

MATTHEW TORRES,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL
COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-04

OPINION

INTRODUCTION

Matthew Torres (Appellant) appeals the decision of the Baltimore City Board of School Commissioners (local board) upholding the non-renewal of his probationary teacher's contract. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

Baltimore City Public Schools (BCPSS) hired Appellant as a probationary first-year teacher during the 2016-17 school year. Appellant taught chemistry, honors chemistry, and Algebra at the Baltimore School for the Arts. (Motion, Ex. 3).

On April 24, 2017, Appellant met with his principal, Christopher Ford, to discuss his performance. Principal Ford presented Appellant with an "Annual Evaluation Report" that he created based on his observations of Appellant and conversations with students and parents. (Motion, Ex. 2, 3, 6). The form found Appellant to be "satisfactory" in the areas of planning and preparation and professional responsibilities, but unsatisfactory in "learning environment" and instruction/instructional support. Principal Ford wrote that there was "evidence of disengaged students in both formal observations" and that Appellant "must monitor student progress in class more effectively." He rated Appellant overall as "unsatisfactory." This form, however, was not a part of Appellant's overall year-end evaluation. (Motion, Ex. 2, 6).

On April 28, 2017, Appellant received through his work email a letter informing him that his teaching contract would end on June 30, 2017, and would not be renewed for the following school year.¹ The letter stated that "you and your principal have met to discuss this matter and the rationale that led to this decision." If Appellant had not met with his principal, he was instructed to schedule an appointment. The letter explained that Appellant could appeal the decision to the local board "within 30 days of the date of this letter." The letter provided a link

¹ Appellant states in his appeal that he met with a Baltimore Teacher's Union representative on April 27, 2017 to discuss his contract non-renewal, indicating that he was aware prior to the letter's delivery that his contract would not be renewed. (Motion, Ex. 2).

to the local board's appeal information form. (Motion, Ex. 2).

According to Appellant, he contacted the Baltimore Teacher's Union (BTU) on May 3, 2017 to represent him in an appeal. A union attorney reportedly informed Appellant that he had held a meeting with Principal Ford and also met with labor relations. Appellant apparently believed the union would handle all aspects of his appeal. (Motion, Ex. 4).

On May 30, 2017, Appellant received his year-end Teacher Effectiveness Evaluation for 2016-17. His overall rating was "effective," though he received an average score of 2 out of 4 during both of his formal teaching observations (rating him as "developing"). Appellant received only one "effective" rating in his second observation and was rated as developing in the remaining eight evaluation areas. He increased in two of the categories from the first to second observation, but also decreased in two categories between observations. (Motion, Ex. 2).

On June 2, 2017, Appellant filed an appeal of the non-renewal decision with the local board. Although he indicated that he would not be represented by counsel, he listed a BTU union attorney as his representative.² On the appeal information form, Appellant explained the basis of his appeal: "I was discriminated against because on April 24, 2017 my principal presented me with a false evaluation score/form which led me to believe that I was ineffective/unsatisfactory; however as a result my contract was not renewed." (Motion, Ex. 1). In his appeal, Appellant acknowledged that his appeal was filed late, but blamed his union representative. He also suggested that his contract was not renewed because he is of Hispanic/Latino ethnicity. (Motion, Ex. 2).

The local board assigned a hearing examiner to the case. After reviewing written submissions by the parties, the hearing examiner issued a recommended decision on July 21, 2017. The hearing examiner determined that Appellant's appeal was untimely because it was submitted after the 30 day time period had expired. Alternatively, the hearing examiner concluded that Appellant's non-renewal was proper, finding that concerns about Appellant's teaching performance were raised with him and that there was no evidence to support Appellant's claims of discrimination. (Motion, Ex. 3). Appellant filed exceptions to the proposed decision. (Motion, Ex. 4).

On August 22, 2017, the local board voted to adopt the hearing examiner's recommendations. The local board concluded that the appeal should be dismissed because it was untimely and upheld the non-renewal of Appellant's teaching contract. (Motion, Ex. 5).

This appeal followed.

STANDARD OF REVIEW

The local board's decision not to renew a probationary contract will be upheld unless the Appellant meets his burden to show that the decision is illegal or a result of unconstitutional discriminatory action. *See Karp v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-39 (2015).

² According to the record, a union attorney submitted an appeal and exceptions written by Appellant, but did not otherwise argue on Appellant's behalf.

LEGAL ANALYSIS

The probationary period for new teachers in a school system lasts for three years. Md. Code, Educ. §6-202(b). During this probationary period, a certificated teacher is hired under a one year contract that automatically terminates at the end of the school year and must be renewed again the following school year. *Id.* School systems have a large degree of flexibility in deciding not to renew a probationary teacher's contract so long as the reason for the nonrenewal is not illegal or discriminatory. *See Karp*, MSBE Op. No. 15-39. Appellant offers the following arguments as to why his nonrenewal was illegal and discriminatory.

Lack of notice

Appellant argues that he was not given "official notice" of the non-renewal decision. Although Appellant acknowledges receiving the decision through his work email, he argues that he never received a mailed copy and that the email was sent to his "bcps.k12.md.us" email address rather than his "bsfa.org" email address, which he describes as his "primary" professional email account. Finally, he maintains that the Baltimore Teacher's Union should have notified him if it was not going to file an appeal on his behalf.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Griffin v. Bierman*, 403 Md. 186, 197 (2008) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). It is not clear from the record when Appellant actually checked his work email and saw the non-renewal letter, but he acknowledges that he (1) was aware it was pending and (2) discussed it with his union five days after it was sent. In short, Appellant received timely, actual notice of the action through email and had the opportunity to present his objections.

The non-renewal letter informed Appellant that he had 30 days in which to appeal BCPS's decision not to renew his contract. Although Appellant argues that he was unsure whether he had 30 "calendar" days or 30 "business" days to appeal, he made no effort to clarify this apparent confusion with BCPS. In our view, a reasonable person would understand that "30 days" means exactly what it says – 30 calendar days from the date of the letter. *See* Md. Rule 1-203 ("If the period of time allowed is more than seven days, intermediate Saturdays, Sundays, and holidays are counted."). In this case, the 30th day fell on a holiday, which extended the deadline to the next day on which the office was open, May 30, 2017. The appeal was not submitted until June 2, 2017, making it untimely.

Appellant blames this late filing on his union counsel. It is not clear from Appellant's filings exactly what he discussed with his union or what steps the union planned to take on his behalf. Assuming that Appellant's union counsel did err, and we do not conclude that he did, we have previously declined to factor an attorney's performance into our decision of whether a local board acted illegally. *See Green v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 16-35 (2016). Our decisions are grounded in our standard of review, which here is based on whether the local board acted in an illegal manner by not renewing Appellant's contract. BCPS sent Appellant an email informing Appellant of the non-renewal and explained his right to appeal.

Appellant received that letter with ample time to respond. We cannot conclude that this process was in any way illegal.

As we have previously stated, we hold all parties, whether represented by counsel or not, to the same rules. *Id.* Were a local board to do otherwise, it would be creating an arbitrary distinction between appellants who are represented by counsel and those who are not. To excuse late filings for one set of appellants who are represented by attorneys, but not do so for *pro se* appellants would be fundamentally unfair. Appellant was aware of the deadline and chose to delegate the matter to his union to handle. If his union failed to timely act on his behalf, that fault lies with Appellant and the union, not the local board. *Id.*

Non-renewal decision

Although the appeal could have been dismissed solely on timeliness grounds, the hearing examiner and local board also reached the merits. We shall do so as well.

Appellant argues that he was presented with a “false” evaluation by his principal and that his final evaluation rated him as “effective.” The local board included an affidavit from Principal Ford as part of its response to this appeal in which the principal explains that the evaluation in question was not part of Appellant’s official year-end evaluation, but rather a document that collected the principal’s notes and comments from students and parents regarding Appellant’s performance. This explanation is consistent with the evidence in the record: both the evaluation form used by Principal Ford and Appellant’s official year-end evaluation reflect low classroom observation scores. We see nothing illegal in a principal using his own form to discuss a teacher’s performance, considering that the year-end evaluation was not yet available.

Appellant appears to argue that, because he had an “effective” year-end evaluation, his contract should have been renewed. As our standard of review makes clear, a local board may choose not to renew a probationary teaching contract for any reason, or no reason at all, as long as it is not an illegal one. *See Hudson v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 17-26 (2017). We have previously held that a local board may non-renew a probationary teacher’s contract despite a satisfactory evaluation. *Id.* “It might very well be that a teacher’s performance was reasonably satisfactory. If, however, the local system, interested in upgrading the quality of instruction is looking for superior performance, it should be left with the discretion of terminating a teacher whose performance does not measure up to the local board’s standards.” *Id.* (quoting *Anderson v. Bd. of Educ. of Carroll County*, 2 Op. MSBE 40 (1978)).

Finally, Appellant argues that he was discriminated against based on his ethnicity. The only evidence offered to support this allegation is his claim that union officials told him other people of the same ethnicity were also terminated from the school system. It is the Appellant’s burden to prove illegality “with factual assertions, under oath, based on personal knowledge.” *Id.* (quoting *Etefia v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-03 (2003)). In our view, this secondhand, anecdotal information is not sufficient to sustain a claim for discrimination.

CONCLUSION

We affirm the decision of the local board because it was not illegal.

Signatures on File:

Andrew R. Smarick
President

Chester E. Finn, Jr.
Vice-President

Michele Jenkins Guyton

Justin Hartings

Stephanie R. Iszard

Rose Maria Li

Michael Phillips

David Steiner

January 30, 2018