

JONATHAN WRUBLEWSKI,

Appellant

v.

CHARLES COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR15-11

ORDER

Appellant challenged the decision of the Charles County Board of Education (local board) to terminate him from his teaching position.

We transferred the case pursuant to COMAR 13A.01.05.07 to the Office of Administrative Hearings (OAH) for a hearing before an Administrative Law Judge (ALJ). The ALJ issued a Proposed Order recommending that the State Board dismiss the case because the Appellant failed to timely file an appeal to the local board of the local Superintendent's recommendation for termination.

The Appellant filed exceptions to the ALJ's proposed decision and the local board responded. Oral argument on the exceptions was held before the State Board on August 25, 2015. At that time, during deliberations only four of the six members in attendance voted to affirm the local board. To take action on an appeal requires the affirmative vote of six members of the Board. Md. Educ. Art. 2-204(e). The case was mistakenly announced as published, however. It was recalled the following day. At the September 22, 2016 and the October 27, 2016 Board meetings, the Board again deliberated the case.

After much deliberation, this Board has failed to find a majority to accept or reject the ALJ's Proposed Order. In order for the State Board to accept or reject an ALJ's proposed decision and issue a final decision, at least six members must vote in the affirmative to do so. Md. Educ. Art. §2-204(e). In this case, no affirmative vote of six members was achieved. The following members would vote to affirm the ALJ's decision: James H. DeGraffenreidt, Jr., Linda Eberhart, Stephanie Iszard, Guffrie M. Smith, Jr., and Laura Weeldreyer. The following would vote to remand the case to the local board for a hearing on the merits: Chester Finn, Larry Giammo, Michele Jenkins Guyton, and Madhu Sidhu. The remaining board members were absent from the October 27, 2015 meeting.

This represents an instance of first impression for this Board. Courts, when faced with a lack of majority, recognize that "a conscious non-decision is a form, albeit a rare one, of deciding." *Lee v. State*, 69 Md. App. 302, 312 (1986), *aff'd* 311 Md. 642 (1988).

Here the ALJ's Proposed Order recommended that the local board's decision on untimeliness be allowed to stand. The Appellant filed Exceptions to that Proposed Order. When he did so, he became the moving party claiming that the ALJ's Proposed Order was incorrect and should be reversed. He failed to convince a sufficient number of board members that his arguments were correct. The court in *Lee v. State* explained the effect of the failure to obtain sufficient votes for reversal:

"In cases of appeal or writ of error in this court, the appellant or plaintiff in error is always the moving party. It is affirmative action which he asks. The question presented is, shall the judgment, or decree, be reversed? If the judges are divided, the reversal cannot be had, for no order can be made. The judgment of the court below, therefore stands in full force...."

The decision is that the trial court's judgment will not be reversed because the appellant has failed to persuade a majority of the reviewing court that it merits reversal. There is no lack of decisive impact on the case at hand. What is lacking is an agreed *ratio decidendi* which can serve as binding precedential authority for future decisions.

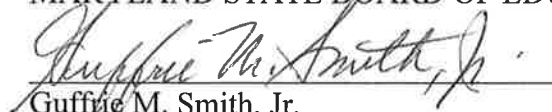
*Id.* at 313-314 (citing *Durant v. Essex Co.*, 74 U.S. (7 Wall.) 107, 112 (1868)).

Allowing the local board's decision to stand conforms to the standard of review applicable in this case. In teacher termination cases, this Board exercises its independent judgment on the applicable law and relevant evidence. COMAR 13A.01.05.05(F). The split of opinion among Board members renders it impossible for this Board to come to a definite decision in the exercise of its independent judgment. Thus, we will adopt the same procedure used by courts, and as we understand it, by local boards of education in Maryland when there is a lack of agreement and the necessary affirmative votes to act and let the decision below stand.

CONCLUSION

Thus, for all the reasons stated herein, the local board's decision will stand. It is so ORDERED, this 5<sup>th</sup> day of November, 2015.

MARYLAND STATE BOARD OF EDUCATION



Guffie M. Smith, Jr.

President