

SUSAN ROUILLER,

Appellant

v.

CARROLL COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-28

OPINION

In this appeal, Appellant contests the local board's decision that the unsatisfactory classroom observation Appellant received on October 12, 1998, was not based on retaliation for Appellant's making a report of teacher misconduct to the school administration. Appellant argues that the local board's decision is "erroneous" and that there is sufficient circumstantial evidence to support her claim of retaliation. The local board has filed a Motion to Dismiss, or alternatively, Motion for Summary Affirmance, maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant is a tenured English teacher with the Carroll County School System. She began teaching at Westminster High School at the beginning of the 1997-98 school year. Prior to that time, Appellant had been teaching in middle school.

On October 12, 1998, a female student complained to Appellant that a male teacher in the school was engaging in inappropriate conduct towards the student. (Tr. 62-63). After conferring with Mary Kay Maurer, the English Department Chairperson, Appellant reported the situation to the school principal, Sherrie-Le Bream. (Tr. 63). Although Appellant was upset by the report, she returned to her teaching duties for the day. (Tr. 64).

At approximately 1:00 p.m. that same day, Gordon Love, one of the assistant principals at Westminster High, conducted a classroom observation of Appellant.¹ Mr. Love observed the class for one hour and noted deficiencies in the manner the class was conducted throughout the

¹Prior to the start of the 1998-99 school year, Mr. Love was assigned 15 teachers to observe by the third week of October. Prior to October 12, Mr. Love had completed 11 of those observations. Appellant's classroom observation just happened to be 1 of the 4 Mr. Love had not yet completed. (Tr. 154-56). Mr. Love testified that he went to do Appellant's classroom observation at the end of his lunch duty on October 12 because Appellant's classroom was one of the closest to where he was located in the school building. (Tr. 161).

entire time he was present.² On the morning of October 14, Mr. Love requested and reviewed Appellant's lesson plans for October 12, observing that Appellant failed to follow the lesson plan for that day. (Tr. 180-182). Mr. Love gave Appellant an overall unsatisfactory rating on the classroom observation. Later on October 14, Mr. Love met with Appellant and they reviewed his observation report together. (Tr. 181). Appellant did not write any comments on the observation report in the area designated for teacher comments.³ *See* Classroom Teacher Observation by Gordon K. Love.

At the end of the school day on October 15, Mr. Love discovered for the first time that Appellant was making accusations that he had given her an unsatisfactory classroom evaluation because Appellant had reported another teacher for misconduct. Mr. Love sought out the principal to discuss the situation. It was during this discussion that the principal informed Mr. Love that Appellant had made a report against another teacher on the morning of October 12, the same day on which Mr. Love observed Appellant's class.⁴ (Tr. 182-184).

Testimony at the local board hearing indicated that the October 12, 1998 classroom observation was scheduled because Appellant had been placed on a list of teachers who should be evaluated during the first period of the school year. The principal's testimony discloses that Appellant was identified as one of the tenured teachers who should be evaluated early based on concerns that she may need some extra support.⁵ These concerns were based on a classroom evaluation conducted by John Seaman, an assistant principal at Westminster, during the 1997-98 school year and his conversation with Appellant regarding her teaching after the observation was over.

Mr. Seaman conducted this particular classroom observation during the Spring of 1998, but decided not to write up a formal report because he was displeased with what he had seen that

²This was an unannounced classroom observation as is the practice in Carroll County. (Tr. 30-31, 198). Mr. Love's script notations indicated that for the hour he was in the classroom, Mrs. Rouiller spoke in a monotone without projecting her voice; no clear lesson plan objectives were explained; students spent more than 25 minutes on a review exercise; and many students wandered off task as the class proceeded. *See* Board Decision, pp. 3-4.

³At the local board hearing, Appellant introduced for the first time a rebuttal to the observation report. She claims that she sent it to "personnel" after her observation conference with Mr. Love. (Tr. 84-85). However, there is no record that the school system ever received the document. (Tr. 202).

⁴Mr. Love testified that he knows the teacher who was the subject of Appellant's report, but that Love is not friends with the teacher and does not socialize with him outside of school. (Tr. 184).

⁵The school makes an effort to observe every teacher each year. (Tr. 133, 138).

day. (Tr. 115). At the end of that day, Mr. Seaman met with Appellant to discuss the observation. He testified that during their conversation, he expressed his dissatisfaction with Appellant's performance, indicated that he would "tear up" his notes, and that he would return to do another classroom observation in the future with the anticipation that there would be some improvement. (Tr. 115-116). He further testified that Appellant stated "[he] could come back if [he] chose to but that [he] shouldn't expect to see anything better."⁶ (Tr. 116). They also discussed Appellant's concerns about teaching at Westminster High School. Mr. Seaman reported his conversation with Appellant to the principal. (Tr. 23). Mr. Seaman did conduct another classroom observation of Appellant later in the 1997-98 school year in which he gave Appellant an overall effective rating. (Tr. 121).

Ms. Bream, the principal, testified that during Appellant's evaluation conference for the 1997-98 school year, she and Steve Johnson, Supervisor for English in Carroll County, discussed with Appellant the comment that she had made to Mr. Seaman. Ms. Bream indicated that Appellant admitted making the comment to Mr. Seaman, that Appellant indicated she had periods of burnout during the school year, and that Appellant expressed safety concerns regarding the school. (Tr. 25). Ms. Bream also testified that they discussed the possibility of Appellant transferring to another school, but that Appellant decided to stay at Westminster and get more involved with the school. (Tr. 25-27). All of this contributed to Appellant's being identified as one of the tenured teachers to be evaluated early in the 1998-1999 school year. (Tr. 39-40).

Appellant appealed the unsatisfactory rating given by Mr. Love for the October 12, 1998 observation to the superintendent. A conference was held with the superintendent's designee, Dorothy Mangle. Ms. Mangle found no evidence of a connection between Mr. Love's October 12, 1998 classroom observation and Appellant's report of teacher misconduct. (Tr. 202-203). Thereafter, Appellant appealed to the local board. On November 10, 1999, a full evidentiary hearing was held on Mrs. Rouiller's claim of an illegal motivation for the classroom observation. In its January 12, 2000 decision, the local board ruled:

After review of all of the testimony and documentary evidence, the board finds that Mrs. Rouiller has not demonstrated that the decision of the designee was arbitrary, unreasonable, or illegal. Mrs. Rouiller has not set forth any particular facts or circumstances creating even an inference that the unsatisfactory classroom observation of October 12, 1998 resulted from retaliation for her report of teacher misconduct earlier that day. Despite being given the opportunity to present evidence to substantiate her claim, Mrs. Rouiller has failed to show any causal link between her report to the principal and Mr. Love's unsatisfactory observation report.

⁶Appellant denies making this comment.

ANALYSIS

Because this case involves a local policy or dispute regarding the rules and regulations of a local board, the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.01.03E(1)(a). At the outset, we note that the issue in this appeal is whether the unsatisfactory classroom observation received by Appellant on October 12, 1998 from Gordon Love was based on retaliatory motives.⁷ Appellant claims that

[t]he fact that this is [her] first unsatisfactory observation in over twenty years of teaching coupled with the fact that the observation occurred less than two hours after [she] informed the administration of a student's report of alleged sexual misconduct constitute strong circumstantial evidence in support of [Appellant's] claim of retaliation by Mr. Gordon Love.

_____Based upon a thorough review of the record, we believe that the timing of Appellant's report to Ms. Bream and Mr. Love's unsatisfactory classroom observation is insufficient to create an inference that Mr. Love's motives were retaliatory. At the hearing before the local board, Mr. Love testified that he was unaware of Appellant's report of teacher misconduct on October 12, and that he first learned that Appellant had made a report towards the end of the school day on October 15.⁸ (Tr. 182-183). When asked whether there was any truth to Appellant's allegation that he conducted her observation in retaliation for her filing a complaint about a teacher at Westminster High School, Mr. Love answered, "Absolutely unequivocally no." (Tr. 187).

Ms. Bream's testimony also supports this assertion. (Tr. 32-33). Appellant's claim is further diminished by the fact that Mr. Love was assigned to conduct Appellant's observation before the school year began, and that there is no evidence that he had any allegiance to the teacher who was the subject of Appellant's report of misconduct. It appears from the record that it was a mere coincidence that Mr. Love conducted the classroom evaluation of Appellant on the

⁷Pursuant to COMAR 13A.07.04.04., an observation report is only appealable if it is a component of an unsatisfactory evaluation. Despite the fact that Appellant received an effective rating on her evaluation, the local board granted Appellant an appeal regarding her classroom observation on the issue of retaliation. Thus, although the State Board will not generally entertain an appeal of an observation that is not a component of an unsatisfactory evaluation, the State Board's review of the issue of retaliation in this case is proper.

⁸Mr. Love testified that he found out from his colleague, Mary Kay Maurer, team leader for the English Department, that Appellant had been telling people in the English Department that her poor observation was retaliation for her turning in a staff member. (Tr. 183). Mr. Love then sought out Ms. Bream for an explanation, at which point she informed him of the report made by Appellant on October 12. (Tr. 183-184).

same

day she made the report. We note also that Appellant has presented no evidence of a retaliatory motive.

Moreover, Mr. Love's notes taken during the classroom observation fully substantiate his unsatisfactory report. (Tr. 165-176.) *See also* Observation Record. Thus, even if Appellant had been successful in creating an inference of retaliatory motive, we find that inference is rebutted by the legitimate and non-retaliatory basis for Mr. Love's observation report. The fact that Appellant received prior good observations throughout her career does not preclude the possibility that she could receive an unsatisfactory review at some point in the future. Given the record in this case, we believe that Appellant has failed to meet her burden of proving that the unsatisfactory classroom observation was motivated by retaliation for her making a report of teacher misconduct.

Finally, while Appellant argues that Mr. Love is not a credible witness, this argument is based on Appellant's disagreement with certain facts, and not on any independent evidence in the record. Determinations concerning witness credibility are within the province of the local board as trier of fact. *See, e.g., Board of Trustees v. Novik*, 87 Md. App. 308, 312 (1991), *aff'd*, 326 Md. 450 (1992) ("It is within the Examiner's province to resolve conflicting evidence. Where conflicting inferences can be drawn from the same evidence, it is for the Examiner to draw the inferences."); *Board of Education v. Paynter*, 303 Md. 22, 36 (1985)(same). The State Board may not substitute its judgment for that of the local board unless there is independent evidence in the record to support the reversal of a credibility decision. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994); *Kaleisha Scheper v. Baltimore County Board of Education*, 7 Op. MSBE 1122 (1998); *Corey Williamson v. Board of Education of Anne Arundel County*, 7 Op. MSBE 649 (1997); *Mecca Warren v. Board of Education of Baltimore County*, 7 Op. MSBE 328 (1996).

Although Appellant believes that there are discrepancies in statements made by Mr. Love at the conference with the superintendent's designee and those made at the local board hearing regarding the timing of his knowledge of the report made by Appellant, Mr. Love explained at the local board hearing that he did not know at the time of the observation or observation meeting that Appellant had reported any staff member for sexual misconduct, but that he was aware that a student was upset in school. (Tr. 191-192). The local board considered the entire record in making its decision. Part of the board's deliberative process included making credibility decisions concerning the witnesses and their testimony. As stated above, the decision of the local board is considered *prima facie* correct. Appellant must demonstrate that the board acted arbitrarily, unreasonably, or illegally. From our review of the record, we believe that there is sufficient evidence to support the conclusion that the unsatisfactory classroom observation was not motivated by retaliation. *See Thelma Smith v. Carroll County Board of Education*, Op. 99-13 (2/13/93) (Insufficient evidence of discriminatory evaluation).

CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Carroll County.

Edward Andrews
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June 21, 2000