

JOHN MELTON,

Appellant

v.

TALBOT COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-38

OPINION

In this appeal, a probationary teacher challenges the local board's decision not to renew his teaching contract. Appellant maintains that the local board impermissibly delegated its authority over tenure matters to the local superintendent, and that the non-renewal decision was the product of impermissible influences without regard to Appellant's good recommendations and evaluations. The local board has submitted a Motion to Dismiss or for Summary Affirmance maintaining that the decision was not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant began his employment as a biology teacher with the Talbot County Public Schools in 1998. By letter dated April 20, 2000, the local superintendent advised Appellant that "[t]he Board of Education, at their April 19, 2000 meeting, officially approved the non-renewal of [his] contract as a teacher in the Talbot County Public School system, effective June 30, 2000." Appellant appeals the decision to the State Board claiming that the local board's failure to renew his contract is improper and requests that the State Board grant him a *de novo* hearing so that he can present additional evidence in this case.

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 and states in pertinent part:

- (a) . . . either of the parties to this contract may terminate it at the end of the first and second school year or on the second anniversary date of employment in regard to employees hired after January 1 following the commencement of a school year by giving notice in writing to the other, as of the following dates:

(a)(i) In the case of employees employed before January 1 following the commencement of a school year, not later than May 1 of that year or of the second year;

Thus, for contract renewal of a probationary certificated employee, 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 in violation of COMAR 13A.07.02.01B.

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 probationary 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 probationary teacher whose contract has not been renewed. *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 has submitted an affidavit stating that two local board members told him that they were obliged to accept the tenure recommendation of the superintendent without independent analysis of fact finding; that Appellant was assured favorable recommendations by the school principal and the assistant superintendent; that Appellant received the highest possible rating on his end of year evaluation; that the local board president who recommended Appellant for his position clashed with the superintendent on a number of educational and personnel policy and operational issues; and that the non-renewal decision may have been influenced by Appellant's report of a student cheating incident. *See* Affidavit of John H. Melton.

Appellant also maintains that the local board impermissibly delegated its authority over tenure decisions to the superintendent by merely approving the superintendent's recommendation and that improper motives influenced the non-renewal decision. Appellant requests that the State Board grant him a *de novo* review pursuant to COMAR 13A.01.01.03D or allow him to present additional evidence to support his claims pursuant to COMAR 13A.01.01.03C(2).

Appellant is mistaken in his assertion that he is entitled to *de novo* review pursuant to COMAR 13A.01.01.03D. That provision confers a right to *de novo* review only to cases concerning teacher dismissals and suspensions pursuant to Md. Code Ann., Educ. § 6-202. It does not apply to cases regarding the non-renewal of a probationary teacher's contract. As previously explained, absent a constitutional violation, a probationary teacher's contractual rights are not required to be determined by an agency hearing. See *Board of Regents v. Roth*, 408 U.S. 564 (1972). 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).

Although Appellant argues that his contract should have been renewed based on his "uniformly excellent performance reviews", it is well established 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). The "Teacher Performance Evaluation and Professional Development Program" handbook for Talbot County Public Schools reinforces this principle at page 24 in the section entitled "Special Note for Non-Tenured Teacher" which states as follows:

First and Second Year teachers may be terminated or non-renewed as provided in the regulations of the Maryland State Board of Education, the Education Article of the Annotated Code of Maryland, and the teacher's employment contract.
Satisfactory Performance Evaluations neither indicate nor guarantee contract renewal. (citations omitted) (emphasis added).

Thus, the fact that Appellant has received good evaluations in the past does not require the granting of tenure, nor render the local board's decision denying tenure illegal.¹

¹The local board may have many reasons for not granting tenure to an employee. Although the local board is not obliged to provide Appellant with the reason for its decision, Appellant himself indicates that he was advised that he was not a "good fit." See Affidavit of John H. Melton.

With respect to the allegation of impermissible delegation of authority by the local board, we note that the two board members named by Appellant serve as President and Vice President of the board. Both also maintain professional careers separate from their board service. We find that it defies belief that two professionals serving as the board's officers do not understand the authority of the board with respect to recommendations of the local superintendent. Appellant's unsubstantiated hearsay inference to the contrary is therefore rejected.

Finally, with respect to the student cheating incident, as noted by Appellant, the incident occurred in October, 1999, and was resolved at that time by the principal.

In sum, based upon our review of the record including the statements in Appellant's affidavit, we find no material fact in dispute. There is therefore no reason to set this matter in for a *de novo* review or a hearing to present additional evidence.

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 Talbot County.

Marilyn D. Maulsby
Vice President

Raymond V. Bartlett

Judith A. McHale

Edward Root

Walter Sondheim, Jr.

John Wisthoff

DISSENT

We acknowledge that neither State law nor the U.S. Constitution requires that a local board establish cause for a decision not to renew a probationary teacher's contract. We also acknowledge that the State Board has previously ruled that a probationary teacher's contract may be non-renewed even if the teacher had satisfactory or better performance evaluations.

Nonetheless, we think that a probationary teacher with satisfactory or better performance evaluations has an expectation that his or her contract will be renewed. Therefore, we believe

that the State Board could reasonably conclude that, absent an explanation in the record, a decision to nonrenew the contract of a probationary teacher who has received uniformly satisfactory or better performance evaluations could be considered to be arbitrary or unreasonable.

Because Appellant had a high performance evaluation and therefore a legitimate expectation of contract renewal, we would reverse the decision of the local board for failure to provide an explanation for the nonrenewal decision.

Philip S. Benzil
President

JoAnn T. Bell

Reginald Dunn

George W. Fisher, Sr.

Walter S. Levin, Esquire

August 30, 2000