

GAYWOOD MCGUIRE, JR.,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-34

OPINION

This is an appeal of the non-renewal of a probationary teacher's contract on grounds of "the incompleteness of the transcript and the illegalness [sic] of the evaluation tools as well as the administering for information". Appellant also maintains that his teaching contract was illegal because it failed to credit him with all of his years of teaching experience. The local board has submitted a Motion for Summary Affirmance maintaining that Appellant was a probationary employee in his first year of teaching who was given timely notice of non-renewal of his contract and thus received all of the process he was legally due. The board also maintains that Appellant failed to raise the issue of the illegality of his teaching contract before the hearing examiner and has thus waived this issue on appeal. Appellant has filed a reply in opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant was hired by the local board as a probationary teacher for the 2001-2002 school year pursuant to a contract dated August 20, 2001.¹ He was assigned to teach mathematics at Woodlawn Middle School in the Baltimore County Public Schools. ("BCPS"). The contract provided that BCPS could choose not to renew Appellant's contract in the first and second years by giving notice of non-renewal to him not later than May 1st of the first or of the second year.²

¹The Regular Contract terms are set out in regulations of the State Board at COMAR 13A.07.02.01B.

²As discussed below, May 1st is the date by which notice of non-renewal must be given to employees, such as appellant, who were hired before January 1 following commencement of a school year.

During the 2001-2002 school year, Appellant's teaching was observed on a number of occasions and was formally evaluated twice.¹ Both evaluations rated his performance as "unsatisfactory". (Evaluations dated 1/14/02 and 3/27/2002). After his first unsatisfactory evaluation on January 14, 2002, Appellant was provided with extensive support, including an assistance plan and hands-on support provided by mentors and the mathematics department chair. (T. 112-113, 128-133). However, Appellant's teaching failed to improve and he received a second "unsatisfactory" rating on March 27, 2002. (Evaluation, 3/27/02) Accordingly, on May 1, 2002, Appellant was advised that his teaching contract would not be renewed for the following year. (Letter of May 1, 2002)

Appellant appealed the non-renewal to the local board. (Letter of 5/28/02). Although not mandatory, the matter was referred to a hearing examiner and a hearing was held on March 27, 2003 before Hearing Examiner Gordon L. Pelz, Esquire. Extensive testimony was presented about Appellant's unsatisfactory performance. That evidence included observations of students roaming out of control in his classroom, throwing objects into the air and catching them (T. 65); obscene language written on a bulletin board (T. 116-117); permitting students to play CDs during class (T. 55); using the classroom phone to permit a student to listen to an obscene message left on his home answering machine (T. 107-110); not taking attendance and thus permitting students who belonged elsewhere to remain in his class (T. 65, 102-103); not keeping a grade book (T. 273-274); eating and sleeping by Appellant during class (T. 103, 252-253); and failure to write and submit weekly lesson plans to the department head despite a direct order to do so. (T. 237).

There also was extensive evidence that little or no instruction was taking place in Appellant's classroom. Dr. Richard Milbourne, Executive Director of Schools for the Southwest Area, Ms. Jerilyn Roberts, Principal of Woodlawn, and Ms. Kimberly Magginson, Chair of the Math Department, all personally observed Appellant's classroom and each testified at length about the lack of instruction. Dr. Milbourne testified about the lack of student engagement in Appellant's classroom (T. 66) and that despite an assistance plan that offered mentors and resource teachers on a daily basis, Appellant's teaching did not improve.(T. 68-69)

Ms. Roberts testified that little or no instruction was occurring in Appellant's classroom (T. 85-90) and that one student had requested a transfer out of his class because Appellant and the male students were playing ball in the classroom and one boy was touching her (T. 109). Ms. Magginson testified that she intercepted a copy of a letter from Appellant's students to parents seeking their help in filing a petition to remove Appellant from the classroom because the students were not learning anything. (Letter of 2/28/02 and petition dated 2/26/02). The Hearing Examiner upheld the superintendent's non-renewal decision noting:

It is quite possible that Mr. McGuire is an excellent mathematician. However, it is clearly evident that he was unable to successfully utilize his talents in mathematics to successfully communicate with his students to the degree necessary to be an effective teacher. Additionally, it is abundantly clear from numerous classroom observations that Mr. McGuire had little control over and maintained no discipline in his classroom, nor did he provide effective instruction....

The testimony as to the unsatisfactory nature of Mr. McGuire's performance during the school year was extensive, it covered various and significant areas of his teaching responsibility and was provided by several different witnesses. Very little of that testimony was specifically disputed or denied by Mr. McGuire, with the exception of his very general, vague and confusing testimony....

(Findings of Fact, Conclusions of Law and Recommendation, p. 14).

The Hearing Examiner ultimately concluded:

¹Appellant was formally observed on 10/3/01, 10/22/01, 11/6/01, 11/26/01, 2/7/02, and 4/12/02 as well as being formally evaluated on 1/14/02 and 3/27/02. He also received several warnings and reprimands about his performance.

Based upon the evidence and testimony presented by the Superintendent and by Mr. McGuire, this examiner concludes that the action of the Superintendent was reasonable and unquestionably not arbitrary or illegal.

(Findings of Fact, Conclusions of Law and Recommendation, p. 14).

The local board adopted the recommendation of the hearing examiner and in an Opinion and Order dated March 23, 2004 affirmed the decision not to renew Appellant's contract. The local board noted that Appellant raised for the first time at oral argument before the local board that he believed his contract was illegal because it did not properly reflect his years of teaching experience. The local board determined that the issue was not properly before it as Appellant failed to raise the issue before the hearing examiner. This appeal to the State Board followed.

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); *Etefia v. Montgomery County Board of Education*, MSBE Opinion No. 03-03 (January 29, 2003) (upholding non-renewal despite allegation of untimely notice); *Powell v. Montgomery County Board of Education*, MSBE Opinion No. 01-04 (January 21, 2001) (upholding non-renewal despite allegation of violations of guidelines in Teacher Evaluation System handbook); *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 and states in relevant 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. That notice was given to Appellant in a timely manner.

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). As stated above, Appellant bases his appeal on “the incompleteness of the transcript and the illegality [sic] of the evaluation tools as well as the administering for information”. At oral argument before the local board, he alleged that his contract was illegal because it did not properly reflect his teaching experience.

In this case, Appellant has not alleged that the local board’s decision violated due process or any other constitutional right. With respect to the evaluation tools, Appellant did claim before the hearing examiner that a particular lesson feedback check off form that had been used in an earlier observation had not been used for his November 6, 2001 observation. However, the hearing examiner explained that a school system witness testified that the use of that particular check off form was discontinued because it was no longer part of the formal observation process. (T. 97, Findings of Fact, Conclusions of Law and Recommendation, p.7).

It is unclear what Appellant means when he refers to the “incompleteness” of the transcript”. As part of the record, BCPS presented the 238 page transcript from the March 23, 2002 hearing, along with hundreds of pages of exhibits. In addition, the record included hundreds of additional pages of material that Appellant sent to the hearing examiner after the close of the hearing which he had not introduced into evidence at the hearing. The entire record provided to the State Board by BCPS is a binder four inches thick containing twenty-five tabs.

Appellant did supply the State Board with allegedly “omitted transcript information” by letter dated May 12, 2004. However, that information is merely a packet of homework papers from the very beginning of the 2001-2002 school year. A second packet received that same day consists of his job offer letter from BCPS, three applicant reference forms, and three verification of teaching experience forms. Appellant did not introduce any of these items at the hearing below, nor did he raise the issue before the hearing examiner that his contract allegedly did not properly reflect his years of teaching experience.

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, because Appellant failed to raise these issues below, he has waived his right to raise these matters on appeal to the State Board.

CONCLUSION

For the reasons set out above and finding no due process violations or other illegalities in the proceedings, we affirm the contract non-renewal decision made by the Baltimore County Board of Education.

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August 25, 2004