

JAMES H. JACKSON,

Appellant

v.

DORCHESTER COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-15

OPINION

This is an appeal of the affirmance by the Board of Education of Dorchester County of the superintendent's decision to reclassify Appellant's teaching certificate to second class based on an overall year-end "unsatisfactory" evaluation.¹ The local board has submitted a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has filed an opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant is employed as a teacher at the North Dorchester Middle School ("NDMS") in Dorchester County where he teaches mathematics and science. Appellant has been employed with Dorchester County Public Schools as a teacher for 34 years.

During the 2002-03 school year, the principal and assistant principal of NDMS conducted classroom observations of Appellant. Those observations noted that Appellant needed improvement in a variety of areas:

- 11/19/02 - Observation by Principal Patricia Saelens included a Needs Improvement rating in the categories of Teaching Skills and Methods, Knowledge, and Process of Instruction;
- 12/10/02 - Observation by Assistant Principal Alice Mitchell included a Needs Improvement rating in the categories of Teaching Skills and Methods and Classroom Management and Organization;
- 3/4/03 - Observation by Principal Patricia Saelens included an Unsatisfactory rating in the categories of Teaching Skills and Methods and Knowledge; and a Needs Improvement rating in the categories of Classroom Management and Organization, Classroom Climate, and Process of Instruction;
- 3/10/03 - Observation by Assistant Principal Alice Mitchell included a Needs Improvement for all categories of evaluation.

See Observation Reports.

¹The unsatisfactory evaluation is not the subject of this appeal.

A Professional Assistance Plan was reviewed and modified after the November, 2002 observation. Following the March, 2003 observation, the principal noted that the Appellant had not completed the assistance plan at that time.

Appellant received an overall rating of “Needs Improvement” on his mid-year evaluation for the 2002-03 school year. The evaluation indicated that Appellant needed improvement in teaching skills and methods, knowledge, classroom management and organization, process of instruction and outcomes of instruction. Appellant received an overall rating of “Unsatisfactory” on his end of year evaluation. That evaluation indicated that Appellant needed improvement in knowledge, classroom management and organization, process of instruction and outcome of instruction, and that he performed unsatisfactorily in teaching skills and methods. *See Evaluation Report.*

In April, 2003, Appellant was notified that his teaching certificate was being rated second class for the 2003-2004 school year. By letter dated May 1, 2003, Appellant appealed the decision to reclassify his teaching certificate to the Superintendent’s office. By letter dated May 14, 2003, Superintendent James Reilly upheld the decision to reclassify Appellant’s teaching certificate to second class. *See 5/14/03 Reilly letter.*

On June 9, 2003, Appellant appealed the Superintendent’s decision to the local board. Upon consideration of the evidence submitted by Appellant and the Superintendent, the local board unanimously affirmed the decision of the superintendent to place Appellant on a second class certificate for the 2003-04 school year.

On October 28, 2003 Appellant filed an appeal of the local board’s decision with the State Board.

ANALYSIS

Standard of Review

The standard of review applicable in this case is that the decision of a local board of education 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.01.01.03E(1).

A teacher’s certificate is either a first class certificate or a second class certificate. Md. Code Ann., Educ. § 6-102(a). Section 6-102 of the Education Article requires each local superintendent to “classify the certificate of each teacher employed by the school system of his county at least once every two years.” Md. Code Ann., Educ. § 6-102(c). In determining the class of the certificate, the local superintendent is to consider the teacher’s scholarship, executive ability, personality, and teaching efficiency. Md. Code Ann., Educ. § 6-102(d).

Issues

Appellant contends that the decision to reclassify Appellant's teaching certificate to second class violated procedures set forth in the negotiated agreement and the local board's evaluation procedures set out in the teacher handbook. As a remedy he requests that the 2002-03 annual evaluation of Appellant be removed from his personnel file, the second class certificate action that was predicated on a defective evaluation process be reversed, and all references to such actions be expunged from his personnel records.

Analysis

In support of his contentions, Appellant references § 4.10.2 [4.10 B] of the Negotiated Agreement between the Dorchester Educators and the Board of Education of Dorchester County that reads:

B. Whenever the rating of a second-class certificate is being considered, the appropriate supervisor must be utilized as the second opinion evaluator.

Appellant maintains that the term "appropriate supervisor" means a person from the central office who would be required to provide an outside opinion. He provides in support an affidavit from J. C. Parker, MSTA UniServ Director, who states that during the 2001-2002 school year, the union and the board negotiated a new contract including a new section 4.10 on evaluation. Mr. Parker also indicates that during that negotiation, both parties agreed to retain the following statement that had been in previous negotiated agreements: "Whenever the rating of a second-class certificate is being considered, the appropriate supervisor must be utilized as the second opinion evaluator." Mr. Parker concludes his affidavit by stating: "Further, both parties agreed that that statement means that the phrase 'an appropriate supervisor' was to mean a person from central office to provide an outside opinion." *See Parker affidavit.*

The local board disagrees with Mr. Parker's interpretation. As noted in its opinion, the board found "no evidence to support so narrow a construction of the phrase 'appropriate supervisor.' Had the parties intended to require that a central office evaluator participate where a second-class certificate was being considered, § 4.10.2 might have easily so provided. Instead, the contract language remained unchanged from previous agreements." Opinion, p. 3.

The board goes on to state that it followed the requirements of COMAR regarding observations and evaluations, in particular the requirement in COMAR 13A.07.04.02A(5) that "[A]n unsatisfactory evaluation shall include at least one observation by an individual other than the immediate supervisor." The board maintains that this requirement was met because the Assistant Principal, Alice Mitchell, was Appellant's immediate supervisor. The Principal, Patricia Saelens, actually made two observations of Appellant. The board also notes that the individual Susan Piavis, who the union maintains should have been the central office observer, is

not a supervisor of Appellant, but the curriculum facilitator for middle and high school science.

Based upon our review of the record, we concur with the local board that Appellant has not met his burden of proving that the term “appropriate supervisor” means an individual from the central office. First, the term is not defined in the agreement. Secondly, we believe it is relevant to review the requirement in the negotiated agreement that precedes the requirement for the use of the appropriate supervisor:

4.10 Evaluations

- A. Teachers shall be evaluated in accordance with current Maryland State Department of Education regulations and board policy.
- B. Whenever the rating of a second-class certificate is being considered, the appropriate supervisor must be utilized as the second opinion evaluator.

As previously noted, the relevant regulation of the State Board requires that an unsatisfactory evaluation include at least one observation by an individual other than the immediate supervisor. *See* COMAR 13A.07.04.02A(5). In this case, the local board and superintendent believed that the school principal who was not Appellant’s immediate supervisor was the “appropriate supervisor” for the second opinion on the evaluation. There is nothing in the record other than the belief by the union representative to indicate otherwise. For example, there is no evidence that the school system consistently interpreted that provision to require a central office person as the second opinion evaluator. Moreover, the board is the other party to the negotiated agreement. While the UniServ Director may state the intention of the union, he has no authority to speak for the board. For these reasons, we uphold the local board’s decision on this issue.

2. Conference with Assistant Superintendent

As a second issue, Appellant argues that the school system violated the provisions of § V(A)(5) of its own observer procedures handbook when it failed to schedule a conference with the Appellant, the evaluator, the assistant superintendent, and the appropriate supervisor prior to issuing an unsatisfactory annual evaluation and placing the Appellant on second-class certificate status. This issue was not raised in the Appellant’s appeal to the local superintendent dated May 1, 2003, nor in the Appellant’s first letter of appeal to the local board dated June 9, 2003. On July 29, 2003, Appellant’s counsel sent a letter to the board president raising this second issue. The board did not address this issue in its opinion. However, in its Motion for Summary Affirmance, the board argues that primary purpose of the handbook is not to confer procedural benefits upon the Appellant; rather, the board references the introduction to the handbook, quoting the following:

This document updates and describes the Dorchester County Public Schools' observation/evaluation process. It is intended to be a guide to teachers and administrators in their joint efforts to bring about the achievement of national/State, and local educational goals for all children. The content and processes described in this handbook are based on extensively researched principles of effective teaching and effective supervision and evaluation practices. . . .

It is designed to provide a process to help all teachers grow within their profession and to be flexible enough to appropriately address the needs of the new teacher, the master teacher, and the teacher in need of assistance.

Relying on a distinction first made by the Court of Special Appeals in *James v. Baltimore City Board of School Commissioners*, the board maintains that because the handbook does not confer procedural benefits, any alleged violation of the handbook is not actionable. *See Board of School Commissioners of Baltimore City v. James*, 96 Md. App. 401 (1992) (Court held that failure of the school system to have a formal evaluation conducted by a non-school based observer in accordance with the Baltimore City Public Schools' procedures for evaluation of teaching staff was harmless because the procedures were not officially promulgated by the local board.)

In this case because the handbook was not officially promulgated by the local board, we concur that any alleged violation in procedure does not mandate reversal of the certificate reclassification. *See generally Powell v. Board of Education of Montgomery County*, MSBE Opinion No. 01-04 (2001)(Teacher evaluation system handbook for Montgomery County Public Schools does not primarily confer important procedural benefits upon the Appellant).

In summary, Appellant does not contest the merits of the observations or the evaluation. Rather, he is relying upon alleged procedural deficiencies to reverse the evaluation, the observations, and the reclassification to second class certificate. For the reasons stated above, we do not find that Appellant has met his burden of proof on the issues he has raised.

CONCLUSION

Because we find that the local board did not act arbitrarily, unreasonable, or illegally in this matter, we affirm the certificate reclassification decision of the Dorchester County Board of Education.

Edward L. Root
President

JoAnn T. Bell
Vice President

Philip S. Benzil

Dunbar Brooks

Calvin D. Disney

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Maria C. Torres-Queral

John L. Wisthoff

March 31, 2004