

KENNETH ETEFIA,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-03

OPINION

This is an appeal of the non-renewal of a probationary teacher's contract. Appellant maintains that notice of the non-renewal decision was untimely and alleges that the non-renewal decision was based on an illegal conspiracy to remove him from his position due to race discrimination. The local board has submitted a Motion to Dismiss maintaining that Appellant was a probationary employee in his second year of teaching who was given timely notice of non-renewal of his contract, and that no further process is due Appellant in the absence of specific factual allegations of unlawful discrimination or other illegality. Appellant has submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant was hired by the local board as a special education teacher under a provisional contract, effective August 29, 2000. He was assigned to teach at Parkland Middle School in Montgomery County. Appellant's provisional contract ended June 13, 2001. A regular teacher contract was issued for the following school year, effective July 1, 2001.

By letter of April 2, 2002, the Office of Human Resources advised Appellant that his principal had recommended that his contract not be renewed based on concerns reflected in his evaluation.¹ The letter further advised Appellant of his right pursuant to the collective bargaining agreement between the local board and the teachers' union, to request a meeting to learn the reasons for the recommendation.

Per Appellant's request, the Superintendent's designee, Dr. Elizabeth Arons, conducted a meeting on April 16, 2002. Appellant had union representation and was given the opportunity to present arguments and evidence regarding the evaluation and non-renewal recommendation.

¹Appellant received an overall "Not Effective" on his 2001-02 end of year evaluation. Among other things, specific comments noted that Appellant failed to provide a sound method for appraising student learning levels, interests, and needs; students were not engaged in the day's instructional activity; Appellant had been reprimanded for his use of physical force with students and his threat to slap a student; and he consistently allowed students to leave the classroom without permission. *See* 2001-02 evaluation at 1-3.

Based on the evidence, Dr. Arons found that Appellant's performance failed to meet the expectations of a teacher to whom the school system should grant tenure and recommended that the non-renewal decision remain unchanged. On April 23, 2002, the superintendent issued his decision to recommend that the local board not renew Appellant's contract. The local board adopted the superintendent's recommendation.

Appellant appealed the non-renewal decision and alleged that the non-renewal was a result of a conspiracy between his principal and his immediate supervisor. He further alleged that these individuals involved other school personnel, some of Appellant's students, and parents of those students in a vendetta to oust him from his position.

On July 25, 2002, the local board affirmed the non-renewal of Appellant's contract of employment. In its decision, the local board stated as follows:

Mr. Etefia has not alleged untimely notice of the non-renewal decision in violation of COMAR 13A.07.02.01B, nor has he presented any evidence or information that would support a contention that the non-renewal decision was made for illegal or constitutionally discriminatory reasons. In considering this appeal, the Board notes that Mr. Etefia has not submitted any information that would support his allegations that school staff and administrators conspired with each other and colluded with students and their parents to give him a bad evaluation.

One board member dissented stating that he would have reversed the decision not to renew Appellant's contract because he believed that Appellant did not get the support from school staff and administrators that he needed in order to successfully carry out his job.

ANALYSIS

It is well established that a local board does not have to demonstrate cause as a basis for deciding not to renew a probationary teacher's contract. See *Ewing v. Cecil County Board of Education*, 6 Op. MSBE 818 (1995) (affirming local board decision not to renew probationary teacher's contract despite unsubstantiated claims of retaliation); *Lockwood v. Howard County Board of Education*, MSBE Opinion No. 00-40 (September 26, 2000) (upholding non-renewal of probationary employee despite numerous unfounded allegations of retaliation). COMAR 13A.07.02.01B sets forth the terms of the regular teacher's contract. It states in pertinent part:

(a) . . . either of the parties to this contract may terminate it at the end of the first and second school year or on the second 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)(i) In the case of employees employed before January 1 following the commencement of a school year, not later than May 1 of that year or of the second year;

Thus, under State Board regulation, as a probationary certificated employee, the only process due Appellant was written notice by May 1 of the decision not to renew the probationary contract.

Appellant now alleges that there was untimely notice of the non-renewal decision in violation of COMAR 13A.07.02.01B.² The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal). Thus, Appellant has waived his right to raise this matter on appeal to the State Board. Nevertheless, because Appellant received notice of his non-renewal not later than May 1 of the first year of his regular teacher contract, we find that notice was timely given.

It is also well established that the only legal basis for a reversal of a non-renewal decision is if the decision were made for illegal or constitutionally discriminatory reasons. In *Board of Regents v. Roth*, 408 U.S. 564 (1972), the Supreme Court reviewed a decision not to rehire a non-tenured teacher for a second year. The Court held that the extent of the property interest in a teaching contract is the fulfillment of the one-year term of the contract. The Court stated that

. . . the terms of the respondent's appointment secured absolutely no interest in re-employment for the next year. They supported absolutely no possible claim of entitlement to re-employment. Nor, significantly, was there any state statute or University rule or policy that secured his interest in re-employment or that created any legitimate claim to it. In these circumstances, the respondent surely had an abstract concern in being rehired, but he did not have a property interest sufficient to require the University authorities to give him a hearing when they declined to renew his contract of employment.

408 U.S. at 578. Thus, absent a constitutional violation, there is no other process due a non-tenured teacher. *See* 408 U.S. at 578-579. *See also Perry v. Sinderman*, 408 U.S. 593 (1992); *Stepper v. Board of Education of Anne Arundel County*, 7 Op. MSBE 324 (1996)(affirming non-renewal of probationary teacher's contract); *Jones v. Board of Education of Charles County*, 7 Op. MSBE 153 (1995)(affirming non-renewal decision where there were no specific factual allegations of a constitutional violation).

²Appellant argues that since he was employed on August 29, 2000, he should have been served notice at the end of his first or second school year. In fact he was given notice before May 1, 2002, of his second year of employment with Montgomery County Public Schools.

In this case, Appellant has made unsubstantiated allegations of race discrimination and conspiracy which he claims resulted in his not being provided with necessary classroom support and his receiving a bad evaluation which ultimately led to the non-renewal of his teaching contract. The State Board has consistently held that a probationary teacher challenging a non-renewal decision must support allegations of illegality with factual evidence. See *Ewing v. Cecil County Board of Education*, 6 Op. MSBE 818 (1995); *Stepper v. Board of Education of Anne Arundel County*, 7 Op. MSBE 324 (1996). As 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 a material fact ‘by producing factual assertions, under oath, based on personal knowledge.’ Unsupported statements or conclusions are insufficient. ‘It is never sufficient to defeat a motion for judgment that the opposing party allege in a general way that there is a dispute as to a material fact.’

Here, the Appellant has filed only a legal memorandum. She [Ewing] has not submitted any affidavit to oppose the sworn affidavits of the school officials. Because the unsupported assertions of the Appellant are insufficient to create a genuine dispute of material fact, we grant the Motion for Summary Affirmance filed by the local board. (Citations omitted).

6 Op. MSBE at 820. Thus, bald assertions are insufficient to overturn a non-renewal decision or to require a hearing on the appeal. Like the appellant in *Ewing*, the Appellant in this case has not submitted any affidavit to support his allegations. Accordingly, we believe Appellant has failed to meet his burden of demonstrating that the local board’s decision was illegal.

Moreover, even if there were some type of conspiracy by the principal to oust Appellant, the principal’s recommendation is not the final word on the non-renewal issue. Pursuant to Administrative Regulation GJB-RC, the principal’s recommendation and all pertinent data are reviewed by the associate superintendent for personnel services who then forwards his/her recommendation to the superintendent. The superintendent then reviews the matter and submits a recommendation to the local board, which takes action on the recommendation. Neither the associate superintendent, the superintendent, nor the local board is bound to accept the principal’s recommendation. Thus, there is no guarantee of contract renewal based solely on a principal’s recommendation.

CONCLUSION

For these reasons, we do not find that the local board acted arbitrarily, unreasonably or illegally in this matter. Accordingly, we affirm the non-renewal decision made by the Board of Education of Montgomery County.

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January 29, 2003