

RODNEY HUDSON,

Appellant

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 17-26

OPINION

INTRODUCTION

This is an appeal of the Prince George's County Board of Education's ("local board") decision not to renew Appellant's teaching contract. The local board filed a Motion for Summary Affirmance maintaining that its non-renewal decision was not illegal and should be upheld. The Appellant opposed the local board's motion and the local board replied to the opposition.

FACTUAL BACKGROUND

The local board initially employed the Appellant as a teacher from 2002 until his resignation in 2008. Several years later, the local board rehired the Appellant to teach at Dr. Henry A. Wise High School ("Wise") for the 2015-2016 school year. Although the Appellant had previously taught for the school system, the school system considered Appellant to be a "new hire" because he had been separated from the school system for over a year.¹ (Motion, Ex. 8). As a "new hire," Appellant was subject to a three-year probationary period for new teachers and had a one year contract that automatically terminated at the end of the school year unless renewed by Prince George's County Public Schools ("PGCPS") for the following year.

For the 2015-2016 school year, Appellant taught various classes to 9th, 10th, and 11th grade students. On October 8, 2015, the Principal of Wise, Charoscar Coleman, performed a formal classroom observation of the Appellant. Principal Coleman reported that the Appellant was deficient in the areas of classroom management, time management, group work structuring, setting purpose for activities, teacher modeling, and delivering rigorous instruction. (Motion, Ex. 4). The report also included specific recommendations for improvement. *Id.*

On October 21, 2015, Principal Coleman met with the Appellant to discuss the evaluation. (Motion, Ex. 4). Principal Coleman also advised Appellant that he was referring him to the Peer Assistance and Review Program ("PAR Program") in light of his observation. The purpose of the PAR Program is for highly effective teachers to provide regular, consistent

¹ PGCPS considers an individual a "rehire" if the employee returns to the school system within one year of job separation. (Motion, Ex. 9).

support to non-tenured teachers in need of assistance in developing the competencies that make teachers successful.² (PAR Guidelines).

Appellant expressed some concerns regarding the timing of the formal observation which took place during the 4th period of the day rather than the agreed upon 1st period. (Hudson Affidavit). Nevertheless, in an email immediately following the meeting on October 21, 2015, Appellant thanked Principal Coleman for the opportunity to improve through the PAR Program. (Motion, Ex. 4). However, after becoming more familiar with the PAR Program, on October 29, 2015, Appellant emailed Dr. Edgar Batenga, in the Office of Employee Performance and Evaluations, questioning his placement in the PAR program. (Motion, Ex. 1).

Appellant was assigned a consulting teacher from the PAR Program, LaTonya Wright. She worked with the Appellant on the recommendations outlined in his October 2015 observation. (Motion, Ex. 4).

During his participation in the PAR Program, the Appellant had two additional formal observations conducted by Wise's staff. Assistant Principal Tyrone Hicks formally observed the Appellant's performance on November 18, 2015. (Motion, Ex. 4). On February 19, 2016, Assistant Principal Byonka Gregory performed a formal observation of Appellant's class. (Motion, Ex. 5). Both observations noted a need for improvement in terms of classroom management. *Id.* In particular, Ms. Gregory noted that many students were engaging in off-task behaviors and not paying attention to Appellant. (Motion, Ex. 5).

Meanwhile, on January 14, 2016, Assistant Principal Gregory met with the Appellant to discuss his failure to make substantial gains in his teaching performance. (Motion, Ex. 4). At the meeting, she developed a Professional Growth Plan for Improvement for the Appellant. The plan provided specific recommendations for Appellant's improvement in the areas of planning and preparation, learning climate, instruction, and professionalism. (Motion, Ex. 4). On February 4, 2016, Appellant received an interim evaluation rating of "needs improvement." (Motion, Ex. 4).

During the 2015-2016 school year, Principal Coleman also had concerns with respect to the Appellant's ability to manage his classroom and handle student safety. Principal Coleman, the administrative team, and security had responded to numerous calls from the Appellant to deal with classroom management, more so than other staff. (Motion, Exs. 4 & 5). Principal Coleman and Ms. Gregory both gave the Appellant informal feedback on classroom management issues during these visits. *Id.* Despite this, Principal Coleman received numerous parental complaints about disruptive students and the Appellant's inability to control the class. Ultimately, the administrative team removed multiple students from Appellant's classroom, which resulted in a lighter workload for the Appellant as compared to other teachers. (Motion, Ex. 4).

In Principal Coleman's view, between October 2015 and February 2016, Appellant failed to achieve substantial gains with his teaching performance. Many of the same deficiencies that were present at the beginning of the school year still existed. As a result, in February 2016, Principal Coleman recommended Appellant for non-renewal. *Id.* He made the non-renewal recommendation in February because it had to be submitted to the PAR Office prior to a February 12, 2016 deadline. (Motion, Ex. 4).

² "New hires" are eligible for placement in the PAR program. (Motion, Ex. 9).

The recommendation was subsequently presented to the PCGPS Employee and Labor Relations Office so that Appellant's name could be submitted to the PAR Review Board prior to a May 1, 2016 deadline. (Motion, Ex. 6). Pursuant to the PAR guidelines, a principal's recommendation is submitted to a review board established by the PAR Program, which issues the final recommendation. (Guidelines p. 18).

On April 28, 2016, the PAR Review Board agreed to the non-renewal. (Motion, Ex. 6). Kevin Maxwell, Chief Executive Officer of PGCPs, advised the Appellant by letter that same day that his contract would not be renewed for the 2016-2017 school year and that his employment with PGCPs would be ending June 30, 2016. (Motion, Ex. 1). Thereafter, Appellant received an "effective" rating on his final evaluation for the 2015-2016 school year. (Motion, Ex. 7).

In June 2016, a student submitted a video of the Appellant's classroom to Principal Coleman. The video demonstrated severe misbehavior by students during class. The students were using profanity and throwing books around the classroom, with the Appellant largely ignoring the students' conduct until confronted by two students. (Motion, Ex. 6).

Meanwhile, Appellant appealed his nonrenewal to the local board. He argued that his nonrenewal was arbitrary and unreasonable based on his performance and that it was illegal based on improper implementation of the PAR Guidelines. The local board found no merit to the Appellant's claims and upheld the nonrenewal decision, noting that a probationary "employee can be non-renewed for any reason or no reason, save an illegal one." (Local Board Decision, citing *Jones v. Baltimore City Bd. of Educ.*, MSBE Opinion No. 15-05 (2005)).

This appeal followed.

STANDARD OF REVIEW

Because a probationary teacher has no due process right to the renewal of the teaching contract, the local board does not have to establish cause for the basis of 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 cannot be based on illegal or discriminatory reasons, however. It is the Appellant's burden to prove illegality "with factual assertions, under oath, based on personal knowledge." *Etefia v. Montgomery County Bd. of Educ.*, MSBE Opinion No. 03-03 (2003) and cases cited therein.

LEGAL ANALYSIS

Appellant maintains that the local board's nonrenewal decision was illegal because Principal Coleman improperly placed him into the PAR Program in violation of the eligibility criteria set forth in the PAR Guidelines. Specifically Appellant maintains that (1) he did not have the proper scores (1 or below) on his initial observation to qualify for placement,³ and (2)

³ Appellant received a 2.2 on his initial observation. (Motion, Ex. 1).

he did not have a Performance Growth Plan in place before his assignment to the PAR program.⁴ He also argues that the PAR Review Board did not have a copy of his final evaluation before accepting Principal Coleman's recommendation for nonrenewal.⁵ In addition, he claims that his 2015-2016 year end "effective" evaluation runs contrary to the nonrenewal decision. (*See* Appeal and Hudson Affidavit).

Appellant's affirmations challenging the nonrenewal decision do not amount to illegality. The Appellant was a probationary employee with no expectation of continued employment beyond the school year. Principal Coleman placed the Appellant in the PAR Program for assistance with his performance. The goal of the PAR Program is to help non-tenured teachers develop the competencies necessary to be successful. Enrollees in the program receive regular and consistent support from highly certified classroom teachers with distinguished practice. (PAR Guidelines, p. 3). Appellant's argument that the nonrenewal decision was illegal based on the fact that he was placed in a program that provided him with extra teaching support has no merit.

Finally, as stated above, a local board may choose not to renew a probationary teaching contract for any reason, or no reason at all, as long as it is not an illegal one. *See Etefia v. Montgomery County Bd. of Educ.*, MSBE Opinion. No. 03-03 (2003) and cases cited therein. The local board non-renewed the Appellant's teaching contract based on his perceived teaching deficiencies, which is a valid reason. Although the Appellant argues that he received an "effective" evaluation for the 2015-2016 school year and the local board should have renewed his contract, the State Board has held that a local board may non-renew a probationary teacher's contract despite satisfactory evaluations. *See Bricker v. Frederick County Bd. of Educ.*, 3 Op. MSBE 99 (1982). As we mentioned in *Anderson v. Bd. of Educ. of Carroll County*, 2 Op. MSBE 40 (1978),

It might very well be that a teacher's performance was reasonably satisfactory. If, however the local system, interested in upgrading the quality of instruction is looking for superior performance, it should be left with the discretion of terminating a teacher whose performance does not measure up to the local board's standards.

The local board has explained in its Motion that although the Appellant did receive the "effective" rating, his professional practice scores place him squarely in the bottom 5% of the 8,484 teachers who used the same evaluation rubric. (Motion, Ex. 7). We do not find any illegality on this basis.

CONCLUSION

For the reasons stated above, we affirm the decision of the Prince George's County Board of Education not to renew the Appellant's teaching contract for the 2016-2017 school year.

⁴ The Instructional Supervisor for the PAR Program explained that PGCPs and the unions understood that no growth plan was required prior to placement in the PAR Program for the 2015-2016 school year because there was a risk that the program would be underutilized. (Motion, Ex. 8).

⁵It is the local board's position that there is a typo in the PAR Guidelines, and that it is the interim evaluation rather than the final evaluation that principals should submit for review final evaluations are not due until June 1, after the May 1 nonrenewal deadline. (Motion, p.11; PAR Guidelines, p.18, Ex. 8).

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin Hartings

Stephanie R. Iszard

Rose Maria Li

Michael Phillips

David Steiner

July 18, 2017