

DENISE D. FRY, ET AL.,

Appellant

v.

WASHINGTON COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-26

### OPINION

Appellants claim that the local board's decision denying their appeal on the grounds of lack of standing and no live case or controversy is arbitrary, unreasonable, and contrary to sound educational policy. The local board has filed a Motion to Dismiss before the State Board maintaining that there is no case or controversy warranting an appeal to the State Board, and that Appellants lack standing to bring the appeal. In reply Appellants argue that the appeal presents a controversy that is ripe for review because the appeal asserts that new school system policies violate terms of the negotiated agreement between the Washington County Teachers Association ("WCTA")<sup>1</sup> and the local board as well as provisions of existing local board policy. Appellants stress that they are not appealing the merits of a classroom observation or the substantive content of a performance evaluation, and that because neither the local superintendent nor the local board has addressed the merits of the dispute, the appeal should be remanded to the local board.

### BACKGROUND

During an August, 1998, inservice meeting, principals, assistant principals and superintendents employed by the local board were advised of new initiatives for the 1998-99 school year concerning the process for classroom observations. The initiatives were clarified in a memorandum to the administrators which included the directives that "[l]esson plans are required for every teacher for every day for every lesson," and that "[a]ll observations of tenured teachers should be unannounced."

School based administrative staff implemented the directives contained in the memorandum at the start of the school year. During the first several weeks of the school year, many certificated teachers employed by the local board voiced concerns with the WCTA that some of the new initiatives differed appreciably from prior practice. The teachers had two primary concerns. The first issue focused on the fact that teachers had previously been required to maintain only abbreviated lesson plans on a daily basis, and to maintain

---

<sup>1</sup> The WCTA is the designated exclusive bargaining agent for all certificated teachers employed by the Appellee.

comprehensive lesson plans only in the event of an announced observation. The second issue focused on the fact that observations had previously been announced with only occasional unannounced observations taking place.

This change in policy prompted an administrative appeal filed on behalf of Denise D. Fry and 445 other teachers.<sup>2</sup> Appellants alleged that the “no notice” formal observation process for the 1998-99 school year violated the negotiated agreement between the WCTA and the local board, and violated local board policy, in particular the provision in Policy GCN-R authorizing a pre-observation conference if requested by either the teacher or the observer. Appellants argued that the new process “increases time spent by teachers in planning” requiring an unusual amount of “detail far beyond what is required for teachers effectively to fulfill their professional responsibility to their students.” They further argued that the new process “negates the possibility of meaningful pre-observation conferences and severely limits the teachers’ ability to discuss with observers the particular nuances of the class to be observed.”

The superintendent denied the appeal on the grounds that there was no controversy or dispute requiring a decision. He cited *Strother v. Howard County Board of Education*, 6 Op. MSBE 1 (1995), in which the State Board held that a disagreement with a classroom observation report can only be appealed as a component of an unsatisfactory evaluation. The superintendent indicated that the instant appeal was not ripe for a decision because not one of the signatories had received an unsatisfactory evaluation which would warrant review of the matter.<sup>3</sup>

Appellants appealed to the local board. The local board did not review the merits of the case. Instead, the local board denied the appeal based on a lack of a cognizable controversy or dispute. This appeal to the State Board followed.

## ANALYSIS

In its Motion to Dismiss, the local board argues in reliance on COMAR 13A.07.04.04 that Appellants have presented no cognizable “case or controversy” and that Appellants lack standing because the appeal presents no evidence that any single Appellant actually received a less than satisfactory observation or evaluation report.<sup>4</sup> However, based upon our review of

---

<sup>2</sup>The signatures of these individuals appear on the pages attached to the letter of appeal to the superintendent.

<sup>3</sup>The superintendent did note in his decision that there was no basis for the contention that the new process violated the negotiated agreement or local board policy.

<sup>4</sup>COMAR 13A.04.04.04 provides that a disagreement with a classroom observation report is not a controversy or dispute under § 4-205(c) of the Education Article unless it is a

the pleadings, we find that this appeal is not a case involving a disagreement with the merits of a specific classroom observation report or a performance evaluation. Rather, the appeal challenges the school system's adoption of an observation process which includes requirements for detailed lesson plans and a "no notice" observation rule for tenured teachers. Appellants' argument is that these changes violate their negotiated agreement and/or violate existing local board policy GCN-R - Procedures for Evaluation of Professional Personnel.

It is well settled that in order for an individual to have standing, he must show some direct interest or injury in fact, economic or otherwise." *See Donald McComb v. Montgomery County Board of Education*, MSBE Opinion No. 98-21 (April 28, 1998); *Adams v. Board of Education of Montgomery County*, 3 Op. MSBE 143, 149 (1983).<sup>5</sup> Here, we find that the Appellants, who are teachers in the school system, have a direct interest in the new initiatives which are alleged to violate provisions of their negotiated agreement or portions of the local board's existing policy: GCN-R on Procedures for Evaluation of Professional Personnel. Accordingly, we find that Appellants have a direct interest at stake which accords them standing.

## CONCLUSION

For these reasons we are remanding the matter to the Board of Education of Washington County for its review of the complaint in accordance with the provisions of the negotiated agreement if applicable, or under § 4-205(c) for a dispute involving a local policy or procedure.

Walter Sondheim, Jr.  
President

Edward Andrews  
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Philip S. Benzil

George W. Fisher, Sr.

---

component of an unsatisfactory evaluation.

<sup>5</sup>The standing doctrine requires that a justiciable case and controversy exist between the parties in order to pursue a claim. *See Sipes v. Board of Mun. and Zoning Appeals*, 99 Md. App. 78, 94 (1994), citing *Chiles v. Thornburgh*, 865 F.2d 1197, 1212 (11<sup>th</sup> Cir. 1989).

Morris Jones

Marilyn D. Maulsby

Judith McHale

Adrienne L. Ottaviani

John Wisthoff

May 26, 1999