

MONICA JONES,

Appellant

v.

BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 15-33

OPINION

INTRODUCTION

In this appeal, Appellant argues that the decision of the Baltimore City Board of School Commissioners (“local board”) affirming the nonrenewal of her teaching contract was illegally based on retaliation for seeking the assistance of the union to help her resolve issues of concern at her assigned school. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. The Appellant responded to the motion and the local board replied.

FACTUAL BACKGROUND

Procedural History

Appellant previously appealed to the State Board the local board’s June 13, 2014 decision upholding the non-renewal of her teaching contract. The focus of that case was whether the Appellant was a tenured teacher subject to the termination procedures under §6-202 of the Education Article or if she was in probationary status during which time a contract can be non-renewed for any reason that is not illegal or discriminatory. In MSBE Op. No. 15-05 (January 15, 2015), this Board found that Appellant was not tenured due to a lapse in her certification, and that she was in a probationary teaching status at the time of her nonrenewal.¹ As we stated in that Opinion, while “a local board need not establish cause when it non-renews the contract of a teacher in probationary status, the decision not to renew cannot be based on illegal or discriminatory reasons.” *Id.* at 8. Because the Appellant had argued before the local board that the nonrenewal was illegally based on retaliation, but neither the hearing examiner nor the local board addressed the issue in its decision, we remanded the case to the local board for review of Appellant’s retaliation claim. *Id.* at 9-10.

On remand, a local hearing examiner conducted an evidentiary hearing on the retaliation claim and recommended that the local board uphold the Chief Executive Officer’s (“CEO”) nonrenewal of Appellant’s teaching contract. The hearing examiner found that Appellant met her

¹ We recognized that the Appellant could have been considered an at-will employee because there was no signed employment contract after her certification lapse, but that the local board treated the Appellant as having a signed contract and thereby recognized her as being in probationary status.

burden of proving a *prima facie* case of retaliation, but that the CEO had rebutted Appellant's case with legitimate non-discriminatory reasons for the non-renewal and Appellant had failed to show that the reasons were pretextual. (Hearing Examiner Decision, 4/1/15). On May 12, 2015, the local board voted to accept the Hearing Examiner's recommendation and affirmed the CEO's decision not to renew the Appellant's teaching contract for the 2013-2014 school year. (Local Board Order). The State Board received Appellant's appeal of the local board's decision on June 17, 2015.

Facts

Appellant began regularly teaching at Baltimore City Public Schools ("BCPS") beginning in 2000.² (Jones Affidavit; MSBE Op. No. 15-05 (2015)). During the time period at issue, her certification was in elementary through 8th grade education and not in any particular content area. (T.30). This type of certification is a general certification, which means that teachers can teach up to all four content areas. (T.65).

Appellant began the 2012-2013 school year teaching at Lockerman Bundy Elementary School ("Lockerman Bundy").³ Shortly after the start of the school year, Appellant was placed on a list to be assigned to another school because Lockerman Bundy had excess staff. In November 2012, Appellant interviewed and accepted a position to teach science as a stand-alone subject at Edgecombe Circle Elementary Middle School (Edgecombe Circle). During the interview, Appellant informed the school principal, Ms. Brinkley-Parker, that she had never taught a stand-alone science class before and that she would need support. (T.64).

On November 5, 2012, Appellant began teaching a 5th/6th grade stand-alone science class at Edgecombe Circle. (CEO Ex. 1, Hill Letter to Jones, 11/2/12). The paraprofessional who had been substituting in the classroom remained for a few days after Appellant arrived to give Appellant some time to acclimate to the class. (T.67).

There were materials in the classroom for Appellant to use when she began. According to Principal Brinkley-Parker, the science classroom had some textbooks, work books, and some hand-outs. (T.68). According to the Appellant, there was little in the way of materials and the textbooks were not appropriate for the science class. (T.162).

Appellant was offered support in science instruction from Ebony Brooks, Academic Liaison.⁴ (T.90-91). Ms. Brooks met with Appellant and also provided the Appellant with science books and assisted in creating a lesson plan. (T. 171). In addition, teachers at Edgecombe Circle were required to attend team meetings twice a week to discuss classroom participation techniques, the curriculum and subject matter. (T. 169-170).

² Appellant held a teaching position with BCPS in 1998 at the Robert W. Coleman School, but left to pursue other interests before she returned in 2000. (Jones Affidavit).

³This case concerns only what transpired during the 2012-2013 school year and the facts set forth herein reflect that. MSBE Op. No. 15-05 contains factual background regarding Appellant's employment prior to that time.

⁴ Edgecombe Circle did not have a science resource person on staff. (T. 90).

During her first month in the position, Appellant sought assistance from a science teacher at another school. The science teacher directed the Appellant to several websites for information to help her with her lessons. (T. 166-167).

On November 27, 2012, the Edgecombe Circle instructional leadership team informally observed the Appellant. The team found no evidence of process charts, no evidence of prior student learning, no student work folders, no lesson plans and no word wall. The team commented that Appellant had not displayed updated student work or a schedule inside the classroom and that Appellant did not have lesson plans available. (CEO Ex. 2; T.70-73).

On November 29, 2012, the Assistant Principal, Alzetta Spencer, formally observed the Appellant. Ms. Spencer noted the following three areas as needing improvement:

- Present Content Clearly - explicitly model to prepare students for independence. Present content in various ways to make content clear.
- Evidence Dependent Questioning - ask questions that push students' thinking. Questions must correlate and have an intended purpose.
- Facilitate Student-to-Student Interaction and Academic Talk - provide structures for student collaborations that are effective at keeping students focused and productive with minimal teacher support.

(CEO Ex. 3, Formal Observation Report, 11/29/12). Ms. Spencer commented that Appellant's lesson plan was not available and that Appellant needed to keep all lesson plans in a binder in the classroom. Ms. Spencer noted that Appellant had met with the science academic liaison to aid in planning and resources, but that she needed continued support in her transition. She recommended that Appellant work closely with support staff to ensure that she understood the teaching expectations for the class. She also recommended that Appellant use a 5 E science lesson plan to capture all of the components of the science instructional model. *Id.*

On December 4, 2012, Ms. Brinkley-Parker conducted an informal observation of the Appellant. (CEO Ex. 5, Focus Learning Walk Form). Ms. Brinkley-Parker observed that Appellant needed help with the instructional framework and identified various instruction points in which she needed to improve. (*Id.*; T.83-84).

On January 10, 2013, Ms. Brinkley-Parker completed Appellant's Performance Review Report which generally serves as the mid-year review. (CEO Ex. 6, Performance Review Report; T. 86). Under "Planning and Preparation," she found that Appellant's daily planning was not consistent and that she needed to plan using the curriculum and materials. She noted that Appellant's lesson plan binder was incomplete because it started with lesson plans dated December 3 despite her November 5 start date. Under "Learning Environment," she noted that Appellant should use the PBIS point system or systems created by the team to implement effective practices. Under "Instruction/Instructional Support" she stated that students only wanted to copy from the board. Ms. Brinkley-Parker gave Appellant a satisfactory rating because

Appellant had not had the benefit of a full half year given her November start date. She explained to Appellant, however, that she needed to work on the items noted otherwise she would end up with unsatisfactory marks. (T. 88-89).

Ms. Brinkley-Parker made the following statement in the report:

Ms. Jones joined our staff in early November and is working on transitioning into science instruction for 5/6. She has been offered the support of science academic liaison and has some materials that will help instruct students. She currently is exploring additional resources to fully understand the content. Ms. Jones is encouraged to continue to implement using . . . resources and work as a professional to do everything necessary to effectively implement science instruction.

(CEO Ex. 6). As next steps, she advised the Appellant to engage in detailed planning with a focus on the instructional strategy of gradual release and to focus on student folders for work and writing. (*Id.*; T. 89).

On January 24, 2013, Ms. Brinkley-Parker conducted an informal observation of the Appellant. (CEO Ex. 7, Observation Form). She noted that all students were on track for the lesson. She recommended that the Appellant review expectations by modeling prior to giving students the work packet. She also suggested listing vocabulary terms and definitions so that the students could refer to them while working independently. *Id.*

On January 25, 2013, Ms. Brinkley-Parker sent Appellant a memorandum via email reminding her of the procedures for submitting student attendance. She stated that there had been several days for which Appellant had submitted attendance after the deadline. She pointed out the importance of submitting the attendance using the computerized system and stated that a hard copy could be submitted to the front office by the designated time if necessary. (CEO Ex. 13, Memorandum; T. 110-111).

On January 28, 2013, the IEP Team advised the Appellant that she had provided untimely and incomplete information in advance of an IEP meeting for one of her students, potentially placing the school in violation of the parents' rights under the special education law. (CEO Ex. 14; T.113).

On February 12, 2013, Appellant received an oral caution that she had three occasions of absence and that she needed to improve her attendance rate. (CEO Ex. 18, T.116).

On February 19, 2013, Ms. Brinkley-Parker conducted another formal observation of the Appellant. Ms. Brinkley-Parker noted the following areas for improvement:

- Present Content Clearly - creating 4 types of questions for students to answer and categorize

- Check for Understanding and Provide Specific, Academic feedback - clearing up misconceptions with questions posed by students and vocabulary; check for understanding prior to having students create own questions
- Build a Positive, Learning-Focused Classroom Culture - calling on multiple students to participate.
- Reinforce Positive Behavior, Redirect Off-Task Behavior, and De-escalate Challenging Behavior - rotating to all groups to ensure on task behaviors; redirecting student behaviors that disrupt instruction.

(CEO Ex. 8, Formal Observation Report). She explained that these are all basic student instructional strategies that teachers should be able to perform, regardless of their subject area. (T.98). Ms. Brinkley-Parker also made the following statement:

Mrs. Jones attempted to use the QAR strategy to get students to understand a text on global warming. However, confusion with question creation led to more time trying to decide which questions to ask instead of understanding the text then using that to create and answer questions within the four categories. Of the 17 students, more than half were disengaged and 1 to the point of severely disrupting the learning for all, yet he was verbally redirected several times and not moved in an attempt to resolve the issue. Because of this, he was able to get others off task which led to the teacher spending more time correcting behaviors. The intended learning was for students to use questioning technique to learn more about global warming, but they spent more time trying to figure out questions to ask based on the 4 quadrants. The focus was intended to be on the topic of global warming and using a plan created by the district without dissecting and making changes based on the needs of your students seemed to have caused more confusion. Between the misunderstanding of the question types and the ineffectiveness of redirecting off task behavior, students did not meet the intended learning goals.

Id.

On February 20, 2013, Ms. Spencer conducted an informal observation of Appellant. She noted that there were no disruptions during the lesson and that students were completing the assignment as they were instructed to do. Ms. Spencer, however, noted problems with Appellant's lesson plans. There were none available prior to February 19, 2013. Appellant was using lesson plans written by a prior teacher and Appellant had not modified the plans to address the individual needs of her students. Ms. Spencer stated that Appellant must have a lesson plan book with current lessons starting from November to be reviewed by an administrator on February 25th. (*Id.*; T. 99). Subsequently, Ms. Brinkley-Parker advised Appellant that she had

failed to comply with the requirement that she hand her lesson plans in two days in advance of the lesson. (CEO Ex. 12, Brinkley-Parker Email).

On February 25, Appellant informally spoke to Sean Conley, Area Executive Officer. She told him that she was not receiving the supports that she needed, that she felt threatened by her students and feared for her safety. (BTU Ex. 1).

On February 28, 2013, Ms. Brinkley-Parker placed the Appellant on a Performance Improvement Plan (“PIP”). The PIP targeted the areas for improvement as planning and preparation and classroom delivery of instruction because these were ongoing problems. (CEO Ex. 10, PIP; T. 102-103). The PIP required the Appellant to plan two days ahead of time using the suggested 5E lesson template and turn in the lesson plan at that time; to arrange to meet weekly with Ms. Brooks; and to revamp the classroom structure by putting new procedures in place to implement an incentive program and to reinforce the discipline procedures to improve rapport with students. (PIP). The principal noted that Appellant would have informal observations with feedback at least monthly, get personal development on management strategies and science content, and access to materials to support development of lesson and planning. *Id.*

On March 11, 2013, Appellant and four other teachers from Edgecombe Circle met with John Casey, Baltimore Teachers Union Representative, to discuss issues at the school. (T. 17). They were concerned about student discipline issues not being addressed, lack of materials, and frequent observations. Of the five teachers who met with Mr. Casey that day, three of them were terminated or non-renewed. (T. 17-18, 31-32). No additional testimony regarding these teachers was introduced at the hearing on the retaliation claim.

By Memorandum dated March 18, 2013, Ms. Brinkley-Parker advised Appellant that she was performing unsatisfactorily overall and would be scheduled for a third formal observation. (CEO Ex. 17).

Appellant went out on sick leave on March 19, 2013.⁵ (T. 26). Ms. Brinkley-Parker issued a notice advising her that she now had five occasions of absence. (CEO Ex. 18).

On March 21, 2015, the Appellant sent Mr. Casey a letter requesting a transfer out of Edgecombe Circle and documenting her concerns about teaching there. (BTU Ex. 1; T.19). She raised concerns about the lack of professional support at the school, particularly regarding lesson planning and responding to teacher complaints; lack of appropriate science textbooks and technology; the disrespectful and unruly behavior of the students towards her, including a student throwing a chair at Appellant and students stealing classroom supplies and Appellant’s personal belongings; the ineffectiveness of discipline within the school; and safety concerns due to an insufficient security presence. *Id.*

As of April 3, 2013, Appellant had still not returned to work. Ms. Brinkley-Parker advised Appellant that medical documentation was necessary. (CEO Ex. 21).

⁵ Appellant did not return to school after that date.

On April 2, 2013, Ms. Spencer advised Appellant that she failed to have emergency lesson plans available as required, which created a problem in her absence. She further advised that failure to have three emergency lesson plans on file could contribute to an unsatisfactory rating. (CEO Exs. 19, 20).

On April 3, 2013, Ms. Brinkley-Parker again advised the Appellant that she needed to provide medical documentation regarding her continued absence. (CEO Ex. 21).

On April 4, 2013, Ms. Brinkley-Parker notified Appellant that she failed to attend a professional development session. (CEO Ex. 22). At this point in time, the school was not aware of Appellant's whereabouts because she had not yet communicated that she was out on sick leave on the day of the training. (T. 144-145). Later that day, Appellant provided medical documentation regarding her absence through April 10 for depression. (CEO Ex. 24; T. 33).

On the afternoon of April 4, 2013, Mr. Casey forwarded Appellant's March 21 letter to Ms. Brinkley-Parker who arranged a meeting to discuss Appellant's claims. (T. 44).

On April 11, 2013, Appellant attended a meeting with Mr. Casey, Ms. Brinkley-Parker, Ms. Spencer and Mr. Conley. The discussion at the meeting centered on the letter and Appellant's request for a transfer. (T. 27). The Appellant's and Mr. Casey's recollection was that at the conclusion of the meeting Mr. Conley recommended that Appellant use sick leave and then apply for a voluntarily transfer in May 2013, and that all of those present at the meeting agreed with that plan. (T. 28, 46-47). Ms. Brinkley-Parker did not recall the conversation about the use of sick leave. (T. 130-131). Both the Appellant and Mr. Casey testified that there was no discussion of nonrenewal or the Appellant's performance at the meeting. (T. 47).

On April 18, 2013, Ms. Brinkley-Parker advised the Appellant that she needed to provide additional medical documentation for her absences or apply for the appropriate leave. (CEO Ex. 24). She stated that the Appellant must submit proper paper work in a timely manner and apply for FMLA if needed. (CEO Ex. 26). Appellant provided the documentation for leave through April 19. *Id.*

On April 26, 2013, Ms. Brinkley-Parker completed Appellant's Annual Evaluation Report. She rated the Appellant as unsatisfactory in all areas. (CEO Ex. 11). She noted that Appellant had not reported to work since March 18. Comments included concerns about planning and instruction, shortcomings with effectively dealing with student behavior, problems with submitting grades in a timely manner and non-compliance with attendance and punctuality policies.⁶ *Id.*

By letter dated May 1, 2013, Kim Lewis, Human Capital Officer, advised the Appellant that her contract with BCPS would not be renewed for the 2013-2014 school year. It stated in part as follows: "It is our understanding that you and your principal have met to discuss this matter and the rationale that led to this decision. If this is your first notice of this action, please move forward with scheduling a time to meet with your principal."

⁶ Ms. Brinkley-Parker assumed the Appellant was tenured at the time she filled out the evaluation as she was unaware of Appellant's certification lapse. (T. 104-105).

Mr. Casey filed an appeal on Appellant's behalf, challenging the decision to end her employment. The nonrenewal decision was affirmed first by the Interim Chief Executive Officer and, on further appeal, by the local board.

As explained in the procedural history above, Appellant appealed the local board's decision to the State Board and the State Board remanded the case to the local board for the sole purpose of having the local board review Appellant's retaliation claim. On remand, there was an evidentiary hearing before a local hearing examiner. The local hearing examiner issued a decision finding no retaliation and recommending that the nonrenewal decision be upheld. The local board accepted the hearing examiner's recommendation and affirmed the nonrenewal.

This appeal followed.

STANDARD OF REVIEW

Because this is an appeal pursuant to §4-205 of the Education Article involving a decision of the local board concerning a controversy or dispute about the nonrenewal of a teacher's contract, the local board's decision is considered *prima facie* correct. COMAR 13A.01.05.05A. The local board's decision not to renew a probationary contract will be upheld unless the Appellant meets the burden of showing that the decision is illegal or a result of discriminatory action. *Etefia v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-03 (2003).

LEGAL ANALYSIS

The issue in this case is whether the local board's decision not to renew Appellant's teaching contract was based on retaliation and was, therefore, illegal.⁷ Appellant maintains that the nonrenewal was based on retaliation because the nonrenewal took place within three weeks of her meeting with union representatives and BCPS personnel during which she presented her concerns about Edgcombe Circle.

Prima Facie Case

In order to establish a *prima facie* case of retaliation, Appellant must show that (1) she engaged in a protected activity; (2) that the school system took a materially adverse employment action against her; and (3) that a causal connection existed between the protected activity and the materially adverse action. *Burlington N. & Santa Fe Ry. Co. v. White*, 584 U.S. 53, 68 (2006). The school system may then rebut the *prima facie* case by showing that there was a legitimate non-discriminatory reason for the adverse action. *Id.* The burden then shifts back to the Appellant to show that the reasons given by the school system are pretextual. *Id.*

We agree with the hearing examiner and the local board that the Appellant has established a *prima facie* case of retaliation. Appellant engaged in a protected activity. She met with her union representative, Mr. Casey, to discuss safety and other concerns at Edgcombe Circle. Mr. Casey conveyed those concerns to Ms. Brinkley-Parker and a meeting took place

⁷ Issues concerning Appellant's lapse in certification were resolved in MSBE Op. No. 15-05 and are not at issue here.

with the Appellant, the union and school system personnel in an attempt to resolve them. Appellant has a right to participate in union activities for representation, including matters such as working conditions. Md. Code Ann., Educ. §6-402(a).

Appellant suffered a materially adverse employment action when she was non-renewed for the 2013-2014 school year. The non-renewal occurred in less than a month of Mr. Casey bringing Appellant's complaints to the attention of Ms. Brinkley-Parker and the meeting with school system personnel, Appellant and the union. The brevity in time between these events and the May 1st nonrenewal is sufficient to show a causal connection. *See Edgewood Management Corp. v. Jackson*, 212 Md. App. 177, 205 (2013), citing *Bleich v. Florence Crittenton Servs. of Baltimore, Inc.*, 98 Md. App. 123, 142 (1993) (“[T]emporal proximity between protected activity and discharge was evidence supporting an inference that the protected activity was the proximate cause of her termination.”).

Prima Facie Case Rebuttal

In an attempt to rebut the *prima facie* case, the local board maintains that there were legitimate non-discriminatory reasons for the adverse action. Performance problems were documented from the Appellant's start at Edgecombe Circle, particularly with planning and preparation and delivery of instruction. These problems, including a recurring failure to have complete lesson plans on hand and classroom management, continued throughout the year and resulted in the Appellant being placed on a PIP. All of this predated the Appellant's March 11th meeting with her union representative, the April 4th transmittal of Appellant's letter from Mr. Casey to Ms. Brinkley-Parker, and the April 11th meeting with the union and school personnel.

In addition, the Appellant had attendance issues for which she received caution notices. When she went out on sick leave on March 19, she had 5 occasions of absence. Her absences negatively impacted instruction. The attendance issues predated the April 4th transmittal of Appellant's concerns from Mr. Casey to Ms. Brinkley-Parker and the April 11 meeting. They serve as a legitimate basis for the nonrenewal.

Pretext

Appellant maintains that these reasons are pretextual and that her non-renewal was retaliatory.

First, she claims that her observations increased and her performance was found to be unsatisfactory only after she shared her concerns with the union. We point out here that Mr. Casey did not share the Appellant's concerns about the conditions at Edgecombe Circle with Ms. Brinkley-Parker until the afternoon of April 4, 2013. (BTU Ex. 2). The record reflects that Appellant's performance was a concern well before that date, starting from the beginning of her assignment at Edgecombe Circle in November 2012. From that time, Appellant was observed regularly and those observations continued throughout the school year. Issues with Appellant's performance were consistently noted and served as a basis for the unsatisfactory annual evaluation. Even though the Appellant's unsatisfactory annual evaluation was not completed until April 26, 2013, Ms. Brinkley-Parker had previously advised the Appellant on March 18th

that she was performing unsatisfactorily and would be subject to a third formal observation. Appellant never returned to school, however, so no additional observation took place.

Appellant also maintains that the attendance issue is pretextual based on her claim that at the meeting on April 11, 2013, Mr. Conley suggested that she take sick leave until the end of the school year and then apply for a voluntary transfer. Mr. Casey and the Appellant testified to this but Ms. Brinkley-Parker did not recall that conversation. Disregarding any sick leave taken after April 11th, the Appellant's attendance record still shows an accumulation of absences to support a legitimate basis for concern. Again, she was advised regarding attendance concerns prior to the date Mr. Casey shared Appellant's letter with Ms. Brinkley-Parker.

We recognize that the record reflects two very different viewpoints regarding the reasons for the Appellant's performance at Edgecombe Circle. One depicts a teacher with significant planning and instructional deficits and the other depicts a struggling teacher with little support. Whether or not the administration could have done more to assist Appellant with her performance is not dispositive of the retaliation claim. Despite the reasons for the Appellant's performance, what is clear is that the administration perceived problems with the Appellant's teaching from the start of her assignment at Edgecombe Circle. Those performance problems were documented beginning in November 2012 and continued until the Appellant went out on sick leave in March 2013. The school administration did not first raise performance issues with the Appellant in April 2013 after Ms. Brinkley-Parker became aware of the union's involvement. The issues that were documented were ongoing long before that time and served as the basis for Appellant's April 26, 2013 annual evaluation.

Appellant argues that the timing of her April 26th annual evaluation and May 1st nonrenewal notice lends support to her retaliation claim. The local board explained, however, that both the evaluation and nonrenewal were required to be communicated to the Appellant by May 1st. Under the agreement between the local board and Baltimore Teachers Union, notice of an unsatisfactory annual evaluation must be delivered to all teachers, tenured or not, by May 1st. (Agreement, attached to Motion). Pursuant to COMAR 13A.07.02.01, either party opting to terminate the employment contract must provide notification to the other party by May 1st. Thus, the timing of the evaluation and nonrenewal notice were essentially pre-determined by the legal requirements which happened to be in close proximity to the date Mr. Casey communicated Appellant's concerns to Ms. Brinkley-Parker and the date of the meeting with Appellant, and the union and school representatives.

In addition, Mr. Jerome Jones, Labor Relations Manager, explained the district-wide process for determining which teachers will not be renewed by the school system. He explained that at some point prior to May 1, his office reviews all teachers to see if their certification has lapsed. If it has, the school system then reviews the evaluations and attendance records to determine if there are performance and attendance issues. He stated that if there are attendance or performance issues, the Labor Relations Office recommends nonrenewal. (T. 57-60). In this case, the Appellant's certification had lapsed which placed her in probationary status with the school system. Her unsatisfactory annual evaluation was in the BCPS electronic system. She also had attendance issues. The confluence of all of these events supports the timing of the unsatisfactory annual evaluation and nonrenewal notice for legitimate reasons.

The Appellant also maintains that conflicting information regarding who made the nonrenewal determination supports her claim that it was retaliatory. In the prior case, Ms. Henderson, a Labor Relations Associate, testified that Ms. Brinkley-Parker requested the Appellant's nonrenewal due to job performance. In this case, Ms. Brinkley-Parker testified that she did not request it. In fact, she was under the assumption that the Appellant was tenured because she was unaware that Appellant's certification had lapsed. Mr. Jones explained the process for determining the non-renewals. We do not believe that this conflicting information means the reasons given were pretext. Rather it shows confusion on the part of the individual who testified in the prior case, which was clarified in this case. Moreover, because we find that there were legitimate, nondiscriminatory reasons for the non-renewal, we do not find the issue of who made the ultimate decision to be relevant

Appellant also argues that the proffered reasons for the nonrenewal are pretextual because they were not initially given as the basis for the non-renewal. The May 1st letter advising the Appellant of her nonrenewal does not include an explanation of the basis for it. Rather, it refers the Appellant to the principal for discussion of the rationale. There is no evidence that the Appellant sought such a rationale. Moreover, there is no law that requires a school system to provide reasons for a non-renewal. The reasons are being addressed here because the Appellant has raised the issue of retaliation.

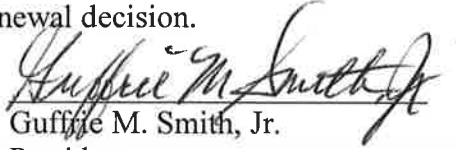
Finally, the Appellant claims that the reasons given are pretextual because counsel for the local board already stated during the hearing in the prior case that job performance had nothing to do with the Appellant's nonrenewal. She cites the following statement:

There was a question, if I may respond, regarding a conversation between Labor Relations and the Principal. There was a conversation about job performance as it relates to non-renewal. The decision that ultimately came out from the designee of the CEO for which this appeal was taken is directly from the May 1st letter which does not cite job performance in any way. There's no indication in Ms. Jones' personnel record indicating job performance issues. This issue of this appeal deals directly with the non-renewal for the 2013, 2014 school year as it relates to certification and as outlined in the response to the appeal in Ms. Henderson's August 19th, 2013 letter all deals with certification and non-renewal. And that's CEO Exhibit 10. There's nothing involving job performance in any way. The door was not opened regarding job performance and there's no indication that that was the purpose behind the non-renewal.

(T. 92-93, 4/24/14). This argument, however, was made by counsel to limit the scope of questioning of a witness. It is not sworn testimony. In the current case we have credible testimony and evidence that Appellant's nonrenewal was based on her performance and attendance issues. We do not find that the statement above proves pretext.

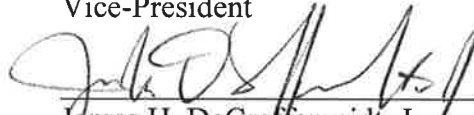
CONCLUSION

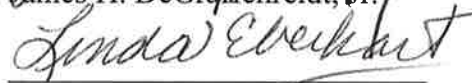
For the reasons stated above, we find that the Appellant's nonrenewal was not motivated by retaliation and we affirm the local board's nonrenewal decision.

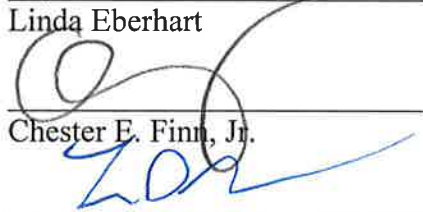

Guffie M. Smith, Jr.
President

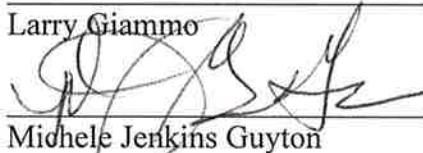
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S. James Gates, Jr.
Vice-President


James H. DeGraffenreid, Jr.


Linda Eberhart

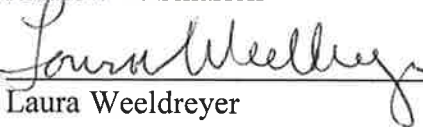

Chester E. Finn, Jr.

Larry Giammo

Michele Jenkins Guyton

 *Enk*
Stephanie R. Iszard


Madhu Sidhu

absent

Andrew R. Smarick

Laura Weeldreyer

October 27, 2015