CHARLES MEESE, MARSHALL FELDMAN,
HELENE DAVIS, EDWARD FLEMING, and
HARFORD COUNTY EDUCATION ASSOCIATION, *Petitioners*
v.
BOARD OF EDUCATION OF
HARFORD COUNTY, *Respondent*

No. 77-10
June 29, 1977

OPINION

Petitioners have challenged the personnel policies adopted unilaterally by the Harford County Board of Education on October 12, 1976. The Board had taken that action in light of the fact that its Board's agreement with the Harford County Education Association had expired on the preceding June 30 and no new agreement had taken its place.

More specifically, petitioner Meese complains of the Board's failure to allow him one day of urgent business leave and petitioner Feldman appeals the denial of his request for tuition reimbursement. The Board had turned down the request of Messrs. Meese and Feldman on the ground that the benefits in issue were not available to them under the personnel policies adopted on October 12, 1976. It is petitioners' contention that the County Board should have adhered to the personnel policies in effect up to June 30, 1976, even though the agreement establishing these policies had expired.

The Board argues that (1) the State Board lacks jurisdiction over the subject matter, (2) petitioners have no standing to file this appeal, and (3) in the absence of an agreement with a teacher organization, the teachers did not have any right to be compensated for urgent business leave or to receive tuition reimbursement.

On the issue of our jurisdiction we again call attention to our opinions in *Wojtulewicz v. Board of Education of Baltimore County,* opinion rendered May 30, 1973, and *Harford Teachers Association v. Board of Education of Harford County,* Opinion 77-5 decided March 30, 1977. For the reasons there set forth, we hold that we have jurisdiction to decide this controversy.

On the issue of standing, we agree with the reasoning and the conclusion of the Hearing Examiner that the Harford County Education Association lacks standing but that the individual petitioners may pursue this appeal.

Turning to the merits, we conclude that once a negotiated agreement between a County Board of Education and a teachers association has expired, the County Board is not required to continue in effect the personnel policies embodied in that agreement. We agree, therefore, with the contention that the Harford County Board of Education had the power to adopt unilaterally new personnel policies on October 12, 1976.

There remains the question, however, of what rules were in effect between June 30, 1976, the date on which the negotiated agreement expired, and October 12, 1976, the date of the new policy promulgated by the Board. The County Board contends that no rules were in effect during that time. We disagree.

A county school system continues to operate once a negotiated agreement has expired. It continues to employ people, who are entitled to know under what terms they are employed. Those terms are usually incorporated into personnel policies. Such personnel policies may have originally resulted from a negotiated agreement with a teachers association, but they remain in effect once that agreement has expired, until they are lawfully changed.

We would reach this conclusion even in the absence of the local Superintendent's "Intercom" of June 9, 1976. What the Intercom does in assuring teachers that "your individual rights and privileges will certainly not be withdrawn in the absence of a negotiated agreement" is to reinforce our view that the existing policies remained in effect until they were expressly changed.

Accordingly, we find that the denial of the one day of urgent business leave requested by Petitioner Meese for September 17, 1976, was improper as it does not conform to the board policy which was in effect as of June 30, 1976. However, Petitioner Meese did not take the day off and therefore, suffered no pecuniary loss. Under these circumstances, we see no justification for requiring that compensation be paid. As to the denial by the Respondent of the request by Petitioner Feldman for partial tuition reimbursement, we reverse the action of the Respondent and order that payment be made to Petitioner Feldman in accordance with the personnel policies in ef-

fect, under the terms of this decision, immediately prior to October 12, 1976.

Richard Schifter, *President*
William G. Sykes, *Vice President*
Ellen O. Moyer, Lawrence A. Miller
William M. Goldsborough, Joanne T. Goldsmith
Mary Elizabeth Ellis, Charles E. Thompson
Albertine Thomas Lancaster

RECOMMENDATION OF HEARING EXAMINER

The issue in this case is whether Respondent acted improperly in denying Charles Meese a day of urgent business leave, in denying Marshall Feldman partial tuition reimbursement, and in unilaterally adopting a set of personnel policies affecting the wages, hours, and working conditions of the teachers of Harford County.

The case was heard by the undersigned on January 31, 1977. On the basis of the testimony, exhibits, and a brief filed by Respondent, this Examiner makes the following

FINDINGS OF FACT

At the outset of this proceeding, the parties stipulated the following facts: In late 1975 Respondent and Petitioner Harford County Education Association (hereinafter "HCEA") commenced negotiations for a 1976–77 Agreement. In January, 1976, negotiations reached an impasse, following which a fact finding hearing took place. In March, 1976, the Fact Finder's Report was submitted to the parties, and was thereafter approved by Respondent with modifications. Respondent's position was then approved by HCEA. This understanding between the parties was then put in the form of a Tentative Agreement, and in April, 1976, HCEA notified Respondent that its members had ratified said Tentative Agreement. In the meantime, Respondent had submitted its budget to the County fiscal authorities, seeking funds sufficient to meet the needs of the Tentative Agreement. The fiscal authorities cut the requested budget in such manner as to provide no salary increase for teachers, and thereafter — from May 11 to May 14 — HCEA directed a strike involving a majority of Respondent's certificated employees. Because of this

strike, Respondent decertified HCEA as the exclusive representative of certificated employees. In June, the County Superintendent advised teachers that the Board would issue a set of personnel policies to guide the operation of the schools in the coming year, and in October such a document was issued. As for the individual petitioners, each had given his or her written assurance, prior to March, 1976, of an intention to return to work for the 1976–77 school year, and each has done so (R., 14–15; Joint Exhibit A; Joint Exhibits 1–7).

According to Petitioners, the Tentative Agreement had in fact been ratified by both parties to it, the personnel policies adopted by Respondent were in violation of that Agreement, and the denial of Petitioner Meese's request for urgent business leave and of Petitioner Feldman's request for tuition reimbursement were contrary to the terms of that Agreement. Further, Petitioner alleged that even were it to be determined that Petitioner HCEA has no standing by virtue of its decertification, the rights of the individual Petitioners remain alive (R., 15–19).

Petitioners presented their case through Chet Elder, the Maryland State Teachers Association negotiator assigned to HCEA, and through Petitioners Meese and Feldman.

Mr. Elder testified that for the past five years he has been chief negotiator for HCEA. He pointed out that both the 1975–76 Agreement and the 1976–77 Tentative Agreement provided that those items not requiring fiscal support shall be valid and binding "when duly ratified by the Association and Board." He described the negotiating process and stated that when the parties resolved their differences the Board had the understanding incorporated in a Tentative Agreement. He added that upon ratification of that Tentative Agreement by the teachers, it would be considered a binding document. He assserted that such ratification had occurred prior to the HCEA strike, that decertification of HCEA had no bearing on the Agreement's validity and that, in any event, the Superintendent had assured the teachers that they would not lose their negotiated benefits other than those affected by rejection of the Board's proposed budget. Finally, he stated that the provisions in the Tentative Agreement with respect to tuition reimbursement and urgent business leave were identical to the provisions in the 1975–76 Agreement (except for a change in tuition dollar amount), and he introduced an arbitration decision interpreting the tuition provisions (R., 20–45, 57).

Petitioner Meese testified that he is a teacher at the Bel Air Senior High School, that he is President of HCEA, that in September, 1976, he requested one day of urgent business leave, and that that request was denied (R., 57–61).

Petitioner Feldman testified that he is a teacher at Hall's Crossroads Elementary School, that he applied for tuition reimbursement in October, 1976, for courses he had taken the previous summer, and that his application was denied (R., 63–73).

Respondent argued that the issues in this proceeding are legal and should be heard by the courts rather than the State Board, and, in the alternative, that HCEA has no standing as a Petitioner in view of its decertification as bargaining agent; Respondent also argued that Petitioners David and Fleming have no standing as Petitioners in view of their failure to assert any injury, and that there was no Agreement between Respondent and HCEA or the individual Petitioners creating the rights claimed to be violated.

Respondent presented its case through Richard Taranto, the Director of Staff Relations for the Harford County School Board. Mr. Taranto testified that he negotiated the 1975–76 Agreement with HCEA, that there had been an impasse in that negotiation resulting in a fact finding proceeding, that the Fact-Finder's Report was approved with modifications by the County Board, that a Tentative Agreement was then prepared, that that Tentative Agreement was ratified by the HCEA membership, and that thereafter it was ratified by the County Board. He further testified that a similar procedure was followed in the negotiation of the 1976–77 Agreement, except for the fact that the Board did not ratify the Tentative Agreement. He added that the Board did ratify Tentative Agreements reached at that time with organizations other than HCEA. Finally, Mr. Taranto called attention to the fact that, in the absence of an Agreement, the Board's relations with its certificated employees has been governed by a set of personnel policies which it adopted in the fall of 1976 (R., 80–103).

CONCLUSIONS OF LAW

Respondent has posed several procedural questions the answers to which will have a significant bearing on how, or indeed whether, the merits of this Appeal should be treated.

I cannot accept Respondent's argument that the issues here are legal rather than factual and that the State Board is therefore without jurisdiction. This argument assumes that the basic question is whether the parties entered into a contract and that this question somehow requires judicial examination. Thanks in part to the careful documentation provided by Respondent, the facts are clear that the parties did not enter into a binding contract. The Tentative Agreement contained language that the Agreement would become "valid and binding" "when duly ratified by the Association and the Board" (Joint Exhibit 4). The same language appeared in the 1975–76 Tentative Agreement (R. 22), and Board Minutes of May 12, 1975, indicate that subsequent to HCEA ratification of the 1975–76 Tentative Agreement, the Board ratified (Respondent's Exhibit 2). Board Minutes of June 8, 1976, similarly reflect ratification of Temporary Agreements reached for 1976–77 with organizations other than HCEA (Respondent's Exhibit 4). But there was no such Board ratification of the 1976–77 HCEA Agreement, and the process was thus not completed which would have made the agreement "valid and binding." I conclude, however, that the State Board has jurisdiction under its Section 6 visitatorial authority over educational policies to consider the personnel policies adopted by Respondent as they relate to the issues raised by this case.

I agree with Respondent's argument that HCEA has no standing as a party to this Appeal. I reach this conclusion for two reasons: Since the Tentative Agreement was never ratified by the County Board, HCEA is not in a position to claim it had binding rights under that Agreement; and since HCEA cannot claim to be the bargaining agent for Harford County teachers, it cannot claim that it — in contrast to individual teachers — has been injured by policies adopted by Respondent. I therefore recommend that HCEA be stricken as a Petitioner.

In the course of the hearing, and subsequently in its brief, Respondent moved to dismiss Miss Davis and Mr. Fleming as Petitioners on the ground that neither alleged any injury. I ruled that "I am going to deny that motion. We will leave them as petitioners, but the record will show that they asserted no individual claims which are different from those which are being asserted by Mr. Meese and Mr. Feldman." (R., 76). I reassert that ruling, for I conclude that Petitioners Davis and Fleming, as Harford County teachers, have a direct interest in the personnel practices of the County Board and in the procedure by which those practices were adopted.

Respondent agreed that Petitioners Meese and Feldman have a right, under Article 77, Section 59, of the Public School Laws, to appeal an action of the County Board to the State Board, but questioned the right of these Petitioners to be represented by counsel (R., 10). While it is true that Section 59 does not expressly address itself to the right of counsel, it would, in my view, be a frustration of the law's purpose to prevent a teacher from taking an appeal with the assistance of counsel or such other agent as he or she may choose. And while these Petitioners asserted that they had retained counsel as individuals, I can see no reason why they should be prevented from using counsel supplied by an employee organization, whether or not that organization has a status of certification.

We come to the appropriateness of the Respondent's personnel policies as applied to Meese's request for a day of urgent business leave and to Feldman's request for tuition reimbursement. So far as I can determine the State Board has not previously been called upon to review the removal of benefits previously enjoyed by employees, and the Board has therefore not had occasion to indicate the circumstances under which it would set aside changes in pre-existing practices. For the reasons which follow, I conclude that the Meese and Feldman requests should have been honored and that Respondent's personnel policies relating thereto should be set aside.

The right to a day of urgent business leave had been embodied in Agreements with HCEA for at least three years and was incorporated, without change and without any apparent objection by Respondent, in the Tentative Agreement for 1976–77. Respondent made no claim that this provision had ever been abused.

The right to tuition reimbursement had been embodied in HEAC Agreements for many years without change. In the course of the 1975–76 Agreement year, this provision was brought to arbitration, for the purpose of determining the right to reimbursement when payment had been made by a third party (i.e., the Veterans Administration). The arbitrator held that the language of the Agreement required that the teacher was nonetheless entitled to payment by the County Board, and the County Board honored that interpretation for the year of the agreement. Identical language was then negotiated for the following year and was incorporated in the 1976–77 Tentative Agreement, and it is reasonable to assume that had that Tentative Agreement become effective, Respondent would have been bound to apply the tuition reimbursement provision in accordance with the arbitrator's interpretation under the prior Agreement.

On June 9, 1976, the Superintendent sent an Intercom to the teachers, in which he advised them that in the absence of an Agreement and of a collective bargaining representative for teachers, the County Board would be adopting a set of personnel policies. This Intercom stated that "The Board has directed that I inform each of you that your individual rights and privileges will certainly not be withdrawn in the absence of a negotiated agreement . . . (T)he reimbursement for tuition will be that which was agreed to in the tentative agreement . . . I wish to assure you that the personnel policies which will be developed will not be greatly different than the negotiated agreements of the past. The items in the agreement which were fundamental to the smooth operation of the schools and of benefit to professional employees will be included in the set of personnel policies . . ." (Joint Exhibit 6). While neither the Tentative Agreement nor this Intercom gave the teachers a legally enforceable assurance that particular rights or benefits would not be diluted, both documents created a strong presumption in favor of continuing pre-existing policies and placed a heavy burden on Respondent to justify changes in those policies. The arbitrary deprivation of collectively bargained rights, under circumstances where there is no bargaining agent to protect those rights, is sufficiently threatening to teacher morale and performance as to warrant the State Board's exercise of its visitatorial authority.

I conclude that in the case of urgent business leave, no abuse was cited which would warrant a shift from the procedure to which Respondent had time and again agreed. I further conclude that in the case of tuition reimbursement, Respondent's reaffirmation — in both the Tentative Agreement and the June 9 Superintendent's Intercom — of the language which had been subjected to arbitration requires Respondent's continued acceptance of the arbitrator's interpretation of that language. Finally, I conclude that, in the absence of a collective bargaining Agreement, Respondent should not put into effect any personnel policy which deprives its employees of any existing right or benefit, unless such deprivation is accompanied by a full justification appealable to the State Board.

As to remedy, I recommend that Petitioner Meese be awarded one day's pay in lieu of the day of urgent business leave which he was denied, and that Petitioner Feldman be awarded that amount of tuition reimbursement which he would have received had Respond-

ent acted pursuant to the terms of the June 1, 1976, arbitration award.

Mitchell J. Cooper, *Hearing Examiner*

March 21, 1977

EDWARD F. BARBANO, *Petitioner*
v.
BOARD OF EDUCATION OF
ANNE ARUNDEL COUNTY, *Respondent*

No. 77-11
June 29, 1977

OPINION

Petitioner, Edward F. Barbano, served during the school years 1974–75 and 1975–76 as a nontenured teacher in the Anne Arundel County Public School System. Toward the conclusion of the second probationary year, on April 27, 1976, he received notice from the Superintendent of Schools of Anne Arundel County that the Superintendent would recommend to the County Board of Education the termination of his teacher's contract at the conclusion of that school year. That recommendation was subsequently accepted by the Board.

Petitioner contends that the termination of his services is defective in that (1) the notice which he received prior to May 1, 1976 was merely a notice from the Superintendent that he would recommend the termination of the contract and was not, by itself, a termination of the contract by the Board, and (2) the County Board of Education had failed to follow its rules as to observation, evaluation and conferences with petitioner.

Respondent Board countered, in the first instance, on the ground that the State Board lacked jurisdiction to hear and decide this case. The Board argued further that it had substantially complied with the applicable requirements for observation, evaluation, and conferences and for termination.

We find that this is the kind of dispute over which the State Board of Education does indeed have jurisdiction under Article 77, Section 6(d) of the Maryland Code. Our views as to our jurisdiction were fully set out in *Wojtulewicz v. Board of Education of Baltimore County*, decided May 30, 1973, and have more recently been restated in *Harford Teachers Association v. Board of Education of Harford County*, Opinion 77-5, decided March 30, 1977.

Turning to the merits of this dispute we focus initially on the question of whether petitioner received proper supervision during his probationary period. We note that he was evaluated, observed and conferred with as follows:

fall semester 1974

observation by principal 11/7/74, followed by conferences and written report 4/4/75;

evaluation report 12/6-74.

spring semester 1975

observation by principal 4/28/75, followed by conference and written report.

At the conclusion of this first school year, petitioner's contract was renewed.

fall semester 1975

observation by principal 9/19/75, followed by conference and written report;

observation by principal 10/7/75, followed by conference and written report;

observation by assistant principal 11/20/75, followed by written report;

evaluation report 11/26/75.

spring semester 1976

observation by principal, 2/25/76, followed by conference and written report;

observation by principal 3/18/76, followed by conference and written report;

evaluation report 3/20/76;