

*6 Opinions of MSBE 1*

APPEALS TO THE STATE BOARD — Right to Appeal; TEACHERS  
— Evaluations

PINKIE M. STROTHER, *et al.*, *Appellants*

*v.*

HOWARD COUNTY BOARD OF EDUCATION, *Appellee*

No. 90-18/Revised

January 25, 1995

OPINION

The case having been remanded to us by the Court of Special Appeals of Maryland for consideration of the merits, and having reviewed the record and considered the arguments of the parties, we adopt the findings of fact and conclusions of the hearing examiner on the merits of each of the three appeals. A copy of the hearing examiner's report is attached as Exhibit 1. We therefore affirm the decisions of the Board of Education of Howard County upholding the classroom observation reports of the three Appellants.

We have reviewed the merits of these observation reports because of the procedural history of the appeal and because of the Court of Special Appeals' admonition to us in footnote 8 of its opinion. *Strother v. Board of Ed. of Howard County*, 96 Md. App. 99, 117 n.8 (1993). We note, however, that effective December 5, 1994, a new set of regulations governs appeals of annual evaluations and of classroom observation reports. *See* COMAR 13A.07.04.04. Consistent with those regulations, we rule prospectively that a disagreement with a classroom observation report is not a controversy or dispute under §4-205(c) unless it is a component of an unsatisfactory evaluation. Only in that event may an observation report be appealed along with the appeal of the unsatisfactory evaluation.

Christopher T. Cross, *President*

Christopher E. Grant, *Vice President*

Edward Andrews, Robert C. Embry, Jr., George W. Fisher, Sr., Marvin E. Jones,

Rose LaPlaca, Joan C. Maynard, Harry D. Shapiro, Edmonia T. Yates

*Absent:* Elmer B. Kaelin

Exhibit 1

PINKIE M. STROTHER, *Appellant*  
MELVIN ODELL GANOE, *Appellant*  
DALE RADCLIFFE, *Appellant*

v.

HOWARD COUNTY BOARD OF EDUCATION, *Respondent*

The issues in these cases are whether an “unsatisfactory” observation report is appealable under Section 4-205(c) of the Education Article and, if so, whether Respondent erred in concluding that the observations in question were properly rated “unsatisfactory.”

These appeals evolve out of a decision of the State Board (88-18) involving the same parties. In view of the identity of the legal question applicable to each case, they were consolidated in the earlier proceeding and were again consolidated in the instant proceeding.

A hearing was held before the undersigned on February 15, 1990, on Respondent’s Motion for Summary Affirmance. I deferred judgment, and the parties agreed that should the Motion be denied they would rely on the record below and post-hearing briefs for a decision on the merits.

RULING ON MOTION FOR SUMMARY AFFIRMANCE

In the earlier appeal of these consolidated cases, the question posed by Appellants was whether classroom observations may be subject to negotiation under the collective bargaining statute and therefore be made subject to arbitration. By the time that issue was heard by this Hearing Examiner, the question of negotiability had been mooted by the decision of the State Board in *Howard County Education Association, et al v. Board of Education of Howard County* (88-5), wherein the Board held that classroom observations are a matter of educational policy and therefore cannot be made subject to negotiation and arbitration. In light of that decision, Respondent moved for a Declaratory Ruling seeking a dismissal of the consolidated appeal. Respondent further urged in that earlier appeal that the question at issue had been mooted by the fact that each of the Appellants had received a “satisfactory” rating at the end of the year in which the “unsatisfactory” observations had been made. Appellants in turn acknowledged the identity of the issue with the then re-

cent classroom observation decision of the State Board, but they asked the Board to remand their Appeal to the local board for a review of the Superintendent’s “unsatisfactory” observations.

I denied Respondents Motion in the 1988 Appeal and my Ruling was adopted by the State Board.

Because of the similarity of the issue posed in the 1988 case to the question raised by Respondent in its Motion for Summary Affirmance in the instant case, I think it worth repeating language in the earlier Ruling:

“Nor can I accept Respondent’s view that this case was mooted by the fact that each of the Appellants received a “satisfactory” rating at the end of the year in which the “unsatisfactory” observations were recorded. So long as those observations remain in Appellants’ personnel files, they will pose some risk to the professional future of each of these teachers. That risk may be a warranted and justifiable one, but Appellants have the right to have that question determined by the local school board and, if necessary, by subsequent appeal to the State Board.”

4-205(c) of the Education Article requires a County Superintendent to “decide all controversies and disputes that involve: (1) the rules and regulations of the county board; and (2) the proper administration of the county public school system.” This Section also provides that “a decision of a County Superintendent may be appealed to the county board” and “may be further appealed to the State Board.”

In arguing its Motion for Summary Affirmance, Respondent took the view that an “unsatisfactory” classroom observation is neither a “controversy or dispute” under the Education Article nor a “decision” of the Superintendent within the meaning of that Article. The position of Respondent that “unsatisfactory” classroom observations cannot be the basis for a “dispute or controversy” rests in large part on its view that classroom observations are a management tool designed to make sure that students are getting the best possible teaching. Respondent also argues that an “unsatisfactory” observation has no significant impact on a teacher and points to the fact that all three teachers involved in this Appeal received satisfactory evaluations at year-end.

Similarly, Respondent argues that a Superintendent's approval of an "unsatisfactory" observation does not constitute a "decision" since it is, in Respondent's view, not a final act and will not become a final act unless and until it is taken into account in the formulation of a year-end evaluation.<sup>1</sup>

The acceptance of Respondent's arguments would mean that Appellants have no right to a county board and State Board review of a Superintendent's decision. That right of review was the very question before the State Board when it considered the original appeal from these teachers in *Pinkie Strother, et al v. Board of Education of Howard County* (88-18), where the Board remanded the consolidated cases to the local board for a determination of whether the "unsatisfactory" observations were proper.

Respondent seems to be suggesting that the State Board either did not call for a review of the merits of the Superintendent's decision or, if the State Board did mandate such a review, it should now reconsider its previous decision. Despite Respondent's protestations to the contrary, an unsatisfactory observation does, as I pointed out in my Ruling in 88-18, pose sufficient risk to a teacher to raise it to the level of a dispute or controversy, and a Superintendent's ruling on such an observation does constitute a "decision." Indeed, in the course of Respondent's counsel's argument before me I raised the following question: "The Superintendent or his agent presumably isn't rubber-stamping . . . but does have a degree of discretion as to whether he would agree with a professional judgment of an observation or not. Is that accurate?" Counsel replied, "Yes, I think you'd have to say that if the Superintendent disagreed with one of the professional assistants he could perhaps exercise that discretion" (Record, p. 36). Surely, such a right to approve or disapprove is the equivalent of the authority to decide.

Further, Respondent's counsel pointed out that classroom observations take place pursuant to procedures adopted by the County Board (R, p. 10). Such observations thus are encompassed in the 4-205 provision that the County Superintendent shall decide controversies involving "the rules and regulations" of the County Board.

<sup>1</sup> It must be noted, however, that Respondent's post-hearing brief asserts that "In those instances where the classroom performance is below the standard set by the local board then the observations also may be used in proceedings to suspend or dismiss those teachers who have not responded to assistance."

In urging that a decision on a classroom observation should not be appealable to a county board and to the State Board, Respondent pointed to language in the Court of Appeals decision in *Lendo v. Garrett County Board of Education* 295 MD 55. The Court in *Lendo* held that the State Board is obliged by 4-205(c) to decide appeals from County Boards, but it also stated that "it does not follow insofar as decisions of County Superintendents are concerned that all such decisions are appealable matters." The difficulty I have with that dictum is twofold: The Court gave us no guidance as to types of decisions by a Superintendent which are not appealable; and 4-205(c)(4) itself provides that "a decision of a County Superintendent may be appealed. . . ." This 205(c) language neither states nor implies that there are some decisions of a Superintendent as to which it would not be applicable. I respectfully suggest that until the dictum in *Lendo* is tested in the courts, county boards and the State Board are both obliged to hear appeals from decisions of "unsatisfactory" classroom observations.

While Respondent has made a forceful argument analogizing classroom observation appeals to student grade appeals, citing *Diame Hawgen v. Frederick County Board of Education* 3 OP MSBE 322 (1983) and *Crawford v. Board of Education of Washington County* (87-15), cases in which the State Board declined to accept appeals involving academic grades, I cannot accept this analogy, since teacher observations involve professionals reviewing professionals in the common interest of good teaching and with a potential impact on general education policy far broader than the grade given a particular student. To accept this analogy would logically require that year-end teacher evaluations should also not be subject to appeal, since they too involve decisions made by the persons most able to evaluate the situation from personal knowledge. Respondent has conceded that evaluations are indeed subject to appeal.

For all the above reasons I deny Respondent's Motion for Summary Affirmance.

#### FINDING OF FACTS

Although the county board ruled that "a classroom observation is not a decision made nor a controversy or dispute under 4-205(c) of the Education Article, and therefore, in our opinion is not appealable," it nevertheless heard the case of each of the three Appellants on the merits in the

event that the State Board finds that observations are appealable. In all three cases the county board upheld the Superintendent. The essential facts in each of these cases are as follows:

#### **Pinkie Strother**

Ms. Strother is an art instructor of sixth, seventh and eighth graders and has been employed by Respondent for some sixteen years. In November 1987 she was formally observed by the school system's art supervisor, Barry Shauk. Mr. Shauk's observation report was critical of Ms. Strother's teaching method and of her explanation of the term "proportion" as used in her art courses. He was also critical of the absence of certain visual aids. Testimony before the local board indicated a marked difference of view between Ms. Strother and Mr. Shauk as to the appropriateness of Ms. Strother's teaching method, and Ms. Strother suggested that this difference might be attributable to the fact that Mr. Shauk was new to the county, was experienced primarily in the education of gifted students and was perhaps not used to art instruction at the level at which Ms. Strother was teaching.

The local board heard extensive testimony from both Ms. Strother and Mr. Shauk and unanimously concluded that there was sufficient justification for Mr. Shauk to have rated Ms. Strother unsatisfactory in his observation report.

#### **Melvin Ganoë**

Mr. Ganoë is Chairman of the Automotive Department at the Howard County Vocational Technical School. He has been employed by the county school system for some twenty-two years. In October 1987 the school's Vice Principal made an observation of Mr. Ganoë's teaching performance and rated it unsatisfactory. Testimony before the local board indicated that as a result of a decline in student enrollment in automotive courses, Mr. Ganoë decided to implement a different schedule in the hope of attracting more students. After this new schedule had been put into effect, however, Mr. Ganoë concluded that it was not working well. He then requested Mr. Hillen, the Assistant Principal, to come into his class to see what could be done to improve the situation. Mr. Hillen took that opportunity to conduct a formal classroom observation of Mr. Ganoë's teaching, and his observation report concluded that too much time was

being spent with students waiting for instructions and that lesson plans and objectives were not clearly set forth. Mr. Ganoë strongly contested these conclusions.

After a full hearing, the County Board unanimously decided that the comments in the observation report were valid and that the "unsatisfactory" judgment should be upheld.

#### **Dale Radcliffe**

Mr. Radcliffe, like Mr. Ganoë, teaches in the Automotive Department of the Howard County Vocational Technical School. He has been in the employ of the Howard County school system for thirteen years. In October 1987 Assistant Principal Hillen observed Mr. Radcliffe's teaching. He reported that students took more than a half hour to complete employment applications which should have been completed in ten minutes and that the majority of the students were not provided with meaningful learning activity during an extended length of time when Mr. Radcliffe was checking out equipment to three new students. Mr. Radcliffe vigorously contested the validity of these criticisms.

Both Mr. Radcliffe and Mr. Hillen testified at some length at the County Board hearing, as a result of which the Board unanimously concluded that the October, 1987, observation report's finding that Mr. Radcliffe's teaching performance was unsatisfactory should be upheld.

Ms. Strother, Mr. Ganoë and Mr. Radcliffe all received satisfactory evaluations at the end of the school year during which the contested observations took place, and each of them remains employed in the County school system.

#### **CONCLUSIONS OF LAW**

COMAR 13A.01.01.03E(1)(a) provides that

"Decisions of a county board involving a local policy or a controversy and dispute regarding the rules and regulations of the county board shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the county board unless the decision is arbitrary, unreasonable, or illegal."

*6 Opinions of MSBE 1*

I consider this standard of review appropriate to appeals of observation reports, since it protects against the State Board's substitution of its judgment for that of the local board on what is essentially a matter where local administrators are entitled to a presumption that they acted properly.

This standard of review places a heavy burden on an Appellant who has been the subject of an unsatisfactory observation report. Since there is no suggestion by these Appellants that the action of Respondent was illegal, their burden is to demonstrate that the reports in question were either contrary to sound educational policy or were of such a nature that a reasoning mind could not have reasonably reached the conclusion reached by the County Board. I conclude that none of these Appellants successfully shouldered that burden. At best, what was demonstrated in each of these Appeals was a respectable difference of opinion as to sound educational policy. In the absence of a showing that the supervisor in each of these cases was demonstrably out of line with the County's policy, deference should be given to the supervisor's judgment, particularly when that judgment was reviewed by a designee of the Superintendent and was then unanimously upheld by the local board after a full and fair hearing.

This is not to say that a reasoning mind could not have reasonably reached a different conclusion in each case. These were not frivolous Appeals and each contains respectable evidence which some other reasoning mind could have found persuasive. But the supervisory personnel and the local board were the people responsible in these cases, and I am satisfied from the evidence on which they acted that their conclusions were neither arbitrary nor unreasonable.

Accordingly, I conclude that teacher observation reports are decisions subject to review under Section 4-205 of the Education Article, but that they must be considered *prima facie* correct. In the cases at issue, the decisions were neither arbitrary, unreasonable nor illegal. I therefore recommend that they be upheld.

Mitchell J. Cooper, *Hearing Examiner*

March 21, 1990