

OLIVIA ABERDEEN,

Appellant,

v.

HOWARD COUNTY
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-31

OPINION

INTRODUCTION

Olivia Aberdeen (“Appellant”) appeals the decision of the Howard County Board of Education (“local board”) to non-renew her probationary teacher’s contract. The local board filed a Memorandum in Response to Appeal.¹ The Appellant responded to the Memorandum, and the local board filed a reply.

FACTUAL BACKGROUND

On August 17, 2017, Howard County Public Schools (“HCPS”) hired Appellant as a conditionally certified teacher. Appellant was assigned to Murray Hill Middle School (“Murray Hill MS”) as a Family and Consumer Science (“FACS”) teacher. On January 1, 2019, Appellant received her Professional Certificate.

During the 2018-2019 school year, Appellant took a second contract with HCPS to coach volleyball at Mount Hebron High School (“Mount Hebron HS”). (Appeal, Ex. 3). On July 23, 2018, after signing the contract, Appellant emailed Murray Hill MS Principal Lisa Smithson to request her planning period be scheduled for the last period of the day in order to leave early for volleyball practice at the high school, which released earlier than Murray Hill MS. Ms. Smithson informed Appellant that the schedule for the following year was made in February and making the requested change would impact too many other parts of the schedule; therefore, her request could not be accommodated. *Id.*

During the 2019-2020 school year, Appellant served as a Howard County Education Association (“HCEA”) representative for Murray Hill MS. There were three representatives assigned to the building. Of the three representatives, only one of the teachers, Mr. Edmund Chrzanowski III, was tenured. As such, the three decided that Mr. Chrzanowski would be responsible for conducting in-person communications with administration regarding building

¹ The local board attached an affidavit from Principal Lisa Smithson as an exhibit to their Memorandum in Response to Appeal. The Principal did not sign the affidavit, electronically or otherwise, thus it is invalid. Therefore, this Board declines to consider the affidavit in its review of the record.

concerns. (App. Response, Ex. E). Appellant never met with Principal Smithson in Appellant's capacity as the HCEA representative.

Early in the 2019-2020 school year, issues arose with a parent among the sixth grade teachers at Murray Hill MS. The parent allegedly engaged in harassing behavior, which was reported by a teacher to the Maryland State Education Association ("MSEA")/HCEA UniServe Director when he felt school administration had not properly intervened. (Appellant's Ex. 4). In the teacher's letter to the MSEA/HCEA Director, Appellant was identified as having been "vocal in her concern[.]" On November 1, 2019, Appellant forwarded an email she received from the parent to Principal Smithson, wherein Appellant stated she was not replying to the parent. (Appeal, Ex. 5). Principal Smithson ignored Appellant's statement and in response provided a model reply for Appellant to send to the parent. *Id.*

In a letter dated March 2, 2020, Ms. Pamela K. Murphy, Director of Staff Relations, informed the Appellant that her principal did not recommend her contract for renewal for the 2020-2021 school year. Ms. Murphy requested the Appellant contact her to schedule a meeting to discuss. (Local Bd. Response, Ex. C). On March 4, 2020, Appellant contacted Ms. Smithson requesting the written reasons that led to the nonrenewal. (Appellant's Response, Ex. I). Ms. Smithson directed Appellant to consult with Ms. Murphy regarding the nonrenewal. *Id.*

On April 16, 2020, the local board voted not to renew Appellant's teaching contract at the conclusion of the 2019-2020 school year. Ms. Murphy informed the Appellant of the decision via letter dated April 20, 2020. (Local Bd. Response, Ex. B).

This appeal followed.

STANDARD OF REVIEW

In cases involving a local board's policy, or a controversy or dispute regarding the local board's rules and regulations, the local board's decision is considered *prima facie* correct. The State Board may not substitute its judgment for that of the local board unless the decision was arbitrary, unreasonable, or illegal. COMAR 13A.01.05.06(A).

Because a probationary teacher has no due process right to the renewal of the teaching contract, the local board does not have to establish any cause or reason for its decision not to renew. *Ewing v. Cecil County Bd. of Educ.*, 6 Op. MSBE 818 (1995). A local board's decision to non-renew, however, cannot be based on illegal or unconstitutionally discriminatory reasons. It is the Appellant's burden to prove illegality "with factual assertions, under oath, based on personal knowledge." *Greenan v. Worcester County Bd. of Educ.*, MSBE Op. No. 10-51 (2010); *Etefia v. Montgomery County Bd. of Educ.*, MSBE Op. No.03-03 (2003).

LEGAL ANALYSIS

The probationary period for new teachers lasts for three years.² Md. Code, Educ. §6-202(b). During the probationary period, a certificated teacher is hired under a one-year contract that automatically terminates at the end of the school year, subject to renewal for the following

² Although not at issue in this case, it is our expectation that school systems will provide the mentoring and professional development to nontenured certificated employees required by Education Art. §6-202(b)(2).

year. *Id.* School systems have a large degree of flexibility in deciding not to renew a probationary teacher's contract so long as the reason for the nonrenewal is not illegal or discriminatory. See *Karp v. Baltimore City Bd. of Sch. Comm'rs.*, MSBE Op. No. 15-39. The local board need not provide to the probationary employee its reasons for its non-renewal decision. *Beckett et. al. v. Allegany County Bd. of Educ.*, MSBE 08-31 (2008). Appellant argues that the local board's decision to not renew her contract should be overturned as the decision was discriminatory and illegal. We address these arguments below in turn.

Discrimination

Appellant asserts that Principal Smithson discriminated against her by denying Appellant's requests for a schedule change to accommodate her coaching position, and separately a request for consecutive planning periods to allow her to grocery shop for her classes. Appellant claims that while her requests were denied, other teachers were given end of day planning periods and consecutive planning periods.

In order to demonstrate a *prima facie* showing of employment discrimination, Appellant is required to show: (1) she is a member of a protected class; (2) she suffered an adverse employment action; (3) she was performing satisfactorily at the time of her adverse employment action; and (4) the adverse employment action occurred "under circumstances which give rise to an inference of unlawful discrimination." *Miles v. Dell, Inc.*, 429 F.3d 480, 484-487 (4th Cir. 2005) (quoting *Texas Dep't. of Cmty. Affairs v. Burdine*, 450 U.S. 248 (1981)).

Under Maryland law, a protected class is defined as "race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or disability[.]" Md. Code, State Government §20-602(1). Appellant argues that Principal Smithson discriminated against her by allowing some teachers to leave early or provide some teachers with back-to-back planning periods. Appellant claims that some teachers were favored, but she fails to articulate a basis for finding her a member of a protected class. As the record is devoid of evidence of protected class status, the Appellant fails to meet the first prong of establishing a *prima facie* case of employment discrimination.

Retaliation

Appellant also argues that Principal Smithson's decision to recommend non-renewal of her teaching contract was a result of her efforts as an HCEA representative and her vocal response concerning the alleged harassment by a parent. This is essentially a retaliation claim even though Appellant does not term it as such. In order to establish a *prima facie* case of retaliation, the Appellant must show that (1) she engaged in a protected activity; (2) that the school system took a materially adverse employment action against her; and (3) that a causal connection existed between the protected activity and the materially adverse action. *Edgewood Management Corp. v. Jackson*, 212 Md. App. 177, 199 (2013). The school system may then rebut the *prima facie* case by showing that there was a legitimate and legal reason for the adverse action. *Id.* at 199-200. The burden then shifts back to the Appellant to show that the reasons given by the school system are pretextual. *Id.* at 200.

Appellant makes a number of allegations about her efforts to advocate on behalf of herself and her fellow teachers in regards to the alleged harassment by a student's parent;

however, she fails to provide sufficient evidence to bolster her assertions. Appellant produces an email from herself to the principal stating she will not respond to a parent's request, but there is no greater context or actual complaint made. Appellant also provides an email sent by another teacher wherein she states that Appellant was concerned and vocal about the parent's behavior; however, this email did not proffer that Appellant reported the alleged harassment or to whom she was vocal about her concerns. Similarly, there is no evidence that Appellant in her capacity as the HCEA representative ever raised concerns to school administration. Given the dearth of evidence, we find that the Appellant has failed to make a *prima facie* case for retaliation.

CONCLUSION

For all of the foregoing reasons, we conclude that the local board's decision to non-renew Appellant's contract was not illegal or a result of unconstitutional discriminatory action. Accordingly, we affirm the decision of the local board.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

Gail H. Bates

Charles R. Dashiell, Jr.

Susan J. Getty

Vermelle D. Greene

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Dissent:

Experienced and tenured teachers are in the best interest of our children's education. Without specific indication of her lack of performance or ability to assist students in learning, it is difficult to assess the denial of Appellant's teaching contract.

Shawn D. Bartley

Absent:
Rose Maria Li

August 25, 2020