UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0356

September Term, 2014

JOSEPHAT M. MUA

v.

BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY, et al.

Krauser, C.J.
Graeff,
Nazarian,

JJ.

PER CURIAM

Filed: December 8, 2016

Josephat Mua, appellant, was formerly employed by Prince George's County Public Schools ("PGCPS"). When his employment was terminated, Mua filed administrative appeals with the Prince George's County Board of Education ("County Board") and the Maryland State Board of Education ("State Board"), both of which ultimately affirmed Mua's termination. Mua sought judicial review in the Circuit Court for Prince George's County, which also affirmed. Mua appeals that decision and presents several questions for our review. Rephrased and consolidated, they are:

1. Did the State Board err in finding no due process violation?

2. Did the State Board err in affirming Mua's termination on the merits?

For reasons to follow, we answer both questions in the negative and affirm the judgment of the circuit court.[1] Because the parties are intimately familiar with the facts, we shall proceed directly to the merits of Mua's claims.

"The overarching goal of judicial review of agency decisions is to determine whether the agency's decision was made 'in accordance with the law or whether it is arbitrary, illegal, and capricious.'" *Sugarloaf Citizens Ass'n v. Frederick County Bd. Of Appeals,* 227 Md. App. 536, 546 (2016) (internal citations omitted). In doing so, "we [assume] the same posture as the circuit court…and limit our review to the agency's decision." *Anderson v. Gen. Cas. Ins. Co.,* 402 Md. 236, 244 (2007) (internal citations omitted). Moreover, "we 'review the agency's decision in the light most favorable to the

[1] Mua also claims that one of his attorneys violated Section 301 of the federal Labor Management Relations Act. This claim, however, was not raised in or decided by the State Board. Moreover, any alleged violation of this act by Mua's attorney has no bearing on whether the State Board erred in affirming the termination of Mua's employment.

agency' because it is 'prima facie correct' and entitled to a 'presumption of validity.'" *Sugarloaf,* 227 Md. App. at 546.

"With regard to the agency's factual findings, we do not disturb the agency's decision if those findings are supported by substantial evidence." *Id.* "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Board of School Com'rs of Baltimore City v. James,* 96 Md. App. 401, 419 (1993). "In applying the substantial evidence test, a court is not to substitute its judgment for the expertise of the agency, rather the test is a deferential one, requiring restrained and disciplined judicial judgment so as not to interfere with [the agency's] factual conclusions." *Id.* (internal citations and quotations omitted).

On the other hand, "if we determine that the agency's decision is based on an erroneous conclusion of law, no deference is given to those conclusions." *Kenwood Gardens Condominiums, Inc., v. Whalen Properties, LLC,* 449 Md. 313, 144 A.3d 647, 655 (2016). Nevertheless, "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts." *Board of Physician Quality Assur. v. Banks,* 354 Md. 59, 69 (1999).

Mua first argues that the State Board erred in finding that his appeal procedure was dictated by Md. Code, Education, § 6-202, which governs termination proceedings involving certified personnel, rather than Md. Code, Education, § 4-205, which governs termination proceedings involving non-certified support personnel. Mua further argues that he was unduly prejudiced by the approximately one-year delay between his request for a termination review hearing and the date of the hearing.

We find neither argument persuasive. To begin with, whether Mua's appeal was governed by § 6-202 or § 4-205 is immaterial for the purposes of this appeal, as neither statute contains any express language that is of any consequence to the matter before this Court. *Id.* Mua's primary contention is that the County Board failed to hold a termination-review hearing within 30 days of receipt of request. This requirement, however, is not contained in either statute; instead, the thirty-day requirement is part of PGCPS's own internal "Regulations for Supporting Personnel." Thus, the outcome of this case does not hinge on the State Board's analysis and application of the above statutes, but rather on whether the County Board erred in failing to follow its own established rules and regulations.

"'It is well established that rules and regulations promulgated by an administrative agency cannot be waived, suspended or disregarded in a particular case as long as such rules and regulations remain in force.'" *Maryland Transp. Authority v. King,* 369 Md. 274, 282 (2002) (quoting *Hopkins v. Md. Inmate Griev. Comm'n,* 40 Md. App. 329, 335 (1978)). "This rule has been recognized in federal and state jurisdictions and has become known as the '*Accardi* doctrine[.]'"[2] *Id.* Under this doctrine, when an agency fails to follow its own rules and regulations, "its actions will be vacated and the matter remanded." *Pollock v. Patuxent Inst. Bd. of Review,* 374 Md. 463, 503 (2003).

In some instances, however, strict application of the *Accardi* doctrine is unwarranted. First, "the doctrine does not apply to an agency's departure from purely

[2] The doctrine was first announced in *U.S. ex rel Accardi v. Shaughnessy,* 347 U.S. 260 (1954).

procedural rules that do not invade fundamental constitutional rights or are not mandated by statute, but are adopted for the orderly transaction of agency business." *Id.* The timing rules fall squarely into this category. Moreover, "[w]here the *Accardi* doctrine is applicable…prejudice to the complainant is necessary before the courts vacate agency action." *Id.* at 504. The burden of showing prejudice rests with the complainant. *Id.*

We see no prejudice here. Although no Maryland case has definitively established what constitutes "prejudice" when an agency violates a self-imposed time restraint on the holding of a hearing, this Court has determined that, in the context of due process, an administrative delay may hold constitutional significance, depending on the length of the delay, the reason for the delay, whether the complainant made an attempt to expedite the proceedings, and whether the complainant suffered actual prejudice, *i.e.*, loss of witnesses or other important evidence. *Desser v. Department of Health & Mental Hygiene,* 77 Md. App. 1, 11-13 (1988).

Even so, the reasons for the delay attributable to the County Board were innocuous. If anything, Mua was partly to blame for the delay, and there is little evidence that he tried to expedite the process. Finally, the evidence presented to the State Board failed to establish that Mua suffered actual prejudice. Thus, we hold that the State Board did not err on these grounds.

As to the State Board's findings on the merits of his termination, Mua has not presented any substantive argument or citation to the record that would refute these findings. Rather, Mua's primary argument is that his termination was the result of harassment, discrimination, retaliation, and several conspiracies involving members of the

State Board, members of the County Board, and officers of the court. As previously discussed, however, our review of the State Board's decision is limited to: (1) whether the agency's findings were supported by substantial evidence; (2) whether the agency committed any substantial legal error; and (3) whether the agency acted arbitrarily or capriciously. *Para v. 1691 Ltd. Partnership,* 211 Md. App. 335, 354 (2013). In short, this appeal is not the appropriate forum for the relitigation of claims that were presented, or should have been presented, to the agency.

In light of the record as presented to the State Board, we hold that its decision was supported by substantial evidence and was not arbitrary, illegal, or capricious. Accordingly, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.