

ROGER DUNN,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-35

OPINION

In this appeal Roger Dunn, a tenured social studies teacher, contests the local board's decision to terminate him based on incompetence. On May 5 and 6, 1997, a hearing was conducted before the State Office of Administrative Hearings. On August 25, 1997, the administrative law judge issued a proposed decision upholding the decision of the Board of Education of Baltimore County. A copy of that proposed decision is attached as Exhibit 1.

On January 28, 1998, the State Board issued an opinion remanding the case to the administrative law judge for the taking of additional testimony on whether or not Appellant was targeted for dismissal. Based on the remand decision, an additional nine days of hearing were conducted before the State Office of Administrative Hearings. On June 3, 1999, the administrative law judge issued a supplemental proposed decision upholding the termination decision made by the Board of Education of Baltimore County. A copy of that supplemental proposed decision is attached as Exhibit 2. Appellant did not file any exceptions to the supplemental proposed decision. Final oral argument by both parties before the State Board occurred on June 29, 1999.

Based upon our review of the entire record in this matter and after considering the arguments of counsel, we adopt the Findings of Fact and Conclusions of Law of the administrative law judge as set forth in Exhibits 1 and 2. We therefore affirm the termination decision made by the Board of Education of Baltimore County.

Walter Sondheim, Jr.
President

Raymond V. Bartlett

Philip S. Benzil

George W. Fisher, Sr.

Morris Jones

Marilyn D. Maulsby

ABSENT

Judith McHale

John Wisthoff

DISSENT

Based upon our review of the record and after considering the arguments of counsel, we do not find that the local board has met its burden of proof to sustain Appellant's termination based on incompetency.

Edward Andrews
Vice President

JoAnn T. Bell

Adrienne L. Ottaviani

July 28, 1999

EXHIBIT I

ROGER DUNN * BEFORE WAYNE A. BROOKS,
APPELLANT * AN ADMINISTRATIVE LAW JUDGE
v. * OF THE MARYLAND OFFICE
BOARD OF EDUCATION * OF ADMINISTRATIVE HEARINGS
OF BALTIMORE COUNTY * CASE NO. 98-MSDE-BE-01-037
* * * * *

SUPPLEMENTAL PROPOSED DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

This case is before the Office of Administrative Hearings (“OAH”) as a result of an Interim Opinion by the Maryland State Board of Education issued on January 28, 1998, remanding the case for further evidence on the issue of whether the Appellant was targeted for dismissal:

Because we find the issue as to whether Appellant was targeted for dismissal pivotal to our decision in this appeal, we believe additional evidence is necessary to clarify this matter. For these reasons, we are remanding this case to the administrative law judge for the taking of additional testimony through the use of subpoena power as appropriate on whether or not Appellant was targeted for dismissal. After receiving the additional evidence, if any, the administrative law judge is requested to make any appropriate revisions to the proposed decision and resubmit the proposed decision to the State Board in accordance with the procedures set out at COMAR 13A.01.01.03P.

The supplemental proceeding began on May 7, 1998, at the OAH. The Appellant was again represented by Howard J. Needle, Esq., and the Appellee, the Board of Education for Baltimore County, was again represented by Leslie R. Stellman, Esq., Timothy Dixon, Esq., and J. Robert Haines, Ass't. County Attorney for Baltimore County.

By way of background, the Appellant received notification on or about April 26, 1995, from the Baltimore County Public School System's Superintendent, Dr. Stuart Berger, recommending a termination of his employment as a Social Studies Teacher at Perry Hall High School. Appellant appealed the recommendation to the Board of Education of Baltimore County (the "Board"). Edward J. Novak, Esq., a Hearing Examiner of the Board ("Hearing Examiner") conducted hearings on September 7, October 17, October 25, November 2, November 20, November 28, December 18, and December 21, 1995, pursuant to Md. Code Ann., Educ. § 6-203. The Hearing Examiner recommended termination of the Appellant based on a finding of incompetency. The Appellant appealed the Hearing Examiner's recommendation to the Board. After hearing arguments from both parties on June 18, 1996, and reviewing the record compiled by the Hearing Examiner, the Board affirmed the Appellant's termination. Pursuant to Md. Code Ann., Educ. § 6-202(4), the Appellant appealed the Board's order to the Maryland State Board of Education and the matter was scheduled before the Office of Administrative Hearings. A hearing was conducted pursuant to the Code of Maryland Regulations ("COMAR") 13A.01.01.03P(1), on May 5 and 6, 1997, before Wayne A. Brooks, Administrative Law Judge ("ALJ"), at the OAH. After a review of the evidence, the ALJ found and concluded that the Appellant should be terminated for incompetency, and issued a proposed decision on August 25, 1997. The Appellant filed written objections to the proposed decision, and this remand followed. This supplemental proceeding confined itself to a consideration

of whether the Appellant was targeted for dismissal for an unlawful, arbitrary or capricious reason.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1995 & Supp. 1998) and the Rules of Procedure of the Office of Administrative Hearings, COMAR 28.02.01.

ISSUE

The issue on appeal is whether the Appellant has proven by a preponderance of the evidence that he was targeted for dismissal for an unlawful, arbitrary, or capricious reason.¹

SUMMARY OF THE EVIDENCE

A. **Exhibits**²

The following exhibits were admitted into evidence on behalf of the Appellant:

- App. Ex. 1 - Copy of Assistant Principal Positions for June 17 Board Meeting;
- App. Ex. 2 - Letter to Appellant from Morton Greenberg, dated November 24, 1992;
- App. Ex. 3 - Handwritten letter from Appellant to Phil Rivera, dated November 25, 1992;
- App. Ex. 4 - Notes on Meeting with Roger Dunn, dated January 5, 1995;
- App. Ex. 5 - Memo to Greenberg from Rivera, re: Dunn, dated October 9, 1992;
- App. Ex. 6 - Letter from Needle to Stelman, dated May 22, 1998;
- App. Ex. 7 - Perry Hall H.S. Climate Survey Results 1995-96;

¹Since there was some dispute as to the Maryland State Board of Education's Interim Opinion on the stated issue and burden of proof for his remanded hearing, the parties were required to submit briefs on those issues. After a review of counsel's briefs and arguments, I determined the issue as stated. The Appellant agreed that he should have the burden of proof in this matter.

²I have incorporated and adopted by reference all documents submitted before the Hearing Officer and admitted before me at the prior hearing of this matter.

- App. Ex. 8a - Field Trip Instructions, revised 11/16/72;
- App. Ex. 8b - Field Trip Instructions, revised 4/25/95;
- App. Ex. 9 - copy of Baltimore County Public Schools Task Force Final Investigative Report;
- App. Ex. 10 - TABCO Bulletin, dated February 6, 1995;
- App. Ex. 11 - TABCO Bulletin, dated March 8, 1995;
- App. Ex. 12 - TABCO Bulletin, dated June 12, 1995;
- App. Ex. 13 - TABCO Bulletin, dated January 2, 1996;
- App. Ex. 14 - Memo from Margaret-Ann Howie to Area Assistant Superintendents, re: Non-Tenured Teachers, dated November 15, 1993;
- App. Ex. 15 - Memo from J. Robert Haines to Area Superintendents, re: Dismissal of Incompetent Tenured Teachers, dated January 31, 1995;
- App. Ex. 16 - Appraisal Process Calendar;
- App. Ex. 17 - Appraisal Process Calendar, for 93-94 and 94-95 school years;
- App. Ex. 18 - Roster of Marginal Rated Tenured Teachers, 1993-94 School Year;
- App. Ex. 19 - Appraisal Process Logs; and
- App. Ex. 20 - Appraisal Process Logs.

The following exhibits were admitted into evidence on behalf of the Appellee:

- Ape. Ex. 1 - Letter from Thomas Hensley, N.E. Area Superintendent to Haines, dated May 6, 1998;
- Ape. Ex. 2 - [see attached order]
- Ape. Ex. 3 - Letter from Stellman to David Grover, Esq., dated May 4, 1998;
- Ape. Ex. 4 - Memo to Roger Dunn from Chris Bush, re: Adult Ed Deposit, dated March 6, 1992;

- Ape. Ex. 5 - Instructional Administrative and Supervisory Evaluation;
- Ape. Ex. 6 - Handwritten letter from Appellant to Bob [Tune];
- Ape. Ex. 7 - Letter from Haines to Needle, dated May 27, 1998;
- Ape. Ex. 8 - copy of Charge of Discrimination by Appellant, dated March 22, 1996;
- Ape. Ex. 9 - copy of blank Grievance Report Form;
- Ape. Ex. 10 - Evaluation of Teacher Process, dated June 10, 1992;
- Ape. Ex. 11 - Memo to Greenberg from Appellant, re: 1991-92 Evaluation;
- Ape. Ex. 12 - Letter from Robert Chapman, Acting Associate Superintendent to Appellant, dated July 20, 1992;
- Ape. Ex. 13 - Memo to Chapman from Appellant, re: Evaluation, dated July 10, 1992;
- Ape. Ex. 14 - Letter from Marchione to Appellant, dated October 9, 1992;
- Ape. Ex. 15 - Letter from Stephen Jones, Area Superintendent to Appellant, dated September 16, 1993;
- Ape. Ex. 16 - Letter from Howie to Appellant, dated August 31, 1994;
- Ape. Ex. 17 - Memo to Appellant from Rivera, re: Field Trip Procedures, dated November 18, 1992;
- Ape. Ex. 18 - Field Trip form submitted by Appellant;
- Ape. Ex. 19 - Memo to Appellant from the Appraisal Team, re: evaluation on 3/5/93, dated March 12, 1993;
- Ape. Ex.20A- Letter from Greenberg to Appellant, dated August 18, 1992;
- Ape. Ex.20B- Letter from Beverly and Donald German to Greenberg, dated July 6, 1992;
- Ape. Ex. 21 - Typed Notes from Department Head Meeting, 4/19/93;
- Ape. Ex. 22 - Memo to Appellant from Greenberg, re: observation conference, dated November 25, 1992;

- Ape. Ex. 23 - Memo to Appellant from Rivera, re: conference 12/23/92, dated January 5, 1993;
- Ape. Ex. 24 - Memo to Appellant from Rivera, re: Bowie YMCA Field Trip 2/20/93, dated February 19, 1993;
- Ape. Ex. 25 - copy of Application for Use of School Facilities;
- Ape. Ex. 26 - Handwritten letter from Appellant to Rivera;
- Ape. Ex. 27 - Attorney Availability Calendar (not admitted, only for discussion purposes);
- Ape. Ex. 28 - Memo to Staff from Greenberg, re: Climate Survey, dated May 13, 1994;
- Ape. Ex. 29 - Evaluation of Principal Greenberg 1993-94 School Year;
- Ape. Ex. 30 - Memo to Physical Education Teachers, Social Studies Teachers from Rivera, re: monitor parking lot between classes, dated May 4, 1993;
- Ape. Ex. 31 - Appellant's schedule/duty assignments;
- Ape. Ex. 32 - Appellant's schedule/duty assignments;
- Ape. Ex. 33 - Handwritten letter from Appellant to Sue [Hanson];
- Ape. Ex. 34 - Handwritten note from Appellant to Sue [Hanson];
- Ape. Ex. 35 - Memo to Appellant from Greenberg, re: observation request, dated October 4, 1994;
- Ape. Ex. 36 - Letter from Straley to Dr. Berger, dated July 28, 1994;
- Ape. Ex. 37 - Letter from Straley to Dr. Berger, dated May 27, 1994;
- Ape. Ex. 38 - blank copy of transportation permission slip;
- Ape. Ex. 39 - Field Trip Instructions, original approved 11/16/72;
- Ape. Ex. 40 - Memo to Appellant from Greenberg, re: Observation, June 7, 1994, dated June 3, 1994;
- Ape. Ex. 41 - Memo to Appellant from Hanson, re: observation, dated February 1, 1995; and
- Ape. Ex. 42 - Letter from Haines to Needle, dated June 22, 1998.

B. Testimony

The following witnesses presented testimony on behalf of the Appellant:

1. Ralph Straley, retired Maryland State Teachers Association
2. William Jachim, Chemistry Teacher, PHHS
3. Eugene Edwards, retired Social Studies Teacher, Balt. Co. Schools
4. Gary Trout, retired Social Studies Teacher, Balt. Co. Schools
5. James Selway, Teacher, Balt. Co. Schools
6. George Wright, Social Studies Teacher, Balt. Co. Schools
7. Eleanora Hall, former Teacher, Balt. Co. Schools
8. Robert Tune, Balt. Co. Schools Adult Education
9. Peter Sugatt, retired Social Studies Teacher, Balt. Co. Schools
10. Appellant

The following witnesses presented testimony on behalf of the Board:

1. Dr. Steven Jones, Assoc. Superintendent, Balt. Co. Schools
2. Christie Brawn, Secretary, Balt. Co. Schools
3. Marilyn Herd, retired, Secretary, Balt. Co. Schools
4. Richard Cantwell, retired former Vice Principal, PHHS
5. Bruce Seward, Guidance Chair, PHHS
6. Vivian Davis, Social Studies Teacher, PHHS
7. Phil Rivera, Assistant Principal, PHHS
8. Sue Hanson, Social Studies Department Chair, PHHS
9. Mort Greenberg, retired, Principal, PHHS
10. Rex Sheppard, Supervisor of Social Studies, Balt. Co. Schools

FINDINGS OF FACT

After careful consideration of the record and the additional testimony presented, I ind, by a preponderance of the evidence, the following facts:

1. I incorporate and adopt by reference the Stipulated Facts 1 through 6 of the Proposed Decision issued on August 25, 1997.
2. I incorporate and adopt by reference from Findings of Facts 7 through 17 of the Proposed Decision issued on August 25, 1997.

Stipulated Facts II:

Witnesses:³

3. The parties agreed that Dr. Stephen C. Jones would have testified to the following:

As Area Superintendent, he was former principal Greenberg's supervisor, and that he would never participate in a scheme to "target" anyone in any of the schools he supervised, including Perry Hall High School. In fact, if Mr. Greenberg or any other principal presented him with a plan to "target" a particular teacher, he would take issue with such a plan and would swiftly overrule it. Finally, that Mr. Greenberg was most upset about having to recommend Mr. Dunn's termination, and that he "agonized" about it over time. In short, he was not a "rubber stamp" for decisions made by principals such as Mr. Greenberg regarding teacher dismissals.

4. The parties agreed that Beverly German would have testified to the following:

As a former supervisor who worked with Mr. Greenberg when the latter was a principal at Randallstown High School, she never observed his demeanor to be one of vindictiveness, nor did she sense that Mr. Greenberg would have kept a "hit list" of those he sought to "target" for harsher treatment. In short, that this was simply not Mr. Greenberg's style, personality, or management philosophy.

5. The parties agreed that Harold Hatton would have testified to the following:

As former supervisor for secondary schools for the Northeast Area, he worked extremely closely with Mr. Greenberg, as well as other principals who had at-risk teachers. Mr. Dunn was not "targeted," and to the contrary, some 2 to 3 years went into the appraisal team's unsuccessful efforts to improve Mr. Dunn's performance. Prior to his assignment in the Northeast Area, he was a fellow principal with Mr. Greenberg in the Northwest Area, where he never observed or sensed that Mr. Greenberg was either vindictive or inclined to "target" teachers. After the appraisal team had already observed Mr. Dunn over a period of time at Perry Hall High School, he, who was outside

³Pursuant to a teleconference with the parties on April 5, 1999, certain language within the originally submitted stipulations for the witnesses (now noted in findings of fact #3-10), were changed by agreement. In other areas, the parties allowed the ALJ to change some of the language where there were disagreements. An attempt was made so that the changes did not effect the substance of the statements, the tense of certain verbs were changed (i.e. "will" to "would"), and the format of the stipulation.

of the normal appraisal team and school administration for Perry Hall High School, was called in for his own observation and evaluation on a number of occasions. Seeing largely unsatisfactory lessons, he concurred with the appraisal team's recommendation that Mr. Dunn be terminated. At no time was he aware of any meetings prior to any observations where the results of those observations were pre-determined. He would never be part of such a scheme, which if discovered, would have caused him to shut down the entire process. He wished fervently for Mr. Dunn to succeed. Dr. Jones and he were superiors of Mr. Greenberg's, and would not have tolerated any attempt to "target" Mr. Dunn. Mr. Greenberg agonized over Mr. Dunn's termination. Even in private, Mr. Greenberg never expressed a desire to "get" Mr. Dunn or any other specific teacher. Had he sensed a personal animosity between the two, he would have warned Mr. Greenberg to back off Mr. Dunn's case. After on particularly poor observation, he observed that Mr. Greenberg was visibly upset over Mr. Dunn's failure to show sufficient progress.

6. The parties agreed that Jane Barranger would have testified to the following:

She was unaware of any evidence of a "hit list," and was not urged to "target" Mr. Dunn by anyone, including Mr. Greenberg, whom she observed to be willing to listen to highly outspoken teachers, including teachers in her department, without taking retaliatory steps against anyone.

7. The parties agreed that Sandra Thomas would have testified to the following:

As assistant principal, she worked closely with Principal Greenberg during Mr. Dunn's final 3 years at Perry Hall High School. Mr. Greenberg had no "hit list," did not "target" Mr. Dunn or anyone else for termination or adverse treatment, and worked hard at insuring fairness in his treatment of all teachers, including Mr. Dunn. Thus, she can testify with certainty that Mr. Greenberg never harbored a grudge. At staff meetings with his administrators, Mr. Greenberg regularly shared developments in the ongoing effort to improve Mr. Dunn's performance. She recalled hearing Mr. Greenberg agonize about the fact that Mr. Dunn had a family, including sons who attend Perry Hall, and for that reason he was frequently heard expressing his wish that Mr. Dunn could "pull [a successful lesson] out." She recalled that the closer time got to the point of Mr. Dunn's termination, the more agonized Mr. Greenberg became at that likely outcome. Mr. Greenberg was far from "cavalier" about the decision to agree with

the appraisal team members who recommended termination of Mr. Dunn to his Area Superintendent. With full retirement on the horizon for Mr. Greenberg, she thought he had no reason to succumb to any pressure from any source in central administration regarding the treatment of any particular teacher, including Mr. Dunn, although there was no such pressure in that regard. Mr. Dunn at no time expressed a concern to her that he was being “targeted” or otherwise treated unfairly.

8. The parties agreed that Frances Dick would have testified to the following:

She has been the chair of the Perry Hall High School business department for the past 5 years, but has worked with Mr. Greenberg for some 30 years, going back to the days in which Mr. Greenberg was an assistant principal at Patapsco High School. She would deny any knowledge of “targeting” of teachers by Mr. Greenberg or any other administrator at Perry High Hall School. Mr. Greenberg’s style was to try to encourage teachers to succeed, not to fire them, as reflected in a situation involving a poor performing teacher on Ms. Dick’s business education faculty (John Kramer). In one post-observation conference, she recalled Mr. Greenberg telling his teacher, “I’ve seen you teach better: I know you can succeed,” or words to that effect. This attitude typified Mr. Greenberg’s view of supervision.

9. The parties agreed that Diane Herpel would have testified to the following:

She was another secretary in the school’s front office during the relevant period. She knew of no “hit list,” nor heard of such a thing while at Perry High Hall School. Mr. Dunn, on the other hand, made occasional comments to her to the effect that he was “not on Mort [Greenberg’s] favorite list,” or that he was “not on the good side of Mort.” She has no information as to why Mr. Dunn would have felt that way.

10. The parties agreed that Barbara Rees would have testified to the following:

As chair of the media department at Perry High Hall School, she would deny that Mr. Greenberg had a “hit list,” was not vindictive towards anyone on the faculty, and frequently disagreed with her over personnel and other issues, but never took such disagreements out on her in the form of retaliation. As a member of the Randallstown High School Faculty Council, she signed a grievance some 10 years ago against the administration at the school, including Principal Greenberg, over the school’s heating and cooling

environment. She was not aware of any retaliation having occurred to either her (she was, in fact, invited by Mr. Greenberg to come to Perry Hall when he became principal there) or any other signatory of the grievance. To the best of her knowledge, another Grievance signatory, Dr. Saunders, was even made assistant principal, which was a promotion endorsed by Mr. Greenberg. When she felt intimidated by her department chair, Mr. Greenberg stood up to the chair and eventually she received an “outstanding” evaluation.

Other Stipulated Facts:

11. The issue of the Appellant’s removal as the night school principal at PHHS was not an issue effecting his termination as a teacher.⁴
12. There was not a written “hit list.”

Additional Facts II:

13. The Appellant was offered the following assistance by the PHHS administration:
 - a. meetings with his department chair and assistant vice-principal;
 - b. opportunity to observe social studies teachers at different schools;
 - c. opportunity to observe his department chair model a class;
 - d. suggested that he take a social studies method course at a local college;
 - e. Mr. Greenberg made certain that Ms. Hanson was familiar with relevant portions of the Appraisal of Teachers Manual and that she maintained an appraisal log on the Appellant;
 - f. Mr. Greenberg periodically met with Ms. Hanson to review the Appellant’s progress, and make further suggestions for assistance; and
 - g. Offered make-up observations and an opportunity to receive a satisfactory

⁴As a result of this stipulation the parties also stipulated that the testimony of Robert Tune should be disregarded, as well as Appellee’s exhibits 4, 5, and 6, and Appellant’s exhibit 2 (see, tr. 422:1 - 6).

evaluation if he achieved two satisfactory observations in a row.

14. Of the sixteen observations conducted, approximately seven were done during the 1992-1993 school year. At least one-half of the seven observations were requested by the Appellant.
15. The Appellant never complained during the 1992-1993 school year that the number of observations was excessive.
16. The number of administrators on the observation team for the Appellant varied from anywhere between three to four people. The team generally consisted of Mr. Greenberg, as Principal, a vice-principal, and the Department Chair. At times, Dr. Steven Jones, the Northeast Area Superintendent, Harold Hatton, the Supervisor for Secondary Schools in the Northeast Area, and/or Rex Sheppard, the Social Studies Supervisor would also join the observation team.
17. Over the course of the three years of observations, the observation team sometimes, but not often would meet in the principal's office prior to an observation of the Appellant. At those times, the general purpose for the pre-meeting was simply to gather together before going to the observation, but some members of the team would review the team's previous notes on the observations. There were no conclusions made as to the outcome of the observations prior to the observation. After the observations, the team generally would again meet in the principal's office to draft the observation report.
18. The Appellant had requested the presence of a TABCO representative (Ralph Straley) at some of his observations, but Mr. Greenberg denied the request, as Mr. Straley was not a part of the formal observation team. Mr. Straley, however, was granted permission to observe the Appellant's class at any other time.

19. The Appellant had two unannounced observations by Rex Sheppard, Supervisor of Social Studies for Baltimore County, to which they had previously agreed. He, however, did not work out an agreement with Susan Hanson, the Chairman of Social Studies at PHHS, so she did not conduct unannounced observations.
20. Ms. Hanson attempted to meet with the Appellant on a weekly basis to assist him with the planning and implementation of his lesson plans. On many occasions the Appellant was either late for the meetings, not prepared for the meetings, or did not attend the meetings. Ms. Hanson scheduled some of the meetings during the Appellant's scheduled planning period because of the problems previously noted, and because the Appellant would not commit to a time. During the times that they did meet, Ms. Hanson worked as purposed on assisting the Appellant with suggestions for the planning and implementation of his lesson plans.
21. During the course of the meetings with Ms. Hanson, the Appellant produced portions of approximately six lesson plans that he had been working on, only one during that time was complete. The last of the plans, and the only completed one, showed improvement.
22. At times, Ms. Hanson approved portions of the lesson plans discussed with the Appellant, including the critical thinking questions formulated. During the observation, however, the Appellant had problems with the implementation of the lesson plan.
23. Ms. Hanson denied the Appellant's request to observe other members of the social studies department at PHHS because it would be uncomfortable for everyone concerned, but she did recommend that he observe teachers at other schools. She also offered to model a lesson for him, but he never pursued the offer.
24. Ms. Hanson maintained an appraisal log on the Appellant. The main purpose of the log was

to reflect the contacts that she had with the Appellant regarding the appraisal process, and efforts made to assist him. The log did not serve to address every positive or negative thing that the Appellant did as a teacher, although one or the other may have been reflected in the log.

25. The Appellant would not seek assistance from his Assistant Principal, Phil Rivera, who had experience as a social studies teacher, because he had a strained relationship with him.
26. Mr. Rivera, however, did not treat the Appellant any different than other teachers. Mr. Rivera also did not assign the Appellant to any more extra assignments than any other teacher. Although the Appellant may have been assigned simultaneous duties, monitoring the cafeteria and then the auditorium, Mr. Rivera did not make the latter assignment.
27. Mr. Greenberg did not retaliate against the Appellant for filing a grievance against him in 1992, nor did he threaten to retaliate against the Appellant for anything else.

DISCUSSION

I have also adopted and incorporated by reference the Discussion at pages 7 through 14 of the Proposed Decision issued on August 25, 1997.

As noted previously, the prior hearings resulted in the conclusion that the Appellant should be terminated from his position as a high school social studies teacher on the basis of incompetency. Each one of the prior hearings required the trier of fact to look carefully at the volumes of evidence presented by the parties in this matter, and to make certain credibility judgments as to that evidence. At least from the standpoint of the hearings at the State level, the Appellant had ample opportunity to call and summons relevant witnesses, to fully explore their testimonies before the ALJ, and to

present evidence that he was targeted for dismissal for some grounds other than that permitted by law. In that regard, the Appellant presented approximately twelve witnesses in the present matter, specifically on the issue of targeting by the PHHS administration. He had previously failed to present any witnesses on that issue at the prior hearings in May 1997.

Despite his efforts in the instant hearing, however, none of the Appellant's witnesses presented sufficient evidence to prove that he was targeted for any other reason than his ability to be an effective and competent teacher.

The term "target" is defined as "an object of attack, criticism." Webster's New World Dictionary, 1990. The Appellant believed that in review of certain factors in this case, he was, in fact, targeted by the administration at PHHS for termination, and that he was treated differently than any of the other teachers in his school. He alleged approximately thirty factors, (many of which have been addressed in the prior hearings and not again fully addressed herein), that if taken together arguably would prove his allegations of targeting. The list included, in part, the following things: numerous and biased observations; that he angered Mr. Greenberg by filing a grievance against him; his assignment of simultaneous duties for lunch room monitoring and back of the auditorium monitoring; that he was harassed by Mr. Rivera; that his request for specific individuals to sit in on his observations were denied; that he lost precious planning time because of his required meetings with his supervisors; and that he was not provided any real support by the administration.

It is plausible that the factors taken together, if believed, would leave one to rationally suspect that he was being targeted. But after close scrutiny of his allegations, the Appellant has failed to establish the credibility of any of those factors, or to establish that, if true, any of the factors were a basis for his dismissal. I am, therefore, not convinced that he was targeted for unlawful, arbitrary or

capricious grounds.

Because of the number of factors raised by the Appellant, it is difficult to address each and every slight that he believed contributed to his being targeted because I could find no substance or credibility to any of his complaints. It is not to say that I found the Appellant to be a deliberate liar. After having the opportunity to observe the Appellant on at least two occasions, (certainly much more extensively during the remand case), I have actually found him to be an earnest, hard working person. But, I have also found that his realm of reality and view of events is greatly askew. As a result, he has found and created incidents from his last years at PHHS, and made them appear as though those coincidental events were part of a grand scheme to target him for termination. It has also been very evident from his testimony that he was not willing to accept any responsibility for his failures as a teacher. Instead he has taken a rather paranoid viewpoint in believing that anyone who did not support his position was a co-conspirator in his targeting, and not helpful to his cause. Furthermore, he tended to make broad and general allegations about perceived slights, and despite an opportunity to support the allegations he either conceded the allegations were not correct or his position changed as to the charges. All of those factors tended to greatly weaken his credibility, and lead me to conclude that his complaints had no merit.

Complaints

A. Animus/Hostility Complaints

A major part of the Appellant's complaint, in essence, was that everyone in a position of power over him was part of the conspiracy to target him, and that some of them had real animus towards him. To find the genesis of some of the alleged ill feelings, the Appellant went so far as to accuse Mr. Rivera of holding a grudge against him for ten to fifteen years. At that time, Mr. Rivera

was the Appellant's supervisor at a junior high school, and he and the Appellant differed about minor disagreements of procedures. Whatever other problems Mr. Rivera may have had, I did not find that he harbored a grudge during that long period of time, especially over something so minor, and I did not find that he had any sort of vendetta against the Appellant. It was apparent from the Appellant's testimony that he did not respect Mr. Rivera's opinions, and that there was a problem in the relationship. But again, the problem seemed to be more a figment of the Appellant's imagination. The Appellant admittedly was an outspoken critic of people and things that he didn't think made sense, Mr. Rivera was one of them. His critiques of and problems with Mr. Rivera, however, did not cause retaliation, his inability to heed advise, to listen to comments, and to follow procedures are the things that got him in trouble with Mr. Rivera. For example, the Appellant complained that Mr. Rivera denied him field trips for not completing documentation correctly, while other teachers were allowed to do so with the same lateness and incompleteness problems. The fact of the matter was that he had been told several times about the proper procedures, and at the last minute attempted to accomplish trips without going through those procedures. Again he refused to accept responsibility for his role. He also believed that Mr. Rivera assigned him more duties than any other teacher was assigned. Mr. Rivera did give the Appellant cafeteria duty, which not all teachers received, but the assignment was for a half-period whereas others were given assignments for a whole period. Furthermore, the Appellant subsequently was assigned a behind the auditorium monitoring duty as well, and it started right after his cafeteria assignment. Another administrator, however, gave him the auditorium assignment and Mr. Rivera was not a part of that decision.

He also believed that his termination was part of Mr. Greenberg's alleged retaliation for the grievance he (the Appellant) lodged against Mr. Greenberg. The grievance, however, was about an

evaluation he received in 1991-1992 from Tony Morreale, a former Department Chair for the Social Studies department at PHHS. Mr. Greenberg had no real involvement in the evaluation, as it occurred prior to his becoming Principal. Although Mr. Greenberg would not revise the evaluation, he did tell the Appellant that instead of waiting two years for another evaluation he would grant him another evaluation at the end of the year. The Appellant insisted that the grievance was the start of his problems with Mr. Greenberg, and that Mr. Greenberg would not meet with him one on one after that incident. He also alleged that Mr. Greenberg felt threatened by his stature in the community. I found no substance to those allegations either. Mr. Greenberg at times would not meet privately with the Appellant because of the Appellant's tendency to misconstrue things, and because of his desire to have a witness observe the meeting or to document it. Finally, despite the fact that Appellant was well liked by many parents and students alike, his status in the community was not the reason for his dismissal. As alluded to in the first decision, his good deeds were considered in mitigation, but they were never negatively used against the Appellant. Instead of having an agenda to get rid of the Appellant, the evidence showed that Mr. Greenberg, who presented as a credible witness, was genuinely concerned about the Appellant and wanted to see him succeed.

B. Assistance Complaints

In contradiction to the Appellant's complaints of lack of assistance, the evidence also showed that Mr. Greenberg was not only concerned, but he and the entire administration offered the Appellant assistance. In an ironic twist, the Appellant viewed much of the assistance offered as part of the problem, and did not heed much of the suggestions made to him.

He contended that the sixteen observations he had in a three-year period were excessive. The reason that many of his fellow teachers gave for their belief that he was being targeted was also

because of the unusual amount of observations he endured. In a normal circumstance, sixteen observations would be excessive. However, the year, for example, that the Appellant believed was the most excessive, (1992-1993 where six to seven observations were performed), the Appellant repeatedly requested an additional one after every unsatisfactory report. He admitted to asking for at least half of the observations. Simply, the Appellant can not have it both ways. He can not argue that they were excessive and at the same time argue that he had requested the additional observations. Some of the other observations were more of a chance to help the Appellant string together two consecutive satisfactory observations. Mr. Greenberg promised the Appellant that if he could put two good observations together there would be an attempt to have him rated as satisfactory. Unfortunately, the Appellant could not do it.

The Appellant also contended that there was no coordinated effort to help him. He faulted Mr. Greenberg and Ms. Hanson mainly for the failure to provide assistance. He argued that Mr. Greenberg placed Ms. Hanson, a relatively new Department Chair, in charge of steering his resurrection from an unsatisfactory performer to a satisfactory one, but that she did not have the experience or training to do so. First, there was no authority provided by the Appellant to show that anyone was required to provide such assistance. Certainly, it is logical that the entire administration would desire to see him succeed and would therefore lend some assistance. Mr. Greenberg testified that he left the responsibility to the Appellant's first line supervisor, Ms. Hanson. Mr. Greenberg also indicated that he made sure that she had relevant portions of the Appraisal of Teacher's Manual, and that she worked with the Appellant throughout his appraisal process. Despite the Appellant's argument that she had never seen the full Manual, I did not find that to be consequential. She had the relevant portions of the Manual, which would assist her with assessing and evaluating the Appellant's

performance. She also kept a log of her meaningful and relevant contacts with the Appellant in relationship to his appraisal. The Appellant was overly concerned that every contact that she had was not recorded and that it somehow proved that he was being targeted. Again, I did not find that to be the case. There were contacts and conversations that Ms. Hanson admitted were not made a part of the log, both positive and negative, and things that were made a part of it, but her focus was to include information regarding the appraisal process. It did not appear that she wanted to bias the administration against the Appellant. On the other hand, if she had noted every contact that she had with him then he would have argued that she was targeting him, as he did with Mr. Rivera.

Ms. Hanson, who appeared honest and sincere, indicated in her testimony that when she was elevated to the position of Department Chair, she had some discussions with her predecessor and Mr. Greenberg about staffing issues, but no real specific conversations about the Appellant. She also pointed out that her approach was to try to give every teacher a clean slate, so she would not be biased by earlier problems. She approached the Appellant in the same manner. Throughout her testimony, as with others, a pattern of the Appellant's behavior appeared obvious. The Appellant was generally disorganized, tardy, and reluctant to heed advice. Ms. Hanson made numerous efforts to meet with him and to get him to agree to dates, all with great difficulty. Once she set a date, then he complained that it was scheduled during his planning period. At the meetings, Ms. Hanson stated that the Appellant was hardly ever prepared, or he would have only portions of the material he needed for the meeting prepared. At other times, the Appellant asked to reschedule meetings. The times that they did meet, Ms. Hanson worked on planning lessons and other aspects of the class work in order to get the Appellant prepared for his next observation. A part of the preparation for the lesson plan was to develop critical thinking questions to ask students. Ms. Hanson admitted that she worked with the

Appellant on creating such questions, and that she approved some. However, the major criticisms against the Appellant, was not so much his inability to create a successful lesson plan, but his inability to implement the plan in the classroom, and keep his students motivated and involved. That is where the Appellant failed; yet he continually attempted to deflect attention from that problem by blaming his performance on a conspiracy. He also argued that he wanted to observe other teachers in his department to see what, if anything, they were doing differently. He complained that Ms. Hanson refused his request despite the fact that Mr. Greenberg stated that it was something that could have been done. Ms. Hanson presented sufficient reasoning for her decision to refuse the request. She believed that given the circumstances it would be uncomfortable and not in the best interest of any of the teachers involved having the observations as proposed. She did, however, offer the Appellant the opportunity to observe teachers at other schools as he had done in the past, and she was willing to model a class for him. The Appellant did not pursue either suggestion.

Mr. Greenberg also followed up on the Appellant's progress by periodically checking in with Ms. Hanson. As part of the observation team, Mr. Greenberg was involved in the team's recommendation that the Appellant take a social studies method course. Finally, Mr. Greenberg was also confident that Mr. Rivera could be instrumental in providing assistance to the Appellant, as Mr. Rivera had been a social studies chair previously. Of course, the Appellant did not welcome Mr. Rivera's assistance.

C. Conspiracy Complaints

As mentioned earlier, the Appellant at some point believed and argued that all of the people that he should have been able to rely upon for support from the administration instead joined as co-conspirators to terminate him after he was placed on someone's unwritten hit list. He alleged in

the previous state hearing that during Dr. Berger's regime, all principals were given authority to get rid of whomever they wanted. He asserted that there was a pervasive air of fear among teachers because principal's now had such control, and that they were targeting people that they didn't like or want. The Appellant also contended that no one in the system wanted to question the edict of Dr. Berger, and so no one challenged a principal or sought to seek a teacher's termination. In the instant case he questioned Mr. Sheppard's involvement on the observation team as evidence of the conspiracy. He believed that Dr. Jones was co-opted into his inevitable termination and advised him to take a medical leave before he was terminated. He also argued that every assistant principal and department chair involved in his case was under the fear of Mr. Greenberg and/or Mr. Rivera and was told that he was to be terminated. He specifically argued that Ms. Hanson received information from her predecessor, Ms. Barranger, and direction from Mr. Greenberg that he should be terminated. Again, none of the new allegations, as was true for the older ones, were proven and none amounted to any evidence of a conspiracy, of being on a hit list, or of being improperly targeted. None of the administrators that got involved in the case, Dr. Jones, Mr. Sheppard, Mr. Hatton, was subordinate to Mr. Greenberg, and none would have had to acquiesce to Mr. Greenberg's demands. The evidence indicated that, if they had been aware of a conspiracy to terminate the Appellant by Mr. Greenberg they would have refused to be a part of it, and they would have told him to remove himself from the process. I am convinced that from their own independent review of the facts, the three outside administrators came to their own conclusions that the Appellant's performance was not up to standard, and that he should be terminated. As to Ms. Hanson, it was admirable of her to look at the Appellant anew, without any prior baggage. The Appellant argued, however, that Ms. Hanson maintained a detached relationship from him, without attempting to get to know him or what he has

done. But that very well may have helped her, as she testified, to give the Appellant an opportunity to be seen in a different light. If she had not done so, then there may have been some credence in the Appellant's argument.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that there were certainly problems at PHHS; that there were probably different approaches that the administration at PHHS could have taken; and that there may even have been additional assistance that could have been provided to the Appellant; but the Appellant has not proven that he was targeted for dismissal for an unlawful, arbitrary or capricious reason in violation of Md. Code Ann., Educ. § 6-202 and COMAR 13A.01.01.03. There was no evidence that he was treated differently than other teachers, and there was no evidence that he was on someone's hit list. Unfortunately, the problems encountered by the Appellant were the direct result of his own failures as a teacher, and his failure to accept the advice of those that served to evaluate and assist him.

PROPOSED ORDER

It is proposed that the decision of the Board of Education of Baltimore County terminating the Appellant for incompetency be **UPHELD**.

Date: June 3, 1999

Wayne A. Brooks
Administrative Law Judge

NOTICE OF RIGHT TO FILE OBJECTIONS

Any party adversely affected by this proposed decision has the right to file objections with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200

West Baltimore Street, Baltimore, Maryland 21201-2595, within ten (10) days of receipt of the proposed decision, in accordance with COMAR 13A.01.01.03P(4).

EXHIBIT II

ROGER DUNN
APPELLANT

* BEFORE WAYNE A. BROOKS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS

v.

BOARD OF EDUCATION

OF BALTIMORE COUNTY
APPELLEE

* CASE NO. 96-MSDE-BE-01-550

* * * * *

PROPOSED DECISION
STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
PROPOSED ORDER

STATEMENT OF THE CASE

On or about April 26, 1995, Roger Dunn, ("Appellant"), a social studies teacher employed by the Baltimore County Public School System ("BCPS") at Perry Hall High School ("PHHS") received notification from BCPS Superintendent Dr. Stuart Berger recommending the termination of his employment. Appellant appealed the recommendation to the Board of Education of Baltimore County (the "Board"). Edward J. Novak, Esq., a Hearing Examiner for the Board ("Hearing Examiner"), conducted hearings on September 7, October 17, October 25, November 2, November 20, November 28, December 18, and December 21, 1995, pursuant to Md. Educ. Code Ann. § 6-203. The Hearing Examiner recommended termination of the Appellant based on a finding of incompetency. The Appellant appealed the Hearing Examiner's recommendation to the Board. After

hearing arguments from both parties on June 18, 1996, and reviewing the record compiled by the Hearing Examiner, the Board affirmed the Appellant's termination on September 10, 1996. Pursuant to Md. Educ. Code Ann. § 6-202(4), the Appellant appealed the Board's order to the Maryland State Board of Education on or about October 9, 1996, and the matter was scheduled before an administrative law judge of the Office of Administrative Hearings.

Pursuant to the Code of Maryland Regulations ("COMAR") 13A.01.01.03P(1), hearings were conducted on May 5 and 6, 1997, before Wayne A. Brooks, Administrative Law Judge ("ALJ"), at the Office of Administrative Hearings, Hunt Valley, Maryland.¹ The Appellant was represented by Howard J. Needle, Esq. Leslie R. Stellman, Esq. and Timothy Dixon, Esq. represented the Board.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, Md. State Gov't Code Ann. §§ 10-201 through 10-226 (1995 & Supp. 1996) and the Rules of Procedure of the Office of Administrative Hearings, COMAR 28.02.01.

ISSUE

The issue on appeal is whether the termination imposed upon the Appellant pursuant to Md. Educ. Code Ann. § 6-202(a)(1997) for incompetency was proper and in accordance with existing law and regulation.

SUMMARY OF THE EVIDENCE

A. Exhibits

The parties agreed to adopt and incorporate into this record all of the documents that were submitted from the record below. The Appellant did not submit any additional documents,

¹The record was held open until June 18, 1997, for the parties to submit closing statements and legal memorandums.

but the Board submitted one additional document, which was admitted as Board Exh. #1 (Senate Bill 868).

B. Testimony

The Appellant relied upon the testimonies developed from the hearing held before the Hearing Examiner, and presented the testimony of the following witness:

Dr. Stuart Berger, former Superintendent of Baltimore County Public School System.

The Board did not present any additional witnesses, but also relied upon the testimonies developed from the hearing held before the Hearing Examiner.

FINDINGS OF FACT

After careful consideration of the record and the additional testimony presented, I find, by a preponderance of the evidence, the following facts:

STIPULATED FACTS:²

1. [Appellant] served as a teacher in Baltimore County for a period in excess of 24 years, the last 9 years were spent teaching social studies at PHHS.
2. [Appellant] previously made a decision which changed his unreduced retirement benefits eligibility from requiring 25 years of service to 30 years of service.
3. The record in this case is uncontradicted that [Appellant] worked a substantial number of hours each week in his teaching job and in the other school-related and community-related activities that he was involved with; the time he worked exceeded the apparent average or

²The parties stipulated to the Hearing Examiner's findings of facts pertaining to the Appellant's work history. Therefore, these facts are taken directly from the decision of the Hearing Examiner, and incorporated herein as a part of the decision.

customary time that most teachers would work; his hours allowed him to be available for his students and other children after school and in the evenings and weekends.

4. The hearing record provides uncontradicted evidence of substantial involvement by [Appellant] in numerous additional school-related activities; in particular, his sponsorship and mentoring of the Legislative Club and of archaeological activities is highly commendable and shows evidence of his enthusiasm, caring and efforts to develop students to be the best that they can be; regardless of what or if he was paid extra for those activities, no adequate financial compensation would seem possible; the record shows he was truly recognized and appreciated by the students and parents who participated in and substantially benefitted from their association with the [A]ppellant.

5. The record in this case clearly and impressively suggests that [the Appellant] was and is a truly caring and supportive teacher and child mentor; his interest in and concern for his students and other children is beyond challenge; it was evidenced by his own testimony and the substantial showing of support from numerous witnesses (and the proffer of potential witnesses' testimony and a variety of exhibits accepted into evidence and offered but not admitted or accepted because of concern for the voluminous record already compiled).

6. While teaching at PHHS, school administrators determined that [Appellant] was experiencing job performance problems during school years 1992-93, 1993-94 and 1994-95 resulting in a substantially increased schedule of formal classroom observations.

ADDITIONAL FACTS:³

³I have adopted, with some modification, a number of the Proposed Findings of Fact submitted by the Appellee. Others were not used because I did not find them relevant to the decision.

7. The administrators concerns also resulted in activities being undertaken by both PHHS administrators and county staff and administrators to offer assistance to the Appellant and to more closely monitor his job performance on a regular basis. The assistance provided to and accepted and utilized by the Appellant resulted in some improvements in certain deficiencies, but not in other areas considered significant.

8. An appraisal team, consisting of Principal Greenberg, Assistant Principal Rivera, Supervisor Shepard and Department Chairman Barranger, later replaced by Ms. Hanson, conducted at least 16 formal classroom observations of the Appellant over a three (3) year period. These observations resulted in the production of written reports given to and discussed with the Appellant.

9. The reports resulted in the following ratings: 1992-1993: 2 ratings of needs improvement, 2 ratings of unsatisfactory; 1993-1994: 1 rated satisfactory, 2 ratings of needs improvement, 3 ratings of unsatisfactory; and, 1994-1995: 2 ratings of needs improvement, and 4 ratings of unsatisfactory.

10. The Board's witnesses who performed an observation or evaluation of the Appellant are experts in the field of observations and evaluations for tenured Maryland teachers.

11. The Appellant received 5 evaluations from the appraisal team over the three year period, and the overall ratings for the evaluations were: marginal (June 8, 1993), marginal (January 25, 1994), unsatisfactory (April 28, 1994), unsatisfactory (January 5, 1995), and unsatisfactory (April 5, 1995).

12. Section I, the "Professional Competencies" category of the evaluative instrument, was weighted the most on the evaluations by Principal Greenberg because it evaluated the factors

which are needed to be a good teacher. In each evaluation, the Section I rating corresponded with the overall rating.

13. The Appellant was fully informed of the problems that the appraisal team had with his performance, and he was given ample time to correct the deficiencies.

14. The problems of most concern were in the areas of lesson planning, implementing a lesson plan, questioning techniques, management of class time, and student classroom activities.

15. Since the Appellant did not make the necessary improvements, he was recommended for termination by the Area Superintendent, Dr. Stephen Jones, to the BCPS Superintendent.

16. Dr. Berger, then Superintendent of BCPS, after a review of the Appellant's file, recommended the Appellant's dismissal to the Board effective June 30, 1995, in a letter dated April 26, 1995.

17. Dr. Berger raised concerns about the Appellant's inability to effectively plan and implement appropriately developed and challenging lesson plans. Additional concerns involved inadequate questioning of levels and techniques.

DISCUSSION

COMAR 13A.01.01.03E provides for the procedure and standard of review in a teacher dismissal case and states the following:

(3) Teacher Dismissal and Suspension.

- (a) The standard of review in teacher dismissal or suspension actions shall be de novo as defined in Section E(3)(b).*
- (b) The State Board shall exercise its independent judgment on the record before it in determining whether to sustain a disciplinary infraction.*
- (c) The county board shall have the burden of proof.*

(d) *The State Board, in its discretion, may modify a penalty.*

Pursuant to the COMAR section cited above, I have undertaken an extensive review of the evidence presented and the decisions rendered in this matter from all levels, and I must conclude that the evidence clearly established the reasonableness of the Board's decision to terminate the Appellant.

The applicable law provides that a teacher may be suspended or dismissed, for cause, by a local board, on the recommendation of the superintendent, and that the teacher has the right to a hearing prior to such suspension or dismissal. Md Educ. Code Ann. § 6-202 (1992) reads, in pertinent part, as follows:

§ 6-202. Suspension or dismissal of teachers, principals and other professional personnel.

(a) *Grounds and procedure for suspension or dismissal.* - (1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:

- (i) Immorality;
- (ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of § 5-704 of the Family Law Article;
- (iii) Insubordination;
- (iv) Incompetency; or
- (v) Willful neglect of duty.

The evidence showed that the Appellant's performance as a teacher during school years 1992-1993, 1993-1994, and 1994-95 was not up to professional standards. There is no question that the Appellant worked hard at his teaching job, as well as with school-related and community-related activities, for which he was given the appropriate amount of credit; but it was his failures in the classroom which formed the basis for the termination.

As the parties acknowledged, the evidence presented before the Hearing Examiner included a massive amount of testimony and documents, all of which I will not attempt to recapitulate or discuss. However, for purposes of this decision, it is imperative that a general overview of the factual predicate for the Hearing Examiner's decision be reviewed herein.

In his testimony before the Hearing Examiner, Principal Greenberg noted that he had started to realize some problems with the Appellant's performance in the 1991-1992 school year. The problems of most concern were in the areas of lesson planning, implementing a lesson plan, questioning techniques, management of class time, and student classroom activities. During the time in question, as a result of continued performance problems by the Appellant, the administrators of PHHS and other county staff offered assistance to the Appellant, and began to more closely monitor his job performance on a regular basis. The assistance provided to and accepted by the Appellant, and subsequently utilized by the Appellant, resulted in some improvements in certain deficiencies, but not in other areas considered significant (more specifically, in the area of lesson planning). An appraisal team, consisting of Principal Greenberg, Assistant Principal Rivera, Supervisor Shepard and Department Chairman Barranger, later replaced by Ms. Hanson, conducted at least 16 formal classroom observations of the Appellant over a three (3) year period. These observations resulted in the production of written reports given to and discussed with the Appellant. The reports resulted in the following ratings: 1992-1993: 2 ratings of needs improvement, 2 ratings of unsatisfactory; 1993-1994: 1 rating of satisfactory, 2 ratings of needs improvement, 3 ratings of unsatisfactory; and, 1994-1995: 2 ratings of needs improvement, and 4 ratings of unsatisfactory. Since the Appellant did not make the necessary improvements, he was recommended for termination by the Area Superintendent,

Dr. Stephen Jones.

The conduct, number and conclusions of the observations were the source of many of the Appellant's objections. The Appellant also argued that the observations were sort of a "witch hunt" against him. Again, all of the various objections to the observations were areas that were fully explored and addressed by the Hearing Examiner, and the Appellant presented nothing new that would show that the Hearing Examiner's decision's in those areas were arbitrary, unreasonable or illegal. Generally speaking, the Hearing Examiner found that there may have been some minor problems or inconsistencies with the observations and the reports, but he did not find anything substantial enough to reverse the recommended termination of the Appellant. The Hearing Examiner also did not find a grand conspiracy amongst the administrators of PHHS to rid themselves of the Appellant. After reviewing the evidence and the arguments I must agree with the Hearing Examiner.

From the stand point of the credibility of the witnesses who testified for and against the Appellant in regard to the observations, I have to give considerable deference to the Hearing Examiner's findings. Anderson v. Dep't of Public Safety, 330 Md. 187 (1993). Although, the Hearing Examiner found some problems with the credibility of some of the Superintendent's witnesses, more specifically, Principal Greenberg, and Assistant Principal Rivera, he looked at the totality of the evidence from all of the witnesses and determined that the other witnesses (which could be considered neutral) also noted problems with the Appellant's performance. Furthermore, it can not be overlooked that even the Appellant's own "independent" witnesses found some deficiencies in the Appellant's classroom performance, although their ratings were more favorable than the Superintendent's witnesses.

In terms of the conspiracy/witch hunt theory propounded by the Appellant, the witness that the Appellant relied upon as providing the "smoking gun" for that theory, Donna Fritz, apparently did not impress the Hearing Examiner. He could not find from her testimony that there was some sort of predetermined negative rating for the Appellant, nor that the Appellant was on somebody's hit list for termination.

In the instant hearing, the Appellant did not really add anything to the above-noted arguments, other than his attempt to get Dr. Stuart Berger, the former Superintendent, to admit that he (the Appellant) was targeted for termination. Of course, Dr. Berger denied any specific attempts that he was aware of to specifically target the Appellant, although he admitted to a general goal of attempting to identify poor performers for termination. Furthermore, it was apparent that Dr. Berger has had a few encounters (that he probably believed to be unpleasant) with the Appellant's counsel, and was not the most cooperative witness, but I could not find his testimony biased or evasive.

The Appellant's next argument was that the observers who rated him less than satisfactory should have, pursuant to Section 13.4.6 of the Master Agreement and Section A.8 of the Appraisal of Teacher's Manual suggested, in writing, ways in which he could improve. He noted that his testimony before the Hearing Examiner indicated that this was never done in his case, and it was therefore a violation of the Master Agreement and Teacher's Manual. The evidence, however, would indicate a contrary finding. A review of the observation reports shows that the observers noted various things that the Appellant should do in the "comments" section of the report. Further, the Hearing Examiner stated that the Appellant had been offered assistance and referred to various teaching materials. The improvements that the Appellant made during the

course of the observations were no doubt attributed in large degree to those recommendations, in written and verbal form. Therefore, I find no violation of Section 13.4.6 of the Master Agreement and Section A.8 of the Appraisal of Teacher's Manual.

The Hearing Examiner painstakingly reviewed each and every argument of the Appellant against the evidence presented in the case, and he found that the case was similar to the findings and conclusions of Avery v. Baltimore County Board of Education, 4 Op. MSBE 10 (1985). I can also conclude that based upon the evidence presented: 1) the evaluation process utilized by PHHS was properly followed; 2) PHHS appraisal team used objective criteria to judge the Appellant's teaching performance; 3) the evaluations were conducted in a proper manner; and 4) the Appellant was provided adequate assistance to help improve his performance.

The Appellant also argued that even beyond the PHHS level there were mistakes and violations made at the Superintendent's level. He contended that Section 13.10 of the Master Agreement was violated because his file, that went to the Superintendent for review, contained material of a negative nature without his knowledge. The Hearing Examiner, as well as the Appellant, reviewed the file at the hearing below, but I am not aware of, nor have I been presented in this hearing, any specific negative material that the Appellant alleged was included in his file, other than Counsel's argument that grievance forms and attendant papers were in the file. The Hearing Examiner addressed the issue and noted that he found nothing improper about the Appellant's personnel files (including any alleged negative materials). Again, I must conclude that the Hearing Examiner's decision as to the issue of a violation of Section 13.10 of the Master Agreement was supported by the evidence.

Finally, in terms of the actions or violations at the Superintendent's level, the Appellant

argued that in accordance with Rule 4118.16 of the Board of Education Manual of Policies and Regulations, he was entitled to discuss the possibility of retirement with the Area Superintendent. The Appellant claimed that since he had almost 25 years of service, he had requested the opportunity to teach just one more year before considering retirement. He asserted that his proposal was considered and approved by Dr. Berger, but once it was discovered that there was some confusion about the subject of the proposal, it was denied. First, it should be noted that the Appellant was not eligible for retirement, or even early retirement, so the proposal would not have been valid anyway. Second, there is no requirement that the Superintendent grant retirement; the requirement is that it be discussed or considered. Finally, Dr. Berger stated that he was unaware of the proposal because he left it to his Deputy, Dr. Marchione, to handle. In this case, the possibility of retirement was discussed, but as noted, the Appellant was not eligible for retirement anyway, so I can not find that there was a violation of the rule.

The Appellant's last assault on the decision below was that he was denied due process. He made the same arguments before the Hearing Examiner, in that he believed that there was,

"a lack of discovery and subpoena power, witnesses reluctant to testify because of retaliation, lack of *de novo* appeal, problems with potential bias on the part of the hearing examiner because his selection and compensation are controlled by the Board which makes it extremely difficult for him to find against the Board."

The Hearing Examiner also adequately addressed each of those issues and concluded that the hearing followed the established procedures as set forth in the Education Article (Md. Educ. Code Ann. § 6-203). The Appellant is not entitled to any more process than that which was established by the Maryland Legislature for this type of case, and I find that his arguments are without merit. Assuming *arguendo*, that the Appellant's lack of discovery and subpoena power

had some impact on his ability to prepare his case or defend against the Board's allegations, or that the Hearing Examiner was beholden to the Board, all of those problems were cured at the hearing before me, because he was provided such opportunities through a *de novo* hearing by an independent administrative law judge. Over the course of the several hearings involved in this case, the Appellant has been given ample opportunity to review all of the evidence against him, and to prepare a case in defense of the allegations, including calling a number of witnesses on his behalf.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the decision by the Local Board to dismiss the Appellant, **ROGER DUNN**, was in accordance with existing law and is warranted pursuant to Md. Educ. Code Ann. § 6-202 and COMAR 13A.01.01.03.

PROPOSED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is proposed that the decision of the Board of Education of Baltimore County terminating the Appellant, Roger Dunn for incompetency be **UPHELD**.

Date: August 25, 1997

Wayne A. Brooks
Administrative Law Judge