will be permitted to apply for any available administrative position, including school principal.

(emphasis added)(Supt. Ex. 6).

By letter dated August 11, 2014, Herman James, Director of Staffing for BCPS, informed the Appellant that she had been assigned to the position “Administrator, Special Projects” for the Department of Safety and Security for the 2014-2015 school year. He advised that her salary would remain at \$121,264 for the 2014-2015 school year, but thereafter it would revert to a Grade 10, Step 14 in the amount of \$103,877 on July 1, 2015 unless she accepted another position. As a result of the change in position from Principal to Administrator, Special Projects, the Appellant’s bargaining unit changed from the Council for Administrative and Supervisory Employees (“CASE”) to the Organization of Professional Employees (“OPE”).¹ (Smith Ex. 9).

Appellant appealed the salary determination, maintaining that the reduction in salary violated the terms of the Settlement Agreement. She claimed that she had relied on promises from BCPS that her salary would remain at the same pay grade at the end of the one-year salary protection, and that she would never have signed the Settlement Agreement if she knew the OSS position was at a grade 10 and was part of the OPE bargaining unit.

Appellant’s argument was unsuccessful before the Superintendent’s Designee and the local board. On appeal to the State Board, we transferred the matter to an ALJ for review and recommendation because we found that there was a dispute of material fact about the intent of the parties regarding the grade and step of the position.

The ALJ concluded that the local superintendent properly interpreted the Settlement Agreement. She stated the following:

While the Settlement Agreement is silent as to salary and grade, the extrinsic evidence and testimony presented by both sides demonstrate that the Appellant chose to remain on assignment at the OSS in a position that was being reviewed by HR as a vacancy reclassification and, as such, she would “be compensated based on the grade and step of that position.” In other words, once the vacancy reclassification was complete, the Appellant would be compensated accordingly. As such, I do not see a basis for the Appellant’s argument that the Local Superintendent’s decision to

¹ CASE is the bargaining unit for building administrators, including curriculum specialists, and other administrative and supervisory personnel. OPE is the bargaining unit representing professional, technical and supervisory positions that do not require State certification.

uphold the Settlement Agreement was arbitrary, unreasonable, or illegal.

(ALJ's Proposed Decision at 29.).

The ALJ wrote a comprehensive and well-developed recitation of the full factual background of this case in the Proposed Decision. The factual background is set forth in the ALJ's Proposed Decision and Joint Stipulation of Facts and Findings of Fact (pp.9-19). We adopt in their entirety the ALJ's Joint Stipulation of Facts and Findings of Fact.

STANDARD OF REVIEW

Because this appeal involves a local policy or a controversy and dispute regarding the rules and regulations of the local board, the decision 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.01.05.05A.

In this case, the local board failed to garner the seven votes that it needed to affirm or reverse the superintendent's decision. Such a result means that the Appellant failed to meet her burden to persuade a majority of the local board that the local superintendent's decision merited reversal. In such situations, the decision of the local superintendent prevails and the State Board reviews the rationale behind the local superintendent's decision on appeal.

The State Board referred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ's Proposed Decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications, or amendments to the Proposed Decision. *See* Md. Code Ann., State Gov't §10-216. In reviewing the ALJ's proposed decision, the State Board must give deference to the ALJ's demeanor based credibility findings unless there are strong reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Shrieves*, 100 Md. App. 283, 302-303 (1994).

EXCEPTIONS

Appellant has filed two exceptions to the ALJ's proposed Decision. First, the Appellant claims that there is no evidence to support the ALJ's finding that Dale Rauenzahn's testimony is less than credible. Second, the Appellant claims that there is no evidence to support the ALJ's conclusion that Appellant signed the Settlement Agreement with the understanding that the grade and step of the OSS position was not yet determined. We address each exception in turn.

Exception Regarding Testimony of Dale Reuenzahn

The Appellant takes exception to the ALJ's finding that Mr. Rauenzahn was not a credible witness.

Mr. Rauenzahn, Executive Director of OSS at the time, was the individual who initiated the creation of a full-time position for the Appellant in the OSS. In May 2014, Mr. Rauenzahn submitted to HR a Class Specification Form and a Vacancy Reclassification Form for the position "Principal on Assignment to the Department of School Safety and Security." Both forms were unsigned. The Vacancy Reclassification Form listed the proposed grade and salary

schedule as grade 13, step 13 on the CASE pay scale. The Class Specification Form listed the grade as “Grade 13” and the position title code as “TBD.” Mr. Rauenzahn shared this information with the Appellant and showed her the Class Specification Form.

In June 2014, HR returned the Vacancy Reclassification Form to Mr. Rauenzahn with edits that changed the title of the position to “Administrator, Special Projects, School Safety & Security, and changed the grade and salary scale to grade 11 on the OPE scale. (Local Board Motion, Ex. 8). Mr. Rauenzahn marked up the edited version and resubmitted it to HR telling HR his original request should be approved as written with the Grade 13 CASE pay scale. The ALJ found that, thereafter, on July 23, 2014, Mr. Rauenzahn electronically signed and resubmitted to HR another updated version of the Vacancy Reclassification Form listing the salary for the position as “Grade 10 OPE.” (ALJ Proposed Decision at 15; *See* Supt. Ex. 2). The ALJ made this finding despite Mr. Rauenzahn’s testimony at OAH that he did not follow-up with HR after submitting the first round of form edits, that nobody from HR ever got back to him about it, and that he did not use electronic signatures.

In a case such as this, we defer to the ALJ’s demeanor based credibility findings unless there are strong reasons presented that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Shrieves*, 100 Md. App. 283, 302-303 (1994). The State Board gives great deference to demeanor based credibility determinations because the trier of fact has had an opportunity to see, hear, and judge the witnesses’ truthfulness as the witness testifies.” *Gwin v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 12-19, 12-13 (2012).

In the Proposed Decision, the ALJ explained why she found Mr. Rauenzahn’s testimony to be less than credible and cited various examples to demonstrate this. (*See* ALJ Proposed Decision at 31-33). For example, Mr. Rauenzahn testified that he had reason to believe that the salary for the vacancy reclassification would be what he requested. The ALJ noted, however, that Mr. Rauenzahn also testified that he knew that his request outlined job responsibilities that were not in line with that of a principal and required final approval by HR. (Proposed Decision at 24, 30-31). In addition, Mr. Rauenzahn testified that he did not electronically sign the updated Vacancy Reclassification Form listing the salary as Grade 10 OPE. The ALJ found more credible the testimony of Mary Bushman, BCPS HR Specialist, who testified regarding the authenticity of the form, and the timeframe within which she received it from Mr. Rauenzahn. (Proposed Decision at 17, n.22; 31-33).

The Appellant claims that finding Mr. Rauenzahn not credible is contrary to comments made by local board member Michal Collins during oral arguments before the local board. Mr. Collis stated during discussion that Mr. Rauenzahn was “a certain, organized, you might control freak type of individual. . .” (Local Board Transcript at 42:6-10). To the extent that such comments are relevant on the issue of Rauenzahn’s credibility as a witness, Mr. Collins comments are not evidence in this case.

The Appellant also argues that Mr. Rauenzahn’s testimony that he did not use an electronic signature is credible when combined with his testimony that he communicated several times his intent to have the position classified as CASE grade 13, step 13. The Appellant has not pointed to any evidence in the record or testimony from other witnesses to support this notion. Nor has the Appellant attached copies of the transcript pages that support her argument. *See* COMAR 13A.01.05.07(F)(3). We do not find that the Appellant has met her burden of providing a strong reason for rejecting the ALJ’s credibility determination.

Exception Regarding Salary/Bargaining Unit Classification for OSS Position

As explained above, during the Appellant's assignment at the OSS, the parties negotiated a Settlement Agreement to resolve pending disciplinary issues. The ALJ concluded that the Appellant agreed to remain on assignment at OSS and receive her principal's salary for the remainder of the 2014-2015 school year. As of July 1, 2015, however, the Appellant was free to apply for another position with BCPS, or she could remain in the position at OSS and be compensated based on the grade and step established for that position. The ALJ explained that the reason the Settlement Agreement did not specify the grade and step of the OSS position was because HR had not yet approved the position and pay. (Proposed Decision at 35).

The Appellant takes exception to the ALJ's determination that it was the intent of the parties at the time the Settlement Agreement was executed for the Appellant to receive a yet to be determined salary for the OSS position. It is the Appellant's view that, prior to her signing the Settlement Agreement, the salary had been finalized at a grade 13, step 13 on the CASE pay scale.

The ALJ reviewed the evidence and testimony presented by both sides to determine the intent of the parties. The ALJ pointed out that, prior to the Settlement Agreement being signed, Appellant communicated with Mr. Rauenzahn who showed the Appellant the proposed Class Specification Form listing the OSS position as "Principal on Assignment to the Department of School Safety and Security" at grade 13. The Appellant acknowledged in her testimony, however, that the form was not finalized because the title code stated it was "TBD." She also acknowledged that, at that time, she had not spoken to anyone in HR about the position.² Further, Appellant testified that she was aware that Mr. Rauenzahn lacked the authority to approve the position and salary, and that that determination was a matter for HR and the local superintendent. Thus, the ALJ concluded that the Appellant made an assumption about the pay and grade of the position and that her reliance on Mr. Rauenzahn was misplaced.

In addition, the ALJ noted that the grade and step of the position was not specified in the Settlement Agreement, nor was it listed on the documents that were part of the settlement negotiation, because the position and pay had not yet been approved. Appellant knew that to be the case before she signed the Settlement Agreement. As the ALJ found, counsel for the Appellant was certainly aware that the grade and step of the position was an issue of concern for the Appellant prior to signing the Agreement. Specifically, Ms. Howie, counsel for the school system, wrote a "counteroffer" in exchange for the Appellant agreeing to withdraw her administrative appeal with prejudice and receive a reprimand for her actions. The "counteroffer" stated that the Appellant may remain in a position at the OSS and retain her current salary for the 2014-2015 school year, but thereafter "the Appellant's salary will revert to the position she holds at that time." (Local Board Motion, Ex. 3). Appellant's counsel responded that the Appellant

² Although the Appellant testified that she relied on representations by Dr. Alpheus Arrington and Mr. Herman James, members of BCPS HR, that the change in position would be in title only and that her salary would remain the same, any discussion that she had with them was in July 2014, after she signed the Settlement Agreement. (Proposed Decision at 22). Thus, she could not have relied on any such representations in signing the Agreement. In addition, Allyson Huey, Manager of Employee and Student Appeals, testified that Dr. Arrington told her that he and Mr. James advised the Appellant that her salary would not change during the 2014-2015 school year, but that it would change if she remained in the OSS position. (Hearing Examiner Tr. 100-101). The ALJ stated in the Proposed Decision that "Appellant's credibility did not fare much better [than Rauenzahn's], because much of her testimony on direct was unsupported or her statements were successfully challenged on cross-examination." (Proposed Decision at 33).

“has tremendous trepidation as to what salary she will revert to once the salary protection is terminated.” (Local Board Motion, Ex. 4).

Despite these concerns, counsel for the Appellant did not follow-up on the issue and his client signed the Settlement Agreement that did not specify the grade and step of the OSS position. As the ALJ stated, “the Appellant was certainly free to wait until [the position and pay approval] process was complete, but she assumed the risk of the outcome by entering into the Settlement Agreement perhaps prematurely.” (ALJ Proposed Decision at 35).

The ALJ further explained that the language of the Settlement Agreement was consistent with the negotiations, as demonstrated by the May 15 and 20, 2014 letters from Appellant’s counsel and Ms. Howie’s May 20, 2014 letter. (Local Board Motion, Exs. 2, 3, & 4). The ALJ also noted that the Settlement Agreement mirrored the requirements of the BCPS Operating Procedures for “Reassigning Administrative and Supervisory Personnel,” which require that a reassigned employee retain the current salary for one year and, at the start of the new fiscal year on July 1, the employee’s salary will be readjusted to reflect the salary of the reassigned position. (See Local Board Motion, Supt. Ex. 5). We concur with the ALJ’s assessment.

CONCLUSION

Based on the record in the case, we find that the decision of the Superintendent’s Designee was not arbitrary, unreasonable or illegal. Thus, we adopt the ALJ’s Proposed Decision in its entirety and affirm the decision of the Superintendent’s Designee that BCPS did not reduce the Appellant’s salary or change her collective bargaining unit classification in violation of the Settlement Agreement. After the conclusion of the 2014-2015 school year, Appellant was to be compensated at a Grade 10, Step 14 on the OPE pay scale.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin Hartings

Stephanie R. Iszard

Rose Maria Li

David Steiner

Absent:
Michael Phillips
Irene M. Zoppi Rodriguez

December 5, 2017

CHRISTINE SMITH,
APPELLANT
v.
BOARD OF EDUCATION
OF BALTIMORE COUNTY

*** BEFORE KATHLEEN A. CHAPMAN,**
*** AN ADMINISTRATIVE LAW JUDGE**
*** OF THE MARYLAND OFFICE**
*** OF ADMINISTRATIVE HEARINGS**
*** OAH NO.: MSDE-BE-20-16-37548**

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PROPOSED DECISION¹

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
JOINT STIPULATION OF FACTS
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDATION

STATEMENT OF THE CASE

On July 2, 2014, Christine Smith (Appellant) entered into a Settlement Agreement and Release (Settlement Agreement) with the Baltimore County Board of Education (Local Board or BCBE) and Dallas Dance, Ph.D. (Local Superintendent) concerning her employment with the Baltimore County Public Schools (BCPS).²

On March 15, 2015, the Appellant filed an appeal to the Local Superintendent's office claiming that the BCPS and the Local Superintendent unilaterally changed the terms and conditions of the Settlement Agreement thereby affecting her salary grade, scale, and collective bargaining unit. The Appellant believes that the actions by the BCPS and the Local Superintendent were arbitrary, unreasonable, and illegal; and must be overturned.

¹ Pursuant to Code of Maryland Regulations (COMAR) 13A.01.05.07E, "The administrative law judge shall submit in writing to the State Board a proposed decision containing findings of fact, conclusions of law, and recommendations, and distribute a copy of the written proposed decision to the parties."

² In the record below, at times, the parties interchangeably referred to the BCPS, BCBE, Local Board, and Local Superintendent as the same entity.

On June 4, 2015, Ms. Allyson Huey, the Local Superintendent's Designee, conducted a hearing pursuant to section 4-205(c) of the Education Article to determine whether the Appellant accepted her current position with the BCPS' Department of School Safety and Security with the understanding that her salary would be at an equivalent level to her former position as a principal. Md. Code Ann., Educ. § 4-205(c) (2014). On July 8, 2015, Ms. Huey issued a ruling denying the appeal on the basis that the "agreement has specific terms regarding your salary as of July 1, 2015, which is the heart of this appeal." Decision by the Superintendent's Designee, p. 3.

On August 7, 2015, the Appellant filed an appeal of that determination to the Local Board. The Local Board appointed Gregory A. Szoka, Esquire, to be a Hearing Examiner to conduct a due process hearing and to provide it with a recommendation about whether the Local Superintendent's decision was arbitrary, capricious, or illegal. Md. Code Ann., Educ. § 4-205 (2014). On February 17, 2016, Mr. Szoka held a one day evidentiary hearing. On April 4, 2016, Mr. Szoka submitted a report (findings of fact, conclusions of law, and recommendations) to the Local Board recommending that the decision of the Local Superintendent's Designee be upheld.

On April 11, 2016, the Appellant requested oral argument before the Local Board. After reviewing the record below and considering the parties' oral arguments, which took place on July 12, 2016, the Local Board was divided as to whether they should adopt the Hearing Examiner's recommendation. As a consequence, the Local Superintendent's decision regarding the Appellant's salary remained in effect.

On August 11, 2016, the Appellant filed an appeal with the Maryland State Department of Education (State Board or MSDE). On September 7, 2016, the Local Board filed a Motion for Summary Affirmance and Memorandum of Law. On September 27, 2016, the Appellant filed an Opposition to the Motion. On October 11, 2016, the Local Board filed a Reply to the

Opposition. On December 5, 2016, the State Board issued MSBOE³ Opinion No. 16-49 transferring the case to the Office of Administrative Hearings (OAH) for further fact finding in accordance with Code of Maryland Regulations (COMAR) 13A.01.05.07A(3). The OAH received the transmittal of the case on December 12, 2016.

On February 23, 2017, I conducted a telephone pre-hearing conference and, on March 2, 2017, I issued a Pre-hearing Conference Report and Order. In consultation with the parties, I scheduled a merits hearing for April 27, 2017.

On March 10, 2017, the Appellant filed a Motion in Limine (Motion) to exclude certain witnesses⁴ and evidentiary documents⁵ the Local Board identified in its pre-hearing conference statement on the basis that the witnesses and/or documents were irrelevant to the factual question at issue. On March 24, 2017, the Local Board filed an Answer to the Motion proffering that the witnesses and evidentiary documents were being offered for a variety of reasons including: rebuttal, cross-examination, and impeachment purposes. Based on the Local Board's proffer, on March 31, 2017, I denied the Motion.

On April 27, 2017, I held a hearing at the OAH, 11101 Gilroy Road, Hunt Valley, Maryland. Valerie A. Thompson, Esquire, represented the Local Board, and Whitney E. Wilder, Esquire, represented the Appellant, who was present.

On May 25, 2017, the Appellant filed a Post-Hearing Memorandum and, on June 8, 2017, the Local Board filed its Post-Hearing Memorandum.

³ Maryland State Board of Education

⁴ Homer L. McCall, Director, Office of Staffing, BCPS; Bridget Bushman, Specialist, Classification & Position Management, BCPS; William Lawrence, President, Council for Administrative and Supervisory Employees; and Allyson Huey, Manager, BCPS Employee & Student Appeals.

⁵ In its pre-hearing conference statement, the Local Board indicated that it intended to offer into evidence the following documents: (1) August 31, 2009 Operating Procedures; (2) July 10, 2007 Superintendent's Rule 4117; (3) May 12, 1995 Superintendent's Rule 4117.1; (4) March 22, 1995 letter to Dr. Stuart Berger; and (5) June 25, 1981 Superintendent's Rule 4117.1.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, the procedural regulations for appeals to the State Board of Education, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); COMAR 13A.01.05; COMAR 28.02.01.

ISSUE⁶

Was the decision by the Local Superintendent's Designee arbitrary, unreasonable, and illegal?

SUMMARY OF THE EVIDENCE

Exhibits

1. The record before the State Board

- A. Employee's August 11, 2016 Appeal to the State Board, containing the following documents:
 - Record of the proceedings before the Local Board:
 1. Opinion and Order of the Local Board, undated
 2. Transcript from Oral Argument before the Local Board, dated July 12, 2016
 3. Hearing Transcript from the hearing before the Hearing Examiner on February 17, 2016, with the following exhibits:

⁶ At the outset of these proceedings, the parties argued that the issue before me was "What did the Parties intend regarding the grade and step of the Appellant's position at the time that they executed the Settlement Agreement." This was based on the decision by the State Board, wherein the State Board wrote:

[T]he intent of the parties regarding the grade and step of the Appellant's position at the time that the [Settlement Agreement] was signed is a dispute of material fact because it directly impacts our interpretation of the [Settlement Agreement]. Accordingly, we shall deny the Motion for the Summary Affirmance because we find there is a dispute of material fact and refer this case to the [OAH] for a hearing and a recommendation to include findings of fact, conclusions of law, and a recommended decision.

See MSBOE Opinion No. 16-49, page 6. I incorporated the aforementioned issue in my March 2, 2017 Pre-Hearing Conference Report and Order, but for clarity sake, I am modifying the issue to account for the Appellant's underlying claim that the Local Superintendent unilaterally changed her salary grade, scale, and collective bargaining unit in violation of the July 2, 2014 Settlement Agreement. The Local Superintendent's Designee issued her decision in response to that claim. *See* COMAR 13A.01.05.05A.

- a. Local Superintendent exhibits:
 1. Letter from Margaret Ann Howie, Esquire (counsel for BCBE) to Thomas Dolina, Esquire (counsel for the Employee), dated May 5, 2015
 2. Corrected Letter from Allyson Huey, Manager, Employee & Student Appeals, Superintendent Designee, BCPS, to the Appellant, dated July 10, 2015
 3. Settlement Agreement and Release, dated July 2, 2014
 4. Letter from Herman James, Office of Staffing, Director, BCPS, to the Appellant, dated August 11, 2014
 5. Letter from Mr. James to Mr. Dolina, dated September 23, 2014
 6. BCPS Class Specification (Administrator, Special Projects – School Safety & Security), created July 2014
 7. Position Content Questionnaire, dated May 27, 2015
 8. Letter from Specialist, Position Management & Classification, BCPS, to April Lewis, Executive Director, Department of School Safety, BCPS, dated November 30, 2015

- b. Employee's exhibits:
 1. Letter from Mr. Dolina to Ms. Howie, Re: Position, dated January 7, 2014
 2. Letter from Mr. Dolina to Ms. Howie, Re: Settlement, dated May 15, 2014
 3. Letter from Ms. Howie to Mr. Dolina, Re: Settlement, dated May 5, 2014
 4. Letter from Mr. Dolina to Ms. Howie, Re: Salary Protection, dated May 5, 2014
 5. Letter from Mr. Dolina to Ms. Howie, Re: Settlement Agreement Edits, dated June 11, 2014
 6. Settlement Agreement and Release, dated July 2, 2014
 7. BCPS Class Specification (Principal on Assignment to the Department of School Safety and Security), created May 2014
 8. Vacancy Reclassification Form with edits, undated
 9. Letter from Mr. James to the Appellant, Re: Salary, dated August 11, 2014
 10. Letter from the Appellant to Mr. James, Re: Salary, dated August 19, 2014
 11. Letter from Mr. Dolina to Mr. James, Re: Salary, dated August 28, 2014
 12. Letter from Mr. James to Mr. Dolina, Re: Salary, dated September 23, 2014
 13. Email from the Appellant to Mr. Dolina, Re: Follow-up with Local Board, dated January 5, 2015
 14. Letter from Mr. Dolina to Dr. Dallas Dance, Superintendent, Re: § 4-205 Appeal, dated March 18, 2015
 15. Letter from Ms. Howie to Mr. Dolina, Re: Settlement Agreement and Salary, dated April 16, 2015
 16. Letter from Mr. Dolina to Ms. Howie, Re: Settlement Agreement and Salary, dated April 17, 2015
 17. Letter from Mr. Dolina to Dr. Dance and Ms. Howie, Re: Basis for § 4-205 Appeal, dated April 22, 2015

18. Letter from Ms. Howie to Mr. Dolina, Re: Hearing on Appeal, dated May 5, 2015
19. Letter from Ms. Huey to the Appellant, Re: Corrected Decision, dated July 8, 2015
20. Letter from Ms. Huey to the Appellant, Re: Appeal, dated July 10, 2015
21. BCPS Superintendent's Cabinet Meeting minutes, dated October 13, 2014
22. Position Content Questionnaire, dated May 27, 2015
23. Salary Scales
 - (a) 2014-15 OPE⁷ Chart
 - (b) 2014-15 CASE⁸ Chart
 - (c) 2015-16 OPE Chart
 - (d) 2015-16 CASE Chart

B. Local Board's Motion for Summary Affirmance and Memorandum of Law, containing the following documents:

- COMAR 13A.01.05.03E Record of Local Proceedings before the Local Board:
 1. Request for Oral Argument, dated April 29, 2016
 2. Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation, dated April 4, 2016
 3. Hearing Transcript from the hearing before the Hearing Examiner on February 17, 2016, with the following exhibits:
 - a. Local Superintendent's exhibits:
 1. Letter from Ms. Howie to Mr. Dolina, dated May 5, 2015
 2. Corrected Letter from Ms. Huey to the Appellant, dated July 10, 2015
 3. Settlement Agreement and Release, dated July 2, 2014
 4. Letter from Mr. James to the Appellant, dated August 11, 2014
 5. Letter from Mr. James to Mr. Dolina, dated September 23, 2014
 6. BCPS Class Specification (Administrator, Special Projects – School Safety & Security), created July 2014
 7. Position Content Questionnaire, dated May 27, 2015
 8. Letter from Ms. Bushman to Ms. Lewis, dated November 30, 2015
 - b. Employee's exhibits:
 1. Letter from Mr. Dolina to Ms. Howie, Re: Position, dated January 7, 2014
 2. Letter from Mr. Dolina to Ms. Howie, Re: Settlement, dated May 15, 2014
 3. Letter from Ms. Howie to Mr. Dolina, Re: Settlement, dated May 5, 2014

⁷ Organization of Professional Employees.

⁸ Council of Administrative and Supervisory Employees.

4. Letter from Mr. Dolina to Ms. Howie, Re: Salary Protection, dated May 5, 2014
 5. Letter from Mr. Dolina to Ms. Howie, Re: Settlement Agreement Edits, dated June 11, 2014
 6. Settlement Agreement and Release, dated July 2, 2014
 7. BCPS Class Specification (Principal on Assignment to the Department of School Safety and Security), created May 2014
 8. Vacancy Reclassification Form, undated
 9. Letter from Mr. James to the Appellant, Re: Salary, dated August 11, 2014
 10. Letter from the Appellant to Mr. James, Re: Salary, dated August 19, 2014
 11. Letter from Mr. Dolina to Mr. James, Re: Salary, dated August 28, 2014
 12. Letter from Mr. James to Mr. Dolina, Re: Salary, dated September 23, 2014
 13. Email from the Appellant to Mr. Dolina, Re: Follow-up with Local Board, dated January 5, 2015
 14. Letter from Mr. Dolina to Dr. Dallas Dance, Superintendent, Re: § 4-205 Appeal, dated March 18, 2015
 15. Letter from Ms. Howie to Mr. Dolina, Re: Settlement Agreement and Salary, dated April 16, 2015
 16. Letter from Mr. Dolina to Ms. Howie, Re: Settlement Agreement and Salary, dated April 17, 2015
 17. Letter from Mr. Dolina to Dr. Dance and Ms. Howie, Re: Basis for § 4-205 Appeal, dated April 22, 2015
 18. Letter from Ms. Howie to Mr. Dolina, Re: Hearing on Appeal, dated May 5, 2015
 19. Letter from Ms. Huey to the Appellant, Re: Corrected Decision, dated July 8, 2015
 20. Letter from Ms. Huey to the Appellant, Re: Appeal, dated July 10, 2015
 21. BCPS Superintendent's Cabinet Meeting minutes, dated October 13, 2014
 22. Position Content Questionnaire, dated May 27, 2015
 23. Salary Scales
 - (a) 2014-15 OPE Chart
 - (b) 2014-15 CASE Chart
 - (c) 2015-16 OPE Chart
 - (d) 2015-16 CASE Chart
4. Notice of Rescheduled Hearing Date, January 29, 2016, and Notice of Scheduled Hearing, dated December 9, 2015
 5. Acknowledgement of Appeal, undated
 6. Request for Appeal, undated
 7. Transcript of Oral Argument before the Local Board on July 12, 2016
 8. Opinion and Order of the Local Board, undated
- C. Employee's Opposition to the Motion for Summary Affirmance, dated September 26, 2016

D. Superintendent's Reply to Employee's Opposition to the Board of Education's Motion for Summary Affirmance, dated October 11, 2016

2. April 27, 2017 merits hearing

A. Appellant⁹

1. BCPS Class Specification (Principal on Assignment to the Department of School Safety and Security), created May 2014 (previously marked as Empl. Ex. #7)
2. Vacancy Reclassification Form, undated (previously marked as Empl. Ex. #8)
3. BCPS Class Specification (Administrator, Special Projects – School Safety & Security), created July 2014 (previously marked as Super. Ex. #6)
4. BCPS Personnel Action Confirmation, dated August 8, 2014
5. Letter from Mr. James to the Appellant, Re: Salary, dated August 11, 2014 (previously marked as Empl. Ex. #9)

B. BCBE¹⁰

1. BCPS Class Specification (Principal on Assignment to the Department of School Safety and Security), created May 2014 (previously marked as Empl. Ex. #7)
2. Vacancy Reclassification Form, dated July 23, 2014 (electronic signature by Dale Rauenzahn)
3. BCPS Class Specification (Administrator, Special Projects – School Safety & Security), created July 2014 (previously marked as Super. Ex. #6)
4. Memo from Bridget Bushman, Specialist, Position Management & Classification, BCPS, to Dale Rauenzahn, Executive Director, Department of School Safety and Security, BCPS, regarding Classification Review – Vacant Position, dated August 21, 2014, and e-mail from Ms. Bushman to Mr. Rauenzahn, confirmation of the vacancy reclassification request, dated August 21, 2014
5. BCPS' Operating Procedures, Reassigning Administrative and Supervisory Personnel, dated August 31, 2009
6. Settlement Agreement and Release, dated July 2, 2014 (previously marked as Empl. Ex. #6 and Super. Ex. #3)

Testimony

February 17, 2016, section 4-205 hearing before Gregory Szoka, Esquire (Hearing Examiner)

The Appellant testified and presented the testimony of Dale Rauenzahn, Former Executive Director of School Safety and Security.

⁹ At the hearing before me, I referred to the Employee as the Appellant and marked her exhibits as "App. Ex. #."

¹⁰ While the exhibits are marked "Superintendent," for clarity, I will refer to the exhibits introduced during the hearing before me as "BCBE Ex. #."

The Superintendent presented the testimony of Allyson Huey, Manager, Employee & Student Appeals, Superintendent Designee, BCPS.

April 27, 2017 merits hearing:

The Appellant testified and presented the testimony of Mr. Rauenzahn.

The Local Board presented the testimony of Bridget Bushman, HR Specialist, BCPS Classification & Position Management, and Homer L. McCall, Director, BCPS Office of Staffing.

JOINT STIPULATION OF FACTS¹¹

1. The Appellant has been employed by the BCPS since 1987. She has served as a teacher, assistant principal, principal, and administrator of special projects in the Office of Safety and Security. Her current title is manager, Department of School Security.

2. While a principal, the Appellant was compensated based on the Council for Administrative and Supervisory Employees (CASE) pay scale at a grade 13, step 13.

3. The Appellant's salary during the 2012-2013 school year was \$121,264.00.

4. During the 2012-2013 school year, the Appellant was reassigned to the Office of Safety and Security following an allegation of misconduct.

5. The Appellant initiated an appeal of that allegation. Ultimately, the Appellant and the school system entered into an agreement (Settlement Agreement) to resolve the allegation of misconduct. The Appellant signed the Settlement Agreement on June 30, 2014. The Local Superintendent signed the Settlement Agreement on July 3, 2014. The Settlement Agreement is dated July 2, 2014.

6. The Settlement Agreement was the result of negotiations between counsel for the parties.

¹¹ On April 20, 2017, the parties filed the Joint Stipulation of Fact which I have replicated with minimal editing and without any substantive changes.

7. Pursuant to the Settlement Agreement, the Appellant remained assigned to the Office of Safety and Security, and received her principal salary through June 30, 2015.

8. The Appellant and her counsel, Thomas Dolina, Esquire, participated in a meeting on July 15, 2014 with members of the BCPS' Department of Human Resources (HR): Alpheus Arrington, Ph.D., and Herman James. At this meeting, the participants discussed the need to change the Appellant's title from "Principal on Assignment" to "Administrator, Special Projects."

9. On August 11, 2014, the Appellant received a letter from Mr. James indicating that, effective July 1, 2015, the Appellant would be compensated at a grade 10, step 14. The letter stated that this corresponded to \$103,877.00 on the salary scale.

10. In the spring of 2015, the Appellant initiated an appeal under section 4-205 of the Education Article.

11. The Local Superintendent designee, Allyson Huey, held a conference with the Appellant and her counsel on June 4, 2015. Ms. Huey issued a decision on behalf of the Local Superintendent on July 8, 2015 and a corrected decision on July 10, 2015. During the time between the conference and the decision, the July 1st date passed and Appellant was compensated on the 2015 – 2016 Organization of Professional Employees (OPE) scale, grade 10, step 14. This corresponds to a salary of \$107,047.00.

12. The Appellant timely appealed the Local Superintendent's decision to the Local Board which referred the matter to its hearing examiner, Gregory Szoka, Esquire.

13. Mr. Szoka convened a hearing and heard testimony on February 17, 2016. On April 4, 2016, Mr. Szoka issued findings of fact, conclusions of law, and recommendations. He recommended that the decision of the Local Superintendent be upheld. Mr. Szoka issued a report recommending the Local Board affirm the Local Superintendent's decision.

14. The Appellant timely requested oral argument before the Local Board. The Local Board heard oral argument on July 12, 2016. Neither affirmation nor reversal of the Local Superintendent's decision received the support of seven members of the Local Board. As a matter of law, the Local Board took no action. Consequently, the decision by the Local Superintendent remained in effect.

15. The Appellant timely appealed to the State Board.

16. In an opinion dated December 5, 2016, the State Board denied the Local Superintendent's Motion for Summary Affirmance and referred the matter to the OAH for a determination as to the intent of the parties regarding the grade and step of the Appellant's position at the time that the agreement was signed.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. In 2012, the Appellant's position was an elementary school principal.
2. As a principal, the Appellant was compensated based on the CASE pay scale at grade 13, step 13.
3. CASE is the bargaining unit that represents positions that require certification to perform the duties and responsibilities of that position.¹²
4. In 2012, in her position as a principal, the Appellant's salary was \$121,264.00.
5. During that same year, on or about December 7, 2012, a teacher accused the Appellant of misconduct (which is not the subject matter of this appeal).

¹² CASE "is the designated bargaining unit for building administrators, including principals and assistant principals, central office administrators, including curriculum specialists, and other administrative and supervisory personnel within [the BCPS system]." <http://case-bcps.org/index.htm> (last viewed on June 29, 2017).

6. While the BCPS was investigating the allegation, in January 2013, the Appellant was given an alternative service assignment at a newly created department called the Office of School Safety and Security.¹³ Dale Rauenzahn was the Executive Director of the OSS at the time.

7. When the Appellant arrived at the OSS, she was not placed in a pre-existing position.

8. On or about March 2014, Mr. Rauenzahn assigned the Appellant to assist him with the implementation of a number of new programs, including: the Raptor Visitor Identification System, One-card Identification System for employees and students, and the implementation of three thousand new cameras in the school houses.

9. In January 2014, Mr. Rauenzahn approached his immediate supervisor, Michael Sines, Chief Operations Officer, about reclassifying a technician position¹⁴ into a leadership position to oversee the new programs.

10. Mr. Rauenzahn intended the new position to be filled by the Appellant.

11. On January 7, 2014,¹⁵ Thomas Dolina, Esquire (counsel for the Appellant) wrote a letter to Margaret-Ann Howie, Esquire (counsel for the Local Superintendent and BCPS), informing Ms. Howie that the Appellant was interested in remaining in her position at the OSS as a compromise to her proposed termination. Mr. Dolina specifically asked that the Appellant be given a permanent transfer to a position with Mr. Rauenzahn's office and that the Appellant be entitled to salary protection through the remaining portion of the 2014 school year.

¹³ The record below interchangeably refers to the Office of School Safety and Security as the Department of Safety and Security, the Department of School Safety and Security, the Department of School Security, or the Office of Safety and Security. Hereinafter, for clarity, I will collectively refer to any reference to any of these department or office names as "OSS."

¹⁴ On a date unknown, Mr. Rauenzahn submitted a budget for three new technician positions to support the new programs which were approved through the budget process. The job title was "Security Repair Assistant," grade 7 on the American Federation of State, County and Municipal Employees (AFSCME) salary scale.

¹⁵ There is some indication in the record that prior to January 7, 2014 the parties discussed alternative assignments for the Appellant, such as placement in an Assistant Principal position; however, the negotiated agreement which is at issue in this case, and the discussions surrounding that, began when Thomas Dolina, Esquire, sent Margaret-Ann Howie, Esquire, the January 7, 2014 letter. Empl. Ex. #1.

12. On April 22, 2014, the Appellant sought judicial review before the Circuit Court for Baltimore County (Circuit Court) (Case No. 03-C-14-004291) of the Local Superintendent's denial of her request for records pursuant to the Maryland Public Information Act.¹⁶

13. In April or May 2014, Mr. Sines approached Dr. Dance and presented the concept of creating a regular full-time position for the Appellant at the OSS.

14. In May 2014, Mr. Rauenzahn created and submitted with HR a Class Specification as well as a Vacancy Reclassification Form for a position titled "Principal on Assignment to the Department of School Safety and Security." Mr. Rauenzahn did not sign either document.

15. The position, as written by Mr. Rauenzahn, required at a minimum the possession of, or eligibility for, a Maryland Advanced Professional Certificate with an Administrator II endorsement, plus eight years of progressively responsible experience in school leadership as an assistant principal or at least five years of experience at the principal level.

16. The proposed grade and salary for the new position was listed at the CASE pay scale grade 13, step 13. The salary associated with this pay scale was approximately \$120,000.00.

17. Mr. Rauenzahn shared this information with the Appellant and showed her the Class Specification form he created.

18. The Class Specification form was not a finalized document – HR had not assigned a title code to the position. Next to the title code, the form was marked "TBD."¹⁷ App. Ex. #1.

¹⁶ See Appellee's Post-Hearing Memorandum, page 8. In addition, according to my case search, I discovered that the Appellant initially filed a complaint before the Circuit Court, in Case No. 03-C-13-004836, on April 22, 2013, but dismissed the case without prejudice seven days later, on April 29, 2013. <http://casesearch.courts.state.md.us/casesearch/inquiryDetail.jis?caseId=03C13004836&loc=55&detailLoc=CC> (last viewed on July 12, 2017).

¹⁷ To be determined.

19. The BCPS' Office of Position Management and Classification is responsible for developing and maintaining classification specifications and job descriptions, and assigning title codes.

20. Mr. Rauenzahn had no authority to bind the BCPS concerning the salary, step, or bargaining unit of the position he submitted to HR.

21. HR maintains its own Operating Procedures for reassigning administrative and supervisory personnel. With respect to salary, the Operating Procedure directs that the reassigned employee retain her current salary for one year and, upon the start of a new fiscal year (July 1), the employee's salary will be readjusted to the salary of the reassigned position.

22. On May 15, 2014, after a telephone conversation with Ms. Howie, Mr. Dolina wrote Ms. Howie a letter telling her that the parties can reach a tentative agreement based on the following terms: that the Appellant be permitted to apply for "a position, created and posted by Dale Rauenzahn's department..." Empl. Ex. #2. Mr. Dolina further indicated that it was his understanding that the salary would be commensurable with an administrator's salary, and will be frozen for one year. It was also understood by Mr. Dolina and the Appellant "that after one year she will revert to COLA¹⁸ on step increases consistent with the scale." *Id.*

23. On May 20, 2014, Ms. Howie wrote a letter to Mr. Dolina with her client's (*i.e.* the Local Superintendent's) "latest counter offer." Empl. Ex. #3. Specifically, the Appellant will agree to withdraw her administrative appeal with prejudice, and receive a reprimand for her actions. In exchange, the Local Superintendent agreed that the Appellant may remain in a position at the OSS and retain her current salary for the 2014 – 2015 school year. Thereafter, however, "the Appellant's salary will revert to the position she holds at that time." *Id.*

¹⁸ Cost of Living Adjustment.

24. On May 20, 2014, Mr. Dolina wrote back to Ms. Howie regarding the issue of salary and the Appellant's concerns. He wrote,

She is trying to verify exactly what the position is at the Department of Safety and Security. I do think she has tremendous trepidation as to what salary she will revert to once the salary protection is terminated. We do want to confirm that despite her salary protection that [the Appellant] will be in the scale for her new position immediately.

Empl. Ex. #4.

25. On May 27, 2014, the Appellant dismissed her Petition for Judicial Review, in Case No. 03-C-14-004291, with prejudice.¹⁹

26. In June 2014, on an unknown date, HR returned the Vacancy Reclassification Form to Mr. Rauenzahn with edits changing the title to "Administrator, Special Projects, School Safety & Security," and the grade and salary schedule to OPE²⁰ scale, grade 11.

27. The OPE is the bargaining unit that represents professional, technical and supervisory positions that do not require a state certification.

28. At some point thereafter, Mr. Rauenzahn marked up the edited version of the Vacancy Reclassification Form and resubmitted it to HR telling HR that his original request should be approved as written. Specifically, he wrote in caps "GRADE 13 CASE." Mr. Rauenzahn did not sign the form. App. Ex. #2.

¹⁹ <http://casesearch.courts.state.md.us/casesearch/inquiryDetail.jis?caseId=03C14004291&loc=55&detailLoc=CC> (last viewed on July 18, 2017).

²⁰ "OPE is the exclusive collective bargaining unit representing professional, technical and supervisory positions that do not require a state certification. Our mission is to provide our members with a voice in the workplace. We accomplish this by protecting and improving the wages, benefits and work conditions of our members and their families, encouraging professional development, advocating for a safe, secure, fair, and healthy workplace, affirming the dignity and value of our members and the work they perform, as we enhance the performance of the organization which contributes to the highest achievement of 21st century students." <https://bcpsope.org> (last viewed on July 25, 2017).

29. On a date unknown, Ms. Howie forwarded a draft settlement agreement to Mr. Dolina for his review and consideration.

30. In a letter dated June 11, 2014, Mr. Dolina told Ms. Howie that he reviewed the terms of the draft settlement agreement with the Appellant and they had four minor revisions to the agreement, but none involved salary.

31. On July 2, 2014, the parties entered into a Settlement Agreement.²¹ The paragraph entitled “Salary and Assignment” provided as follows:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

- ...
2. *Salary and Assignment.* Employee will continue to be compensated at her current salary through the end of the 2014-2015 school year but will remain assigned to the Office of Safety and Security. After July 1, 2015, if the employee chooses to remain in the assignment she occupies in the Office of Safety and Security, she will be compensated based on the grade and step of that position. However, the Employee will be permitted to apply for any available administrative position, including school principal.

BCBE Ex. #6.

32. On page 6 of the Settlement Agreement, the parties were informed prior to signing that all prior and contemporaneous promises and agreements were integrated into the Settlement Agreement.

33. Mr. Rauenzahn was not involved in the settlement negotiations, nor was he a spokesman for the Local Superintendent or the BCPS.

²¹ The Settlement Agreement and release was dated July 2, 2014; however, the Appellant signed the Settlement Agreement on June 30, 2014, and the Local Superintendent signed the Settlement Agreement on July 3, 2014.

34. On July 23, 2014, Mr. Rauenzahn electronically signed and resubmitted an updated version of the Vacancy Reclassification Form to HR.²² On this form, the grade was listed as “Grade 10 OPE.” BCBE Ex. #2.

35. On or about July/August 2014, Bridget Mary Bushman, HR Specialist with the Office of Position Management and Classification,²³ reviewed the Class Specification and Vacancy Reclassification form filed by Mr. Rauenzahn.

36. To qualify for a CASE bargaining unit position, the job duties must involve direct instruction with students, supervised instruction, or develop and write curriculum.

37. The Class Specification filed by Mr. Rauenzahn did not involve any of these job duties. Instead, the job duties (referred to as a “definition”), as listed on the Class Specification form, included the following:

Plans, directs, and coordinates the special projects and programs in the Department of School Safety and Security. Administers special projects at the schools and offices, such as Raptor Visitor Identification System and the On-card Identification System for all employees and students. Administers contracts to maintain safety, security, and customer service programs for all schools and offices on special projects and programs. Administers school-based programs, such as camera operations and door swipe systems with the principals and or staff to promote school safety and security.

App. Ex. #1.

38. Since the Class Specification did not meet the criteria for certification, HR changed the minimum qualifications for the position by removing the need for a Maryland Advanced Professional Certificate with an Administrator II endorsement or the eight years of work

²² During his testimony, Mr. Rauenzahn disputed electronically signing and submitting the Vacancy Reclassification Form which has been marked as BCBE Exhibit #2, however, I found that the date corresponds with when Bridget Mary Bushman, HR Specialist with the Office of Position Management and Classification, received and reviewed the Class Specification. I also found Ms. Bushman’s testimony more credible than that of Mr. Rauenzahn regarding the authenticity of the form and the timeframe she received it from him. My credibility assessment of the witnesses is contained in the discussion below.

²³ In 2014, Ms. Bushman’s title was Specialist, Position Management and Classification, Department of Human Resources.

experience of progressively responsible experience in school leadership as an assistant principal or at least five years of experience at the principal level.

39. Ms. Bushman then assigned a title code (V17202) to the new position that was commensurate with the OPE bargaining unit.

40. On August 4, 2014, the Position Management and Maintenance office confirmed the vacancy.

41. On August 8, 2014, the BCPS approved the Personnel Action Confirmation. The BCPS uses this form when HR reassigns administrative supervisory personnel to a lower pay grade.

42. On the Personnel Action Confirmation form, Herman C. James, Director of Staffing, handwritten "red-circled for one (1 yr). Reverts to salary, Grade 10, step 14 for the 2015 – 2016 school year." App. Ex. #4. This means that the Appellant's salary was frozen through the 2014 – 2015 school year.

43. On August 11, 2014, Mr. James sent the Appellant a letter informing her that her assignment to the position of Administrator, Special Projects at the OSS for the 2014 – 2015 school year had been confirmed. Mr. James further wrote, in pertinent part,

Your salary of \$121,264 will remain at its present level for the period of one year, ending June 30, 2015. Your salary will adjust to the appropriate salary grade 10/step 14 in the amount of \$103,877, aligned with your assigned position, on July 1, 2015, unless you accept another position that carries a greater salary. Please note that you are welcome to apply for advertised positions as they become available.

Empl. Ex. #9.

44. On August 13, 2014, the Department of Fiscal Services reviewed the costs associated with the new position. On August 18, 2014, Ms. Bushman recommended approval of the reclassification request. On August 18, 2014, the Executive Director of Human Resources

approved the reclassification request. And, on August 19, 2014, the Chief Human Resources Officer approved the reclassification request.

45. On August 21, 2014, Ms. Bushman informed Mr. Rauenzahn in an email that HR completed its Vacancy Reclassification Form review and approved the reclassification as “Administrator, Special Projects, Safety & Security, Grade 10.”

46. Ms. Bushman was not involved in the negotiations involving the Appellant nor was she directed by Dr. Dance or Mr. Sines to handle the review and approval process differently from the normal process of review.

47. The Appellant was free to apply for another position with the BCPS, but accepted a position with the OSS.

48. Beginning July 1, 2015, the BCPS paid the Appellant a salary based on the grade and step of the position referred to as “Administrator, Special Projects, School Safety & Security.”

DISCUSSION

Position of the parties

The Appellant

The Appellant contends that the BCPS and Local Superintendent enticed her to dismiss her lawsuit before the Circuit Court in exchange for entering into the Settlement Agreement wherein she believed she had agreed to accept a position in the OSS as a “Principal on Assignment to the Department of School Safety & Security,” with a salary grade 13, scale 13 on the CASE scale.

Prior to entering into the Settlement Agreement, the Appellant claims that she communicated to the BCPS and the Local Superintendent that her paramount concern was the salary she would receive starting on July 1, 2015, when her salary protection ended. According

to the Appellant, during the settlement negotiations, the BCPS and the Local Superintendent shared with her a Class Specification prepared by Dale Rauenzahn that showed the position she would apply for and presumably get was at a grade 13. Though the Class Specification did not list the bargaining unit, it was the Appellant's belief that the position's salary was grade 13 on the CASE scale, a salary of approximately \$120,000.00.

According to the Appellant, after entering into the Settlement Agreement, she and her attorney, Mr. Dolina, met with HR (Dr. Alpheus Arrington and Herman James) in July 2014 to discuss the title name of the position as well as salary. At this meeting, HR expressly told her that it changed the title name to "Administrator, Special Projects" as opposed to "Principal on Assignment," but assured her that the change would not negatively impact her salary.

The Appellant asserts it was not until August 11, 2014, when Mr. James sent her a letter confirming her assignment to the OSS as an Administrator, Special Projects, that she learned her compensation would be \$103,877.00. This is based on grade 10, step 14 on the OPE scale. At this moment, the Appellant was convinced that the BCPS and the Local Superintendent committed a bait and switch by unilaterally changing the agreed upon position's salary grade, salary scale, and bargaining unit to OPE, resulting in a significant salary differential of \$20,000.00 less per year.

As such, the Appellant charges that the BCPS' and the Local Superintendent's decision to change the positions salary grade, salary scale, and bargaining unit is a violation of the terms of the Settlement Agreement and, therefore, is arbitrary, unreasonable, and illegal.

In support thereof, the Appellant testified that she dismissed her case in the Circuit Court in exchange for a position at the OSS. She believed that the terms of the Settlement Agreement

presented to her attorney, Mr. Dolina, by the BCPS' and the Local Superintendent's attorney, Ms. Howie, included the creation of an Administrator position at the OSS. The Appellant stated:

I was told that they were going to create a position, that one of the job positions that was in our department was going to be reclassified into a position commensurate with what I was doing based on the needs of the department. It was written by Dale and submitted to HR in regards to that.

(OAH T. 60: 4-9). The Appellant added:

In consultation with Tom Dolina, who was speaking with Margaret-Ann Howie in regards to this, they – they both said that whatever – the position was already there. Dale had the position. Whatever the position was to be written for is what the position would be. It was not a matter of going back and forth of the position. Dale wrote the position. I saw the position that said grade 13. That is what I was shown.

(OAH T. 61: 10-17).

The Appellant indicated that the form they were referring to was “the class specification form, the grade 13, that was created in May 2014.” (OAH T. 61: 20-21). Moreover,

Dale showed this to me. I spoke with Mr. Dolina to confirm because I didn't want to have any going back and forth in regard to this saying that this is not what it was going to be and said, you know, if this is the grade, I'm willing to drop everything and move forward.

(OAH T. 62: 4-8). That is why the Appellant believed the Class Specification form, which was marked as Appellant Exhibit 1, was not a draft.

You're looking at your grade to see where you would fall on the scale and then depending on your years is what step you would be placed on. So, I knew that it was going to be a grade 13, and based on the requirements that it would be on the CASE bargaining unit.

(OAH T. 63: 9-13). To underscore this point, the Appellant spoke about her salary concerns:

I was most concerned about my salary throughout this and that was my utmost concern because I was not dismissing my case against BCPS to go back on a pay scale. I checked with Tom [Dolina] who checked with Margaret-Ann Howie repeatedly. Both had said that whatever Dale was writing it for is what it would be. He had met with his boss and had conversations with Dr. Dance, and in a

previous meeting I was told that Dr. Dance is the one that makes those decisions. So I felt like all the processes were going where they were supposed to be.

(OAH T. 65: 7-16).

According to the Appellant, after signing the Settlement Agreement, she, Mr. Dolina, Dr. Arrington, and Mr. James met in July 2014 to discuss the title name of the position. The Appellant testified too that at this meeting she asked Dr. Arrington and Mr. James about her salary and they assured her that the change in the position title would not change her salary.

(See OAH T 66: 13-20).

Lastly, the Appellant insisted that she never saw a different version of the Class Specification form before entering into the Settlement Agreement (*see* Appellant Exhibit #3) nor was she told that the bargaining unit during the vacancy reclassification changed from CASE to OPE. The Appellant testified that she would have never signed the Settlement Agreement if she knew the position at the OSS was at a grade 10. The Appellant also stressed that she was unaware HR had not finalized the position otherwise she would not have signed the Settlement Agreement. (OAH T. 72: 2-18).

Mr. Rauenzahn testified that the Appellant was assigned to the OSS by HR. He also indicated that when the Appellant arrived at OSS, she was not assigned to any position because “there was no position when she came;” instead, “[s]he was assigned there to assist me in a number of new programs.” (OAH T. 25: 12-13). Mr. Rauenzahn testified, however, that at some point he “saw the need for a person of [the Appellant’s] talents and requested through the leadership [*i.e.*, his immediate supervisor, Michael Sines] that [he] be allowed to begin the process of getting a position – a regular position to place her into instead of an assignment from the HR department.” (OAH T. 25: 14-18). According to Mr. Rauenzahn, it was at this time that he and Mr. Sines approached the Local Superintendent to have the Appellant permanently placed

in his department. Mr. Rauenzahn said that after Mr. Sines pitched the idea to the Local Superintendent by prefacing “if that would help to resolve the situation, that she would then be in a regular full-time position,” “we were given the go ahead.” (OAH T. 26: 1-3; *see also* OAH T. 29: 17-24).

Mr. Rauenzahn further indicated that after he spoke to “leadership” and garnered the support he needed, in May 2014, he created a new position titled “principal on assignment” which would “preserv[e] [the Appellant’s] current salary, current status[.]” (OAH T. 26: 18-19). Mr. Rauenzahn added, “I wanted it at that grade and was directed by my boss to move forward with it, which I took that he agreed with me.” (OAH T. 35: 3-5). To that end, Mr. Rauenzahn subsequently asked HR to reclassify a vacant technician position into a new administrator (leadership) position for the Appellant. Mr. Rauenzahn explained the process as follows:

And the first thing you have to do when you do that is to create a job description, and that job description was developed by me as a category 13, which is on the principal’s salary scale. It was labeled as an administrative principal on assignment. Because I wanted a principal type person, the requirements were even matching that in that they had to have the administrative II requirement and be certified to be a principal because if [the Appellant] refused the position down the road, when [sic] back to being a principal, I wanted to hire another principal. So, I’m looking down the road at what I was able to do in creating that position.

(OAH T. 27: 25; OAH T. 28: 1-11).

After he submitted the Class Specification (marked as Appellant Exhibit #1) and a Vacancy Reclassification Form to HR, Mr. Rauenzahn said HR returned the Vacancy Reclassification Form (marked as Appellant Exhibit #2) to him with significant edits (in red and yellow typeface) changing the title from “Principal on Assignment” to “Administrator, Special Projects,” grade from 13 to 10, and the bargaining unit from CASE to OPE. Prior to receiving the marked up copy, Mr. Rauenzahn explained that he understood that there might be some minor edits, particularly to the title. Specifically, Mr. Rauenzahn recalled speaking to someone

from HR who told him that “we can’t use the title of principal on assignment. Principal is very specific. And I said, okay, what can we call it? And he said, well, you – you decide.” (OAH T. 31: 12-15). However, according to Mr. Rauenzahn, the same person in HR assured him that “everything else, you know, is okay. I said, okay, we’ll call it administrator.” (OAH T. 31: 15-16). Mr. Rauenzahn recalled this clearly, because he “vehemently opposed it” when he received the edits and “I ... notified my boss that, you know, this was not what we were requesting. So, we felt – again, because of the information I was given by numerous sources, that what I was requesting would be approved.” (OAH T. 38: 25; OAH T. 39: 1-4). At which point, he allowed the matter to drop and he did nothing else to follow-up.

Mr. Rauenzahn claimed thereafter no one else from HR contacted him again about the vacancy reclassification. (OAH T. 31: 23-25). That is why he questioned the authenticity of the Vacancy Reclassification Form, dated July 23, 2014, presented by the Local Board (*see* BCBE Exhibit #2), because he would never have submitted a Vacancy Reclassification Form to HR electronically.

I was not allowed to do that. We were told vehemently never do electronic signatures. I don’t even remember using electronic signature. In 2012, I was told very point blank by the law office that I must sign everything original signature. I had previously used a rubber stamp to do certificates and some other things and was told I should not be doing that. I had to hand sign everything that I did. So, I do not believe this is my document. I don’t believe I’ve ever seen it before.

(OAH T. 43: 19-25; OAH T. 44: 1-3).

The Local Board

In response, the Local Board contends that as a result of alleged misconduct while the Appellant served as a principal, the BCPS and the Local Superintendent assigned (known as an alternative service assignment) her to the OSS pending an investigation and possible termination. During the Appellant’s assignment at the OSS, the parties negotiated a Settlement Agreement to

resolve all the pending disciplinary issues. Specifically, the Appellant agreed to remain on assignment at the OSS and receive her principal's salary for the 2014 – 2015 school year. The terms of the Settlement Agreement, however, also provided that, effective July 1, 2015, the Appellant was permitted to apply for another position within the BCPS or stay at the OSS and be compensated based on the grade and step established for the position she was in. As such, the Local Board charges that the excerpt from the Settlement Agreement dealing with the OSS position and salary was unambiguous.

The Local Board also contends that the language contained in the Settlement Agreement is exactly what was discussed by Mr. Dolina and Ms. Howie during negotiations, and is consistent with BCPS' Operating Procedures.

In support thereof, the Local Board introduced into evidence HR's Operating Procedures for "Reassigning Administrative and Supervisory Personnel," through its witness, Homer McCall, Director of Staffing. *See* BCBE Ex. #5. Mr. McCall testified that with respect to salary, the Operating Procedures require that a reassigned employee retain her current salary for one year and, upon the start of a new fiscal year (July 1), the employee's salary will be readjusted to the salary of the reassigned position. Mr. McCall also indicated during his testimony that the language pertaining to salary in the Settlement Agreement was entirely consistent with that of the Operating Procedures. (OAH T. 118: 4-8).

In addition, the Local Board stresses that the language contained in the HR Operating Procedures is exactly what was discussed by Mr. Dolina and Ms. Howie during negotiations. Specifically, the Local Board wrote in its post-hearing memorandum:

The HR Operating Procedure is also consistent with the negotiations of counsel. In his letter dated May 15, 2014, Mr. Dolina writes, "It is my understanding that the salary will be **commensurable** with an administrator's salary, and will be frozen for one year." (Empl. Ex. #2) (emphasis added). Merriam-Webster dictionary defines "commensurable" as "having a common measure." *Merriam-*

Webster.com Merriam-Webster, n.d. Web. 31 May 2017. ... In her letter dated May 20, 2014, Ms. Howie writes, "The Superintendent, in turn, will permit [the Appellant] to remain in a position in the [OSS], and to retain her current salary for the 2014-2015 school year. Following the 2014-2015 school year, [the Appellant's] salary will **revert** to the position she holds at that time." (Empl. Ex. #3) (emphasis added). Merriam-Webster dictionary defines "revert" as "to go back to a previous and usually lower state or level." *Merriam-Webster.com* Merriam-Webster, n.d. Web. 31 May 2017.

Appellee's Post-Hearing Memorandum, pp. 3-4.

Similarly, the Local Board points to its procedure for approving vacancy reclassifications and said that there was nothing aberrant about that approval process either. Bridget Mary Bushman, HR Specialist, BCPS' Office of Position Management and Classification, testified that she is the individual who approved the vacancy reclassification for the OSS position in 2014.

Speaking about her responsibilities, Ms. Bushman stated:

[My] position is responsible for developing and maintaining classification specifications and job descriptions. I facilitate vacancy reclassifications requests that may come in from departments. I review occupied positions for classification purposes and I also assist the organization and facilitate requests from departments and offices with regard to reorganizations or office restructures.

(OAH T. 95: 8-15).

When asked about the position at the OSS, Ms. Bushman recalled receiving the vacancy reclassification form from Mr. Rauenzahn in July 2014. Ms. Bushman testified that she began her process of review by relying on Mr. Rauenzahn's May 2014 Class Specification to determine the proper classification for the position. According to Ms. Bushman, the position was properly classified as an OPE, because only positions that "have direct instruction with students, supervised instruction, or develop and write curriculum" are required to be filled by a person holding a certificate. (OAH T. 101: 9-11). And, since the position did not have any affiliation with curriculum, an administrator's certification was not required. Ms. Bushman explained further "[w]hen we determine whether or not a position classification requires certification, we

apply guidelines in – provided by the – Maryland State as to whether or not a position – the duties and – and responsibilities of the position” meet that criteria of “direct instruction with students, supervised instruction, or develop and write curriculum.” (OAH T. 101: 5-11).

Ms. Bushman made it clear, however, that she did not change the grade and salary schedule; instead, when Mr. Rauenzahn submitted the Vacancy Reclassification Form (marked as BCBE Exhibit #2), he had already identified the grade and salary schedule as “Grade 10 OPE.” In response to questions on this point, Ms. Bushman said:

- [Counsel]: Okay. And just so I’m clear, when we look at tab 2, your testimony is this came to you as a grade 10 OPE salary request?
- [Ms. Bushman]: That is correct.
- [Counsel]: And when you look at tab 3, the changes that your office would have made deal with the requirement of a certificate not being necessary, correct?
- [Ms. Bushman]: That – that may – yes. If that had come in that way as requiring a certificate, I would have changed it.

(OAH T. 102: 9-17). Finally, Ms. Bushman stated that she sent an email and memorandum to Mr. Rauenzahn on August 21, 2014 telling him that the vacancy reclassification had been approved. (OAH T. 103: 3-23).

Burden of Proof

The Appellant carries the burden of proof by a preponderance of the evidence to establish that the Superintendent’s Designee’s decision in this matter was arbitrary, unreasonable, or illegal. *See* Md. Code Ann., Educ. § 4-205(c) (2014); Md. Code Ann., State Gov’t § 10-217 (2014); COMAR 13A.01.05.05A, D. The terms “arbitrary, unreasonable and illegal” are defined as follows:

- B. A decision may be arbitrary or unreasonable if it is one or more of the following:
- (1) It is contrary to sound educational policy; or
 - (2) A reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached.

- C. A decision may be illegal if it is one or more of the following:
- (1) Unconstitutional;
 - (2) Exceeds the statutory authority or jurisdiction of the local board;
 - (3) Misconstrues the law;
 - (4) Results from an unlawful procedure;
 - (5) Is an abuse of discretionary powers; or
 - (6) Is affected by any other error of law.

COMAR 13A.01.05.05B, C.

The terms “arbitrary” and “illegal” were analyzed by the Court of Special Appeals in *Hurl v. Board of Education of Howard County*, 107 Md. App. 286, 306 (1995):

In order to determine whether the appellant sufficiently alleged facts of “arbitrariness and capriciousness,” we first must define what is meant by those terms. “Decisions contrary to law or unsupported by substantial evidence are not within the exercise of sound administrative discretion, but are arbitrary and illegal acts.” *Department of Health v. Walker*, 238 Md. 512, 523 (1965). *See also Hackley v. City of Baltimore*, 70 Md. App. 111, 116 (1987). BLACK’S LAW DICTIONARY (6th ed. 1990) (citations omitted) defines the term “arbitrary” as including something done “[w]ithout adequate determining principle,” nonrational,” and “[w]illful and unreasoning action, without consideration and regard for facts and circumstances presented”; and the term “arbitrary and capricious” as “willful and unreasonable action without consideration or in disregard of facts or law or without determining principle.” Finally, the State Board regulations define decisions of a county board as being “arbitrary” where “contrary to sound educational policy” and/or where a “reasoning mind could not have reasonably reached the conclusion the county board reached.” COMAR 13A.01.01.03E(1)(b).

In addition, the term “unreasonable” is defined as “not guided by reason; irrational or capricious.” Black’s Law Dictionary 1772 (10th ed. 2014); *see also* Law Dictionary 500-01 (2nd. ed. 1984) (“not conformable to reason, irrational, beyond bounds of reason or moderation.”)

Based on my review of the record before me, I find that the evidence simply does not support the Appellant’s position that the Local Superintendent or the BCPS offered her a position at the OSS at grade 13 on the CASE pay scale. As such, the Local Superintendent’s Designee’s decision to deny her claim that the Local Superintendent and the BCPS unilaterally changed her

salary grade, scale, and collective bargaining unit in violation of the July 2, 2014 Settlement Agreement was not arbitrary, unreasonable, or illegal.

Analysis

To resolve the dispute referred to the OAH requires use of basic contract law. The overriding principle in contract interpretation is to effectuate a reasonable and fair construction of the contract, given the parties' intent in entering into the agreement. *Canaras v. Lift Truck Servs.*, 272 Md. 337 (1974). To ascertain the intent of the parties, extrinsic evidence may be used. *Alco Constr. v. Peachwood Devel. Corp.*, 257 Md. 269 (1970). In addition, when 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.'" *Pulley v. Calvert Cty. Bd. of Educ.*, MSBE Op. 14-37 (quoting *Dumbarton Improvement Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 51 (2013)).

While the Settlement Agreement is silent as to salary scale and grade, the extrinsic evidence and testimony presented by both sides demonstrate that the Appellant chose to remain on assignment at the OSS in a position that was being reviewed by HR as a vacancy reclassification and, as such, she would "be compensated based on the grade and step of that position." In other words, once the vacancy reclassification was complete, the Appellant would be compensated accordingly. As such, I do not see a basis for the Appellant's argument that the Local Superintendent's decision to uphold the Settlement Agreement was arbitrary, unreasonable, or illegal.

On cross-examination, Mr. Rauenzahn agreed with counsel for the Local Board that neither he nor Mr. Sines worked for HR. He also agreed that no one from HR told him that the position he created had to be filled by a principal. Moreover, in response to the question "And, in fact, no one from BCPS said this position must be filled by a principal?," Mr. Rauenzahn

replied, "Other than me, no." (OAH T. 35: 12-14). Despite understanding and acknowledging that HR must vet all positions and "make[] the final determination," Mr. Rauenzahn insisted that he "had been told that, submit what you want Dale and it'll work." (OAH T. 35: 22-23).

There is also no disagreement between the parties that the CASE bargaining unit "is the designated bargaining unit for building administrators, including principals and assistant principals, central office administrators, including curriculum specialists, and other administrative and supervisory personnel within [the BCPS system]." <http://case-bcps.org/index.htm> (last viewed on June 29, 2017). As such, I find no dispute that the job requirements of the new position, as created by Mr. Rauenzahn, showed any resemblance to the certification requirements for administrators or supervisors as required by the MSDE.

Administrators and supervisors who have direct contact with students, who have responsibility for curriculum development, or who have responsibility for supervision of instruction shall meet the requirements for a professional certificate under COMAR 13A.12.01.04—.06, as applicable, including 3 semester hours in special education. These regulations set forth the additional education and experience requirements for administrators and supervisors.

COMAR 13A.12.04.01. The following exchange took place between Ms. Thompson (counsel for the Local Board) and Mr. Rauenzahn:

- [Counsel]: So, in her capacity as special administrator – administrator of special projects, she may have supervised one temporary employee?
- [Mr. Rauenzahn]: At that time, yes.
- [Counsel]: She wasn't responsible for a building filled with children?
- [Mr. Rauenzahn]: No.
- [Counsel]: She wasn't supervising instruction?
- [Mr. Rauenzahn]: No.
- [Counsel]: She's wasn't evaluating teachers?
- [Mr. Rauenzahn]: No.
- [Counsel]: She didn't come in early to coordinate student arrival?
- [Mr. Rauenzahn]: Not for student arrival.
- [Counsel]: Didn't stay late to facilitate dismissal of students?
- [Mr. Rauenzahn]: No.
- [Counsel]: She didn't work evenings at school events?
- [Mr. Rauenzahn]: No.

(OAH T. 36: 7-25; OAH T. 37: 1). In fact, Mr. Rauenzahn agreed that “[t]he request that I put in outlines job responsibilities that were not in line with that principal shift.” (OAH T. 37: 7-9).

As a result, I found Mr. Rauenzahn’s testimony to be curious and unpersuasive that when HR sent back the edits to the Class Specification in June 2014, he failed to (1) say anything to the Appellant or (2) produce a paper trail of his reaction to the changes. On direct, Mr. Rauenzahn said, that he was “vehemently opposed” to the edits and, on cross-examination, he said “[a]ll I know is that my response was to go back to HR and say you guys changed this. This is not what I’ve been directed to do. It’s not what I was told to put in to help resolve this issue and the end result is that I felt they understood where we were.” (OAH T. 38: 25; OAH T. 39: 1, 10-15). Given the conviction in these statements, I find it incredulous that Mr. Rauenzahn would let the matter drop without any further follow-up with the Appellant, HR, or leadership.

Even more curious is Mr. Rauenzahn’s testimony about the vacancy reclassification process. According to both Mr. Rauenzahn and Ms. Bushman, there is a process associated with the submission and approval of vacancy reclassifications. Ms. Bushman explained that “the vacancy reclass process is a request that comes into HR from a department who has a funded vacancy and wants to reclassify it to something else. (OAH T. 96: 6-9). In fact, Mr. Rauenzahn confirmed during his testimony that he had prior experience with the vacancy reclassification process and understood the protocol associated with it. (OAH T. 55: 9-1). Part of that process is for Ms. Bushman to log in the request and assign it a Title Code. (OAH T. 98: 24-25; OAH T. 100: 13-14). Ms. Bushman acknowledged assigning to the position at OSS the Title Code of V17202 because, in her observation, it “represents an OPE eligible bargaining unit position.” (OAH T. 100: 17-18). Thereafter, according to Ms. Bushman, the Vacancy Reclassification Form must be endorsed by the five persons representing Position Management & Maintenance, Department of Fiscal Services, and HR. Once that is done, Ms. Bushman said that she informs

the department head, in this case Mr. Rauenzahn, of the vacancy reclassification decision. (OAH T. 103: 11-23). Mr. Rauenzahn knew that the Class Specification form he submitted to HR was his proposal to create a position for the Appellant. He also knew that the Title Code had yet to be determined, hence the reason he added "TBD" to the form. That means the creation of the position is still a work in progress.

Since the Appellant failed to rebut Ms. Bushman's testimony on this point, I found Mr. Rauenzahn's protestation that the BCPS disavowed any use of electronic signatures years earlier to be odd. I took his testimony to mean that he believed someone other than himself submitted the Vacancy Reclassification Form to HR under his electronic signature. There are a couple of issues with this argument. First, the Vacancy Reclassification Form was seen by no less than five persons representing Position Management & Maintenance, Department of Fiscal Services, and HR. In addition, Ms. Bushman sent the email and form to a number of individuals via the BCPS email system. *See BCBE Exs. #2 and #4.* Certainly, if the use of electronic signatures was an unusual occurrence, then someone would have noticed and questioned it. Second, Ms. Bushman disagreed with Mr. Rauenzahn and said that in her position she has seen electronic signatures. Third, it begs the question why. Who from the BCPS would fraudulently submit a completed Vacancy Reclassification Form under Mr. Rauenzahn's electronic signature for the sole purpose of changing the grade and salary to a position in his department? Neither the Appellant nor Mr. Rauenzahn fully connected the dots on this outlandish conspiracy theory of Mr. Rauenzahn's.

Next, Mr. Rauenzahn testified that HR dropped the ball after he resubmitted the Vacancy Reclassification Form following HR's edits and no one from HR ever got back to him. If this were true, then it would constitute a wrinkle in the process. And, given Mr. Rauenzahn's testimony that leadership (Mr. Sines and Dr. Dance) directed him to submit the Class

Specification as originally drafted to HR for approval, I found it odd that Mr. Rauenzahn did not have any correspondence or emails to complain that HR was mucking up the process or failed to follow protocol.

Lastly, Mr. Rauenzahn claimed that he never received Ms. Bushman's August 21, 2014 Memorandum and attachment. His testimony on this topic is unpersuasive and nonsensical given the elaborate process, as described above. Without hesitation, Ms. Bushman testified that she had no recollection of any delivery issues with the email or attachment otherwise she would have sent a follow-up to Mr. Rauenzahn and that did not occur. (OAH T. 104: 3-6). I found her statements to be credible, because she had no stake in the outcome of this case and her testimony was corroborated by her email as well as the fully endorsed Vacancy Reclassification Form. Without more from the Appellant, I find it more likely than not that Mr. Rauenzahn received the email and attachment.

The Appellant's credibility did not fare much better, because much of her testimony on direct was unsupported or her statements were successfully challenged on cross-examination. For instance, despite her professed concern about salary, the Appellant could "not recall that the grade, step, and salary were in those letters," between Mr. Dolina and Ms. Howie during negotiations. (OAH T. 74: 19-20). The Appellant also conceded the point that HR had not finalized the Class Specification form before Mr. Rauenzahn showed it to her. The following cross-examination exchange illustrates this point:

[The Appellant]: Correct. But the class specification form that was shown to me, which derive our jobs, was what was written.

[Counsel]: Okay. Let's talk about that for a second. You testified, and please correct me if I'm wrong, that you did not believe this was a draft?

[The Appellant]: Correct.

[Counsel]: Okay. And when I look at Smith Exhibit 1, which was previously Smith Exhibit 7 below, under title code it says TBD. What does that mean?

[The Appellant]: HR puts the title codes on there.
[Counsel]: Okay. So, that's to be determined?
[The Appellant]: Correct.
[Counsel]: And if that were a finalized document, it most certainly would have had a title code inserted there, correct?
[The Appellant]: I would assume. I would also – yes. I would assume that.
[Counsel]: Thank you.

(OAH T. 74: 22-25; OAT T. 75: 1-15). Thereafter, clearly not satisfied with how that sounded, the Appellant then blurted, without a question posed, which did not help her credibility “But it – but also, if it's a draft, it would have been stamped draft in the county.” (OAH T. 75: 16-17). To prove this point, on re-direct, the Appellant insisted that during her time as a BCPS employee she never saw a Class Specification form that was a draft that was not “either stamped draft or they have draft through – from the computer written across the middle [like a ghost mark].” (OAH T. 91: 8-9). However, in response to my questions, the Appellant confirmed that Mr. Rauenzahn, and not HR, showed her the Class Specification form and she agreed that since he was the author of the Class Specification form it was up to him to incorporate the draft watermark. Which brings up another hiccup in the Appellant's testimony – the Appellant agreed that she did not communicate with anyone from BCPS, other than Mr. Rauenzahn, about the Class Specification form, as illustrated by the following exchange:

[Counsel]: You – you gave testimony about communicating with BCPS regarding the position. Do you recall giving that testimony?
[The Appellant]: Yes.
[Counsel]: With whom from BCPS did you communicate about your position?
[The Appellant]: Dale Rauenzahn.
[Counsel]: So you never spoke with anyone in HR about the creation of the position?
[The Appellant]: About the creation, no.
[Counsel]: And you would agree with me that Dale does not have the final say as to the – as to what a position will be, correct?

[The Appellant]: Dale does not have the final say, that is correct.

[Counsel]: HR vets that?

[The Appellant]: HR vets it and, ultimately, Dr. Dance.

(OAH T. 76: 9-25).

This brings me to the critical point of all this – the reason the parties did not explicitly list the salary scale during the negotiation was because the position and pay had not been approved yet. Both Mr. Rauenzahn and the Appellant knew that HR was responsible for performing that function. The Appellant was certainly free to wait until that process was complete, but she assumed the risk of the outcome by entering into the Settlement Agreement perhaps prematurely. Given that the Appellant offered no credible response or credible rebuttal to Mr. McCall’s testimony, Ms. Bushman’s testimony, the HR review process for vacancy reclassification, or the BCPS’ Operating Procedures, I find that it was the intent of the parties to allow the Appellant to apply for a position at the OSS which was created by Mr. Rauenzahn and, following the vacancy reclassification review process, the Appellant’s salary beginning July 1, 2015 would be commensurate with the grade and step of that position. Moreover, the Appellant never challenged Ms. Bushman’s testimony that the position was properly on the OPE scale, based on the job description drafted by Mr. Rauenzahn.

Summary

As outlined in the Settlement Agreement, it was the intent of the parties that the Appellant be compensated at her current salary through the end of the 2014-2015 school year, but remain assigned to the OSS and, after July 1, 2015, she (1) was free to apply for any available administrative position, including school principal; or (2) could remain in the assignment she occupied in the OSS. If she chose to stay at the OSS, the parties agreed that she be compensated based on the grade and step of that position. And, since the position for which the Appellant was applying was being reclassified from a Security Repair Assistant, grade 7 on

the American Federation of State, County and Municipal Employees (AFSCME) salary scale, into a leadership position, HR was required to approve the vacancy reclassification.

I further find that the Appellant made assumptions about the position's salary based on communications she had with Mr. Rauenzahn who shared with her a Class Specification he drafted. While it is clear to me that Mr. Rauenzahn intended for the Class Specification to be compensated on the CASE pay scale, the job description contained in the Class Specification did not meet the criteria for certification pursuant to COMAR 13A.12.04.01. Without that, it was a fallacy for both Mr. Rauenzahn and, more importantly, the Appellant to believe that the position at the OSS would be compensated on the CASE pay scale. Furthermore, the record is quite clear and undisputed that Mr. Rauenzahn was not acting on behalf of HR, the BCPS, or the Local Superintendent when he shared this information with the Appellant. Mr. Rauenzahn also had no authority to bind HR, the BCPS, or the Local Superintendent to the Class Specification as originally written.

Briefly, I also did not see the nexus between the Appellant's claim that since HR had not met with her during its efforts to effectively move all eligible employees from CASE to BCPSOPE (*see* Employee Exhibit #21) as proof positive that she was supposed to be in the OPE bargaining unit for the OSS position. The Appellant did not corroborate this point to be persuasive and she did not call as a witness, John Mayo from HR, to explain the "Human Resources Update" and how that may apply to the Appellant. Without more, this is a specious argument at best.

Finally, during the negotiations neither party ever referenced in their correspondence what pay grade or scale (OPE versus CASE) applied to the position at the OSS. The Appellant, through counsel, had multiple opportunities to clarify or explicitly confirm with HR, the BCPS,

the Local Superintendent, and via Ms. Howie the position salary during the settlement negotiations but instead the Appellant's counsel's correspondence to Ms. Howie was veiled in innuendo. I find that this approach was by design, because had the Appellant asked in plain terms to stay at the OSS at a salary on the CASE scale in the position created by Mr. Rauenzahn, a reasonable inference could be made that the BCPS and the Local Superintendent would have declined that offer given that it was in contravention of COMAR.

As an alternative theory, the Appellant argued that the Local Superintendent had the power to negotiate settlements and salaries, and, therefore, he could have assigned a higher grade to the position on the OPE scale. This argument fails for several reasons. First, nowhere in the Settlement Agreement is there any language requiring the Local Superintendent set a pay grade on the OPE scale as opposed to the CASE scale. Second, it is clear to me that it was never the Appellant's intent to receive a pay grade on the OPE scale – the circumstances leading to the Settlement Agreement demonstrates that the Appellant sought a pay grade within the CASE bargaining unit. Conversely, third, if this alternative theory were true, then it was incumbent on the Appellant to wait until HR finished the vacancy reclassification process or explicitly negotiate a salary grade on the OPE scale prior to executing the Settlement Agreement. She cannot have it both ways.

On the other hand, the extrinsic evidence presented by the Local Board supports a finding that the negotiations between counsel and the language of the Settlement Agreement mirror that of the BCPS' Operating Procedures (BCBE Exhibit #5) concerning reassignment of administrative or supervisory employees to a position with a lower pay grade. *See* Mr. Dolina's May 15, 2014 letter (Employee Exhibit #2) and May 20, 2014 letter (Employee Exhibit #3), as well as Ms. Howie's May 20, 2014 letter (Employee Exhibit #4).

The lack of evidence by the Appellant to support a finding otherwise is equally telling. The Appellant, through counsel, had multiple opportunities to clarify or explicitly confirm with HR, the BCPS, the Local Superintendent, or via Ms. Howie the position salary during the settlement negotiations but instead the Appellant's counsel's correspondence to Ms. Howie was veiled in innuendo. If she required assurances from the Local Superintendent about her salary for the newly created position at the OSS, then she needed to spell it out in her correspondence to Ms. Howie before signing the Settlement Agreement. This is especially true given that the Appellant believed the agreement between the parties was to create a position on the CASE pay scale. As I stated earlier, the Class Specification drafted by Mr. Rauenzahn did not qualify to be on the CASE pay scale. And since I did not find any evidence in the record between the parties agreeing to approve a position outside the normal vacancy reclassification process or a salary scale in contravention of COMAR, then I find it reasonable to infer from that it was never the agreement of the parties to do so.

Based on the record before me, I find a reasoning mind can reasonably reach the same conclusion as the Local Superintendent's Designee to deny the Appellant's claim that the Local Superintendent and the BCPS unilaterally changed her salary grade, scale, and collective bargaining unit in violation of the July 2, 2014 Settlement Agreement. Therefore, the decision by the Local Superintendent's Designee was not arbitrary, unreasonable, or illegal as those terms are defined by COMAR 13A.01.05.05B, C.

PROPOSED CONCLUSION OF LAW

Based on the above Findings of Fact and Discussion, I conclude as a matter of law that the Local Superintendent's Designee was not arbitrary, unreasonable, or illegal as those terms are defined by COMAR 13A.01.05.05B, C.

RECOMMENDATION

I recommend that the Maryland State Department of Education that the decision of the Local Superintendent's Designee issued in this matter be upheld.

July 26, 2017
Date Proposed Decision Mailed

Kathleen A. Chapman *By mdc*
Kathleen A. Chapman
Administrative Law Judge

KAC/da
168715

RIGHT TO FILE EXCEPTIONS

A party objecting to this Proposed Decision may file exceptions with the State Board within 15 days of receipt of this Proposed Decision. COMAR 13A.01.05.07F(1).

Copies Mailed To:

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CHRISTINE SMITH,

APPELLANT

v.

BOARD OF EDUCATION

OF BALTIMORE COUNTY

* BEFORE KATHLEEN A. CHAPMAN,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH NO.: MSDE-BE-20-16-37548

* * * * *

EXHIBIT LIST

1. The record before the State Board

A. Employee's August 11, 2016 Appeal to the State Board, containing the following documents:

- Record of the proceedings before the Local Board:
 1. Opinion and Order of the Local Board, undated
 2. Transcript from Oral Argument before the Local Board, dated July 12, 2016
 3. Hearing Transcript from the hearing before the Hearing Examiner on February 17, 2016, with the following exhibits:
 - a. Local Superintendent exhibits:
 1. Letter from Margaret Ann Howie, Esquire (counsel for BCBE) to Thomas Dolina, Esquire (counsel for the Employee), dated May 5, 2015
 2. Corrected Letter from Allyson Huey, Manager, Employee & Student Appeals, Superintendent Designee, BCPS, to the Appellant, dated July 10, 2015
 3. Settlement Agreement and Release, dated July 2, 2014
 4. Letter from Herman James, Office of Staffing, Director, BCPS, to the Appellant, dated August 11, 2014
 5. Letter from Mr. James to Mr. Dolina, dated September 23, 2014
 6. BCPS Class Specification (Administrator, Special Projects – School Safety & Security), created July 2014
 7. Position Content Questionnaire, dated May 27, 2015
 8. Letter from Specialist, Position Management & Classification, BCPS, to April Lewis, Executive Director, Department of School Safety, BCPS, dated November 30, 2015
 - b. Employee's exhibits:
 1. Letter from Mr. Dolina to Ms. Howie, Re: Position, dated January 7, 2014
 2. Letter from Mr. Dolina to Ms. Howie, Re: Settlement, dated May 15, 2014

3. Letter from Ms. Howie to Mr. Dolina, Re: Settlement, dated May 5, 2014
4. Letter from Mr. Dolina to Ms. Howie, Re: Salary Protection, dated May 5, 2014
5. Letter from Mr. Dolina to Ms. Howie, Re: Settlement Agreement Edits, dated June 11, 2014
6. Settlement Agreement and Release, dated July 2, 2014
7. BCPS Class Specification (Principal on Assignment to the Department of School Safety and Security), created May 2014
8. Vacancy Reclassification Form with edits, undated
9. Letter from Mr. James to the Appellant, Re: Salary, dated August 11, 2014
10. Letter from the Appellant to Mr. James, Re: Salary, dated August 19, 2014
11. Letter from Mr. Dolina to Mr. James, Re: Salary, dated August 28, 2014
12. Letter from Mr. James to Mr. Dolina, Re: Salary, dated September 23, 2014
13. Email from the Appellant to Mr. Dolina, Re: Follow-up with Local Board, dated January 5, 2015
14. Letter from Mr. Dolina to Dr. Dallas Dance, Superintendent, Re: § 4-205 Appeal, dated March 18, 2015
15. Letter from Ms. Howie to Mr. Dolina, Re: Settlement Agreement and Salary, dated April 16, 2015
16. Letter from Mr. Dolina to Ms. Howie, Re: Settlement Agreement and Salary, dated April 17, 2015
17. Letter from Mr. Dolina to Dr. Dance and Ms. Howie, Re: Basis for § 4-205 Appeal, dated April 22, 2015
18. Letter from Ms. Howie to Mr. Dolina, Re: Hearing on Appeal, dated May 5, 2015
19. Letter from Ms. Huey to the Appellant, Re: Corrected Decision, dated July 8, 2015
20. Letter from Ms. Huey to the Appellant, Re: Appeal, dated July 10, 2015
21. BCPS Superintendent's Cabinet Meeting minutes, dated October 13, 2014
22. Position Content Questionnaire, dated May 27, 2015
23. Salary Scales
 - (a) 2014-15 OPE Chart
 - (b) 2014-15 CASE Chart
 - (c) 2015-16 OPE Chart
 - (d) 2015-16 CASE Chart

C. Local Board's Motion for Summary Affirmance and Memorandum of Law, containing the following documents:

- COMAR 13A.01.05.03E Record of Local Proceedings before the Local Board:
 1. Request for Oral Argument, dated April 29, 2016
 2. Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation, dated April 4, 2016

3. Hearing Transcript from the hearing before the Hearing Examiner on February 17, 2016, with the following exhibits:
 - a. Local Superintendent's exhibits:
 1. Letter from Ms. Howie to Mr. Dolina, dated May 5, 2015
 2. Corrected Letter from Ms. Huey to the Appellant, dated July 10, 2015
 3. Settlement Agreement and Release, dated July 2, 2014
 4. Letter from Mr. James to the Appellant, dated August 11, 2014
 5. Letter from Mr. James to Mr. Dolina, dated September 23, 2014
 6. BCPS Class Specification (Administrator, Special Projects – School Safety & Security), created July 2014
 7. Position Content Questionnaire, dated May 27, 2015
 8. Letter from Ms. Bushman to Ms. Lewis, dated November 30, 2015
 - b. Employee's exhibits:
 1. Letter from Mr. Dolina to Ms. Howie, Re: Position, dated January 7, 2014
 2. Letter from Mr. Dolina to Ms. Howie, Re: Settlement, dated May 15, 2014
 3. Letter from Ms. Howie to Mr. Dolina, Re: Settlement, dated May 5, 2014
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 9. Letter from Mr. James to the Appellant, Re: Salary, dated August 11, 2014
 10. Letter from the Appellant to Mr. James, Re: Salary, dated August 19, 2014
 11. Letter from Mr. Dolina to Mr. James, Re: Salary, dated August 28, 2014
 12. Letter from Mr. James to Mr. Dolina, Re: Salary, dated September 23, 2014
 13. Email from the Appellant to Mr. Dolina, Re: Follow-up with Local Board, dated January 5, 2015
 14. Letter from Mr. Dolina to Dr. Dallas Dance, Superintendent, Re: § 4-205 Appeal, dated March 18, 2015
 15. Letter from Ms. Howie to Mr. Dolina, Re: Settlement Agreement and Salary, dated April 16, 2015
 16. Letter from Mr. Dolina to Ms. Howie, Re: Settlement Agreement and Salary, dated April 17, 2015
 17. Letter from Mr. Dolina to Dr. Dance and Ms. Howie, Re: Basis for § 4-205 Appeal, dated April 22, 2015
 18. Letter from Ms. Howie to Mr. Dolina, Re: Hearing on Appeal, dated May 5, 2015

19. Letter from Ms. Huey to the Appellant, Re: Corrected Decision, dated July 8, 2015
 20. Letter from Ms. Huey to the Appellant, Re: Appeal, dated July 10, 2015
 21. BCPS Superintendent's Cabinet Meeting minutes, dated October 13, 2014
 22. Position Content Questionnaire, dated May 27, 2015
 23. Salary Scales
 - (a) 2014-15 OPE Chart
 - (b) 2014-15 CASE Chart
 - (c) 2015-16 OPE Chart
 - (d) 2015-16 CASE Chart
4. Notice of Rescheduled Hearing Date, January 29, 2016, and Notice of Scheduled Hearing, dated December 9, 2015
 5. Acknowledgement of Appeal, undated
 6. Request for Appeal, undated
 7. Transcript of Oral Argument before the Local Board on July 12, 2016
 8. Opinion and Order of the Local Board, undated
- C. Employee's Opposition to the Motion for Summary Affirmance, dated September 26, 2016
- D. Superintendent's Reply to Employee's Opposition to the Board of Education's Motion for Summary Affirmance, dated October 11, 2016

2. April 27, 2017 merits hearing

A. Appellant

1. BCPS Class Specification (Principal on Assignment to the Department of School Safety and Security), created May 2014 (previously marked as Empl. Ex. #7)
2. Vacancy Reclassification Form, undated (previously marked as Empl. Ex. #8)
3. BCPS Class Specification (Administrator, Special Projects – School Safety & Security), created July 2014 (previously marked as Super. Ex. #6)
4. BCPS Personnel Action Confirmation, dated August 8, 2014
5. Letter from Mr. James to the Appellant, Re: Salary, dated August 11, 2014 (previously marked as Empl. Ex. #9)

B. BCBE

1. BCPS Class Specification (Principal on Assignment to the Department of School Safety and Security), created May 2014 (previously marked as Empl. Ex. #7)
2. Vacancy Reclassification Form, dated July 23, 2014 (electronic signature by Dale Rauenzahn)
3. BCPS Class Specification (Administrator, Special Projects – School Safety & Security), created July 2014 (previously marked as Super. Ex. #6)
4. Memo from Bridget Bushman, Specialist, Position Management & Classification, BCPS, to Dale Rauenzahn, Executive Director, Department of School Safety and Security, BCPS, regarding Classification Review – Vacant Position, dated August 21,

2014, and e-mail from Ms. Bushman to Mr. Rauenzahn, confirmation of the vacancy reclassification request, dated August 21, 2014

5. BCPS' Operating Procedures, Reassigning Administrative and Supervisory Personnel, dated August 31, 2009
6. Settlement Agreement and Release, dated July 2, 2014 (previously marked as Empl. Ex. #6 and Super. Ex. #3)