

KRISTINE LOCKWOOD,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-40

OPINION

In this appeal, a probationary teacher challenges the local board's decision not to renew her teaching contract. Appellant maintains that the non-renewal decision was based on retaliation for her complaints about testing paint in her classroom, her seeking special education services for a student, her political campaign to become a member of the local board of education, her posting messages critical of the local board on a computer listserv, and her filing grievances against the school system. The local board has submitted a Motion to Dismiss or for Summary Affirmance maintaining that the decision to nonrenew the contract was not done on an illegal basis. Appellant has submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant was employed as a teacher at Glenwood Middle School in Howard County for the 1998-99 and 1999-2000 school years. During the 2 years, Appellant received unsatisfactory ratings or evaluative comments on the following assessment instruments: classroom observation dated April 19, 1999; classroom observation dated May 19, 1999; 1998-99 evaluation dated June 9, 1999; classroom observation dated November 4, 1999; classroom observation dated March 6, 2000; and 1999-2000 evaluation dated March 15, 2000. In particular, deficiencies in Appellant's performance were noted in the areas of planning, preparation and delivery of instruction. Appellant was also placed on an assistance plan in November, 1999.

On March 22, 2000, Daniel Michaels, Principal of Glenwood Middle School, recommended the non-renewal of Appellant's teaching contract.¹ In a memorandum to the superintendent, Principal Michaels stated:

I am recommending that Kristine Lockwood be nonrenewed for the reasons summarized in this memorandum. Kristine

¹By letter of the same date, Principal Michaels advised Appellant of his recommendation that her teaching contract not be renewed.

Lockwood is a 2nd year teacher in the system. In her first year 1998-99, Ms. Lockwood was employed as an English and social studies teacher at Glenwood Middle School. In her second year Ms. Lockwood was employed as an English teacher at Glenwood Middle School. During this time the need for improved performance was noted, communicated to Ms. Lockwood, and an action plan was implemented, and followed up with monitoring. Improvement was expected in the domain areas of Planning and Preparation and Delivery of Instruction. A plan of action was instituted to help Ms. Lockwood achieve expected levels of performance, was monitored and modified with her input and was reviewed. After monitoring Ms. Lockwood's performance for the past two years and under the action plan, I am recommending that her teaching contract be nonrenewed.

The local superintendent recommended non-renewal of Appellant's teaching contract to the local board. The local board adopted the recommendation and on April 27, 2000, Appellant was advised that her employment contract with the school system was not being renewed by the local board.

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 claims 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:

(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, for probationary certificated employees, the only process due the individual is written notice by May 1 of the decision not to renew the probationary contract. Here, Appellant does not allege untimely notice of the non-renewal decision.

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, a probationary teacher has no entitlement to contract renewal. 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).

Here, Appellant makes unsubstantiated allegations that the non-renewal decision was based on retaliation for a variety of activities in which she engaged. These activities included complaining to the school system about testing paint in her classroom, seeking special education services on behalf of a student, campaigning for election to the local board of education, posting messages critical of the local board on a computer listserv, and filing grievances against the school system.

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 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 contradict the sworn affidavits of her principal as well as that of the local superintendent.² Accordingly, we believe Appellant has failed to meet her burden of demonstrating that the local board’s decision was illegal.

Furthermore, in contrast to Appellant’s claims, the record in this case reveals that there were deficiencies in Appellant’s teaching performance. These deficiencies were documented and communicated to Appellant who was placed on a plan of action to assist her in improving her performance. *See* classroom observations and evaluations. Additionally, in his affidavit, Principal Michaels states:

My recommendation that the Board of Education non-renew the Appellant was based on the Appellant’s record of performance and my assessment of her teaching ability. Contrary to the Appellant’s allegations, my decisions were not based on the fact that Ms. Lockwood had filed contract grievances or enlisted union representation, campaigned for election to the Howard County Board of Education, complained about paint fumes, or had provided comment on public listserves, [sic] etc.³

²Appellant asserts that the directions in COMAR 13A.01.01.03B for filing an appeal do not require an affidavit. That is true. However, it is a well established legal principle that facts set out in a sworn affidavit have more validity than bare allegations in a pleading.

³Principal Michael’s objectivity is supported by the fact that he gave Appellant a good evaluation on her February 15, 2000 classroom observation, complimenting Appellant’s teaching and noting several strengths of the lesson. *See* observation. This observation occurred following the actions on which Appellant bases her retaliation claim.

The affidavit of Michael E. Hickey contains a similar statement supporting the non-renewal decision.

Nonetheless, as previously noted, a local board does not have to establish cause for a decision not to renew a probationary teacher's contract. Accordingly, the State Board has previously ruled that a local board may decide not to renew a probationary teacher's contract despite the fact that the teacher has received satisfactory evaluations. *See Bricker v. Frederick County Board of Education*, 3 Op. MSBE 99 (1982). Thus, even if Appellant had received only good evaluations in the past, this fact would not require the granting of tenure, nor render the local board's decision denying tenure illegal.

CONCLUSION

Because we find no evidence of a constitutional violation or other illegality in the non-renewal decision, we affirm the decision of the Board of Education of Howard County.

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September 26, 2000