

CLAIRE ZARRILLI,
Appellant,
v.
ANNE ARUNDEL COUNTY
BOARD OF EDUCATION
Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 21-04

OPINION
INTRODUCTION

This is an appeal of the Anne Arundel County Board of Education’s (“local board”) decision affirming the non-renewal of Appellant’s non-tenured teaching contract. The local board filed a Memorandum in Response to Appellant’s appeal maintaining that its decision to uphold the non-renewal was not illegal nor the result of unconstitutional discrimination and should be upheld. The Appellant responded to the local board’s Memorandum and the local board replied.

FACTUAL BACKGROUND

Appellant was employed as a probationary non-tenured teacher with the Anne Arundel County Public Schools (“AACPS”) under a regular teaching contract. (Local Board at 125-126, Zarrilli Regular Contract signed on August 24, 2018)¹. The regular teaching contract is set forth in the Code of Maryland Regulations (COMAR) 13A.07.02.01 and states that:

Except as provided in subparagraphs (c) - (d) below, the probationary period of employment of a certificated employee in a local school system shall be three years from the date of employment.

Either of the parties to this contract may terminate it at the end of the first, second or third anniversary date of employment in regard to employees hired after January 1 following the commencement of a school year by giving notice in writing to the other...

Id.

¹ The Local Board submitted numerous attachments with its response memorandum to Appellant’s appeal, however the exhibits are not marked which makes it difficult for the Board to locate the documents referenced in the memorandum. In the future, we expect local board’s to mark their attachments and provide a table of attachments if they are voluminous.

Appellant began her employment at Broadneck Elementary School at the start of the 2018-2019 school year and was assigned to teach first grade as a probationary teacher. Appellant was assigned a Right Start Advisor and received teaching support from a school-based reading teacher, for the 2018-2019 school year. (Local Board at 128-132, Right Start Services Log and Professional Support Summary dated 2018-2019).

In addition to mentoring and professional support, in accordance with Article 16, Section C(1), of the “Negotiated Agreement between the Teachers Association of Anne Arundel County and the Board of Education of Anne Arundel County,” Appellant received four formal classroom observations.² (Local Board at 133-136, Negotiated Agreement).

In all four formal observations, Appellant received ineffective ratings in multiple categories. In Appellant’s first observation, conducted on November 7, 2018, Principal John Noon found Appellant’s performance in teaching English language arts to be ineffective in six of thirty-four categories. (Local Board at 138-143, Professional Practices-Instructional Observation Form). In Appellant’s second observation, conducted on December 14, 2018, Vice Principal Thomas Cordts found her performance in math instruction to be ineffective in two of thirty-four categories. (Local Board at 144-151, PPI Observation Form, 12/14/18). In the January 28, 2019 observation, Director of School Performance, Ginger Henley, evaluated Appellant’s performance in reading instruction as ineffective in twenty-four of thirty-four categories. (Local Board at 152-159, PPI Observation Form, 1/28/19). In Appellant’s final formal observation, conducted on March 11, 2019, Principal Noon found her performance in math/science instruction to be ineffective in sixteen of thirty-four categories. (Local Board 160-169, PPI Observation Form, 3/11/19).

On March 13, 2019, Appellant received an ineffective/developing rating resulting in a professional practice score of .5 and was notified that she was being considered for non-renewal of her contract. (Local Board at 170, Non-Renewal of Contract Notification for Non-Tenured Staff, 3/13/19). By letter dated April 23, 2019, the local Superintendent notified the Appellant that her non-tenured teaching contract would not be renewed after its expiration on June 30, 2019. (Local Board at 171, Non-Renewal Letter, 4/23/19).

On May 24, 2019, Appellant appealed the local Superintendent’s decision not to renew her teaching contract. (Local Board at 174, Appeal of Local Sup’t. Decision). On June 28, 2019, Appellant filed her memorandum, with exhibits, in support of appeal. (Local Board at 1-114, Appellant’s Memorandum in Support of Appeal). The local Superintendent followed with a Statement of Position. (Local Board 115-124, Sup’t. Statement).

On June 30, 2020, the local Board issued its Opinion and Order affirming the local Superintendent’s non-renewal of Appellant’s teaching contract. The local Board held that there was no basis under the regular contract entered into by the Appellant or State law to overturn the local Superintendent’s decision not to renew the Appellant’s teaching contract. (Local Board at 175-184, Opinion and Order).

² The Negotiated Agreement requires that each formal rating of teachers must include “a minimum of two classroom observations...during the year in which the rating is presented.” (See Negotiated Agreement, Article 16, Section C(1)(a)).

This appeal to the State Board 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.01.05.06A.

A local board does not have to demonstrate cause as a basis for its decision not to renew a probationary teacher's contract. *Ewing v. Cecil County Bd. of Educ.*, 6 Op. MSBE 818 (1995). However, a local board's decision to non-renew cannot be based on illegal or 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

Appellant asserts that her non-renewal was based on illegal and arbitrary reasons. Appellant maintains that the local board's non-renewal decision should be reversed on the following bases: (1) the negative evaluations of her performance assessed by Principal Noon and Director Henley were "highly subjective," "arbitrary," and "libelous"; (2) the non-renewal of her contract "completely obstructs" her ability to obtain employment in "AACPS, the State of Maryland, and most other states" in the U.S.; and (3) the local board's delay in issuing its Opinion and Order violated her right to due process and adversely affected her "possible reinstatement as a teacher with the AACPS for both the 2019-20 and 2020-21 school years..." (Appeal, pp. 1-3). Appellant has made no claims that the basis for the local board's decision was constitutionally discriminatory.

Appellant's Performance Evaluations

In her Memorandum, Appellant disagreed with the negative performance evaluations she received at Broadneck and maintains that she is a "highly qualified" educator as illustrated by her past evaluations in other jurisdictions as well as her experience and qualifications.

Under Maryland law, 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). Further, under COMAR 13A.07.02.01(B), the regular teacher's contract for probationary employees is subject to non-renewal at the end of each probationary year. Therefore, as a probationary employee, Appellant could have no expectation of continued employment during the probationary period of her contract.

Appellant was given four formal evaluations by three different evaluators, from November 7, 2018 through March 11, 2019. Each evaluation resulted in ineffective ratings in multiple categories. In this case, the local board non-renewed the Appellant's teaching contract based on its evaluation of her teaching deficiencies, which is a valid reason.

In fact, the State Board has held that a local board may even non-renew a probationary teacher's contract despite satisfactory evaluations. See *Bricker v. Frederick County Bd. of Educ.*, 3 Op. MSBE 99 (1982). As 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.

Thus, the only question here is whether the local board non-renewed Appellant's probationary teaching contract based on illegal or discriminatory reasons. Because the State Board has held that even a satisfactory evaluation does not guarantee that a probationary contract will be renewed, Appellant's disagreement with her evaluation ratings does not demonstrate an illegal basis for the non-renewal.

Appellant's Due Process Rights

As stated previously, a probationary teacher has no due process right to the renewal of the teaching contract, and 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). As stated previously, COMAR 13A.07.02.01B sets forth the terms of the regular teacher's contract and states in pertinent part,

...[e]ither of the parties to this contract may terminate it at the end of the first, second or third anniversary date of employment in regard to employees hired after January 1 following the commencement of a school year by giving notice in writing to the other, as of the following dates...

(a)(ii) In the case of employees employed on or after January 1 following the commencement of a school year, not later than June 15 of that year or of the second year...

Accordingly, under Maryland law, as a probationary teacher employed under a regular contract, the only process due the Appellant was written notice by June 15 of the decision not to renew the probationary contract. Appellant was given the required notice of the non-renewal of her teacher contract on April 23, 2019.

The only legal basis for a reversal of a non-renewal decision is if the decision has been made for illegal or constitutionally discriminatory reasons. *Ewing v. Cecil County Bd. of Educ.*, 6 Op. MSBE 818 (1995). The State Board has consistently held that a probationary teacher challenging a non-renewal decision must support allegations of illegality with factual evidence. *Id.* The State Board articulated in *Ewing*,

...In order to defeat a motion, the opposing party must demonstrate that there is a genuine dispute as to material fact 'by producing

factual assertions, under oath, based on personal knowledge.’ Unsupported statements or conclusions are insufficient.

Here, the Appellant has filed only a legal memorandum...the unsupported assertions of the Appellant are insufficient to create a genuine dispute of material fact...

6 Op. MSBE at 820. Thus, the State Board has consistently held that unsubstantiated assertions are insufficient to overturn a non-renewal decision.

Appellant argues that the decision of the local board to non-renew is based upon erroneous information, “subjective and libelous evaluations” of her teaching performance by Principal Noon, and “probable collusion” between Principal Noon and Director Henley. Appellant maintains that Principal Noon’s “complete lack of support” and his “collaboration” with Director Henley in the preparation of her evaluation is “undermines the legality of the non-renewal itself.”

Like the appellant in *Ewing*, Appellant in this case has made unsubstantiated allegations of illegality by Principal Noon and Director Henley in conducting the observations and preparing her performance evaluations. Appellant has failed to provide the State Board with evidence of illegality or constitutional discrimination in the form of “factual assertions, under oath, based on personal knowledge.” Accordingly, Appellant has failed to meet her burden of demonstrating that the local board’s decision was illegal.

In this case, Principal Noon’s recommendation, the Appellant’s evaluations, and other performance data were reviewed by the Regional Assistant Superintendent and Superintendent of the AACPS as well as the local board prior to taking action on the non-renewal. (*See*, Local Board at 137, Checklist for Requesting Non-Renewal of Unit I Employees).

Local Board Delay in Issuing its June 30, 2020 Opinion and Order

Finally, Appellant alleges that the local board’s delay in issuing its Opinion and Order violated her right to due process and adversely affected her ability to obtain employment with Anne Arundel County, the State of Maryland and elsewhere. In its Opinion and Order, the local board explained that due to Appellant’s various complaints concerning her performance evaluation and the working conditions at Broadneck, it stayed the issuance of its final opinion and order to allow Appellant sufficient time to pursue a labor grievance. While that stay was in effect, the COVID-19 pandemic struck. The local board placed all pending appeals on hold until it could safely resume deliberations. Once the local board resumed deliberations, it recognized that the Appellant’s case was substantially older than the other cases and prepared an opinion.

While the time between the initiation of the stay and the issuance of the local board’s Opinion and Order was not ideal, under the circumstances and considering the effects of the pandemic, the time frame between the stay and the written decision was not unreasonable and did not prevent the Appellant from seeking other employment.

CONCLUSION

For the reasons stated above, we affirm the decision of the Anne Arundel County Board of Education not to renew the Appellant's teaching contract for the 2018-2019 school year.

Signatures on File:

Clarence C. Crawford
President

Jean C. Halle
Vice-President

Shawn D. Bartley

Gail H. Bates

Charles R. Dashiell, Jr.

Susan J. Getty

Rose Maria Li

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Absent:
Vermelle Greene

January 26, 2021