

PROBATIONARY TEACHER — Nonrenewal

CHRISTINA EWING, *Appellant*

v.

CECIL COUNTY BOARD OF EDUCATION, *Appellee*

No. 95-3

January 25, 1995

OPINION

A probationary teacher employed by the Cecil County Board as a science teacher at Rising Sun Middle School for the 1993-94 school year has appealed the nonrenewal of her contract. The Appellant maintains that the contract non-renewal is arbitrary and capricious and in retaliation for her carrying out her professional responsibilities in a legal and appropriate manner.

Specifically, she asserts that the local board's decision not to renew her contract was made in retaliation for the teacher's refusal to change the grade of a student to reflect a grade that was not properly earned and because that same student was removed from the student council as a result of disciplinary action taken by the Appellant. The local board declined to grant a hearing. The Appellant has requested the State Board to set the matter in for a hearing so that evidence may be presented to support her claim of retaliation.

The local board has responded by filing a Motion for Summary Affirmance together with a memorandum, affidavits, and several other exhibits that include a recitation of 7 instances of inappropriate conduct by the Appellant supporting the board's decision not to renew her contract.

Briefly, those reasons relate to the Appellant's failure to discuss her volunteer coaching assignment at Rising Sun High School with her own school administration in order to determine the impact upon her teaching duties and release time; her bringing into school a gift-wrapped bottle of wine that she placed on another teacher's desk that caused the recipient great anxiety and concern; her surreptitious tape recording of a conference between her principal and the Appellant that she voluntarily played to another staff member; her securing a block of tickets for a

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Philadelphia 76ers basketball game in Philadelphia that began at 7:30 p.m. on a Wednesday school night; her failure to coordinate with the local school administration her desire to have a college student administer a survey to students as part of the college visitor's coursework; her changing the guidelines of a basketball tournament on two occasions without consulting or coordinating with the acting principal; and her actions in posting the vote tallies of two student members during a student council membership vote.

In his affidavit the acting principal describes the grading incident and indicates that the Appellant used a plus or minus grading system that was not permitted by the Cecil County Public School grading and reporting policy. After the Appellant explained her grading criteria and the weight of each component, the assistant principal converted the Appellant's grades to the correct standard letter grading system. As a result of the review, there were 5 students whose grades needed to be raised for either the first or second marking period.

The principal in his affidavit states that the issue of correcting a student's grades was not considered by him in his evaluation of Appellant nor in his recommendation that her contract not be renewed.

It is well established that a local board does not have to establish cause as a basis for deciding not to renew a probationary teacher's contract. The standard teacher's contract which is set out in regulation at COMAR 13A.07.02B requires only advance notice of non-renewal.

In *Bricker v. Frederick County Board of Education*, 3 Op. MSBE 99 (1983), we indicated that a local board may decide not to renew a probationary teacher's contract even though the teacher has received satisfactory evaluations. We observed that there can be many reasons for the decision of a local school system not to retain a non-tenured teacher and that a satisfactory evaluation does not amount to the granting of tenure. We also noted that a probationary teacher's contractual rights are not required by law to be determined at an agency hearing. See *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Perry v. Sindermann*, 408 U.S. 593 (1972). We concluded that if there were no material facts in dispute, there was no need for an evidentiary hearing.

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On a Motion for Summary Affirmance, the moving party must demonstrate that no material fact is disputed and that on the basis of all the undisputed material facts, it is entitled to affirmance of its decision as a matter of law. COMAR 13A.01.01.03K. See also *Lowman v. Consolidated Rail Corp.*, 68 Md. App. 64, 70-71 (1986). In order to defeat a motion the opposing party must demonstrate that there is a genuine dispute as to a material fact "by producing factual assertions, under oath, based on personal knowledge." *Id.* Unsupported statements or conclusions are insufficient. "It is never sufficient to defeat a motion for judgment that the opposing party allege in a general way that there is a dispute as to a material fact." *Brown v. Suburban Cadillac, Inc.*, 260 Md. 251, 257 (1971).

Here, the Appellant has filed only a legal memorandum. She has not submitted any affidavit to oppose the sworn affidavits of the school officials. Because the unsupported assertions of the Appellant are insufficient to create a genuine dispute of material fact, we grant the Motion for Summary Affirmance filed by the local board.

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