STATE BOARD OF EDUCATION

STATE OF GEORGIA

GRACE MOORE, Appellant, vs. THE BOARD OF EDUCATION FOR THE CITY OF SAVANNAH AND THE COUNTY OF CHATHAM, Appellee.	:	CASE NO. 1978-13

O R D E R

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Board of Education for the City of Savannah and the County of Chatham herein appealed from, be, and it is hereby affirmed.

This 21st day of August, 1978.

Thom K. Vann, Jr.

THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

GRACE J. MOORE, Appellant, vs. THE BOARD OF PUBLIC EDUCATION FOR THE CITY OF SAVANNAH AND THE COUNTY OF CHATHAM, Appellee.	:	CASE NO. 1978-13 REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

On December 7, 1977 the Board of Public Education for the City of Savannah and the County of Chatham (hereinafter "Local Board") entered a decision which affirmed the demotion of Grace J. Moore (hereinafter "Appellant"). The demotion resulted from a reorganization plan adopted by the Local Board on June 8, 1977.

The appeal to the State Board of Education was made on the grounds that (1) the Local Board breached the Appellant's contract; (2) the demotion was contrary to Ga. Code Ann. §32-2101c, and (3) the action of the Local Board was arbitrary and capricious. The Hearing Officer recommends that the decision of the Local Board be affirmed.

PART II

FINDINGS OF FACT

For more than three years, Appellant was a professional employee of the Local Board and served as the Visiting Teacher Coordinator. On April 1, 1977, she was offered another one year contract which she accepted on April 29, 1977. As the Visiting Teacher Coordinator she supervised several other employees and was paid more than non-supervisory visiting teachers.

On June 8, 1977 the Local Board adopted a plan of reorganization which created four area assistant superintendents. This resulted in the reduction of some of the central office staff positions, one of which was Appellant's, because the visiting teachers reported directly to the assistant area superintendent. The record discloses that the reorganization plan was prepared by the Superintendent's staff and presented to the Local Board, debated, and the ramifications discussed. Appellant was not identified by name as one of the persons who would be affected by the reorganization.

On June 9, 1977, the Superintendent told Appellant that her position was to be eliminated. He then notified her in writing on June 16, 1977, that she was to be assigned the position of Visiting Teacher effective July 1, 1977.

Appellant filed a grievance under the Local Board rules. The grievance complained of Appellant's demotion and pay loss of approximately $1000 as a result of her reassignment and failure to obtain the step increase which she would have received in her position as Visiting Teacher Coordinator.

The grievance procedures resulted in a decision on October 21, 1977 that Appellant did not have any grounds for grievance. This recommendation was adopted by the Local Board of December 7, 1977. Appellant filed a notice of appeal to the State Board of Education on January 5, 1978. The transcript was submitted to the State Board of Education on May 4, 1978.

The contract signed by Appellant on April 29, 1977 contained the following pertinent provisions:

> "[The teacher is employed]. . .at an annual contract salary in accordance with the index salary schedule adopted by the employer. . . applicable to the classification and type of service to which the teacher has been assigned, without obligation by the employer to make up any deficit beyond such sum as shall become uniformly applicable to all teachers of the same group, classification, type and length of service as determined by any law

or laws now or hereafter in operation regulating the financing of public school systems."

* * *

". . . the employer reserves the right to effect a transfer at any time to any school or other professional position."

* * *

"The terms and conditions of this contract are made expressly subject to provisions of the Constitution and the laws of the State of Georgia relative to public education and the appropriations therefore."

* * *

"This contract shall not be terminated by the employer except as provided therefore in any law of the State of Georgia presently in force or hereafter enacted pertaining to the retention and/or dismissal of employees of local boards of education."

PART III

CONCLUSIONS OF LAW

Appellant's appeal to the State Board of Education states that (1) the Local Board erroneously breached her

contract and thereby violated her constitutional rights; (2) The demotion was not in compliance with the requirements of Ga. Code Ann. §32-2101c; (3) the evidence did not establish good and sufficient cause for the demotion, and (4) the decision of the Local Board was arbitrary and capricious. Appellant requests that she be granted back-pay representing the difference between what she actually was paid and the amount she anticipated she would be paid when she signed her contract.

A review of the record does not disclose that the decision of the Local Board was arbitrary and capricious. Under Ga. Code Ann. §32-954, a local school board is granted the authority to reorganize the schools within its jurisdiction and under Ga. Code Ann. §32-901 the school district is under the control and management of a county board of education. The Local Board argued the plan of reorganization and deliberated on its effects. The Local Board recognized that some administrative positions would be eliminated, but there is no evidence that the action was directed toward Appellant. The basic decision to reorganize, therefore, was not made arbitrarily and capriciously. Similarly, the decision to pay Appellant at a new salary rate based on the new position was not arbitrarily and capriciously made. As hereafter pointed out, the wording of the contract is such that the Local Board's decision regarding Appellant's

situation was also not arbitrary and capricious.

The contract signed by Appellant provided that she would be paid "in accordance with the index salary schedule . . . applicable to the classification and type of service to which the teacher is assigned . . . ." The contract also provided that the "employer reserves the right to effect a transfer at anytime to any school or other professional position. (emphasis added)" It is Appellant's contention that the contract was breached because it was signed by both parties with an expectation that a certain salary was to be paid, and it was only after the signing that the reorganization was voted upon by the Local Board.

In an analogous case, Austin v. Benefield, 140 Ga. App. 96 (1976), the school system entered into written contracts with the teachers for a stated salary for the next year. The contracts provided that the specified salary was "subject to adjustment. . .without obligation by the employer to make up any deficit." During the summer months, the legislature held a special session and reduced the state appropriation for education. The local board then told the teachers that the stated salaries would be reduced by the amount of the state reduction. Upon the complaint of the teachers, the Court of Appeals reasoned that language in the contract making it subject to the appropriations for education meant appropriations at the time of payment and not when

the contract was signed. Any other interpretation would make the provision a useless redundancy.

In the instant case, the Local Board retained both the right to make a transfer to any "other professional position" and the right to pay the salary "applicable to the classification and type of service to which the teacher is assigned. . . ." As in Austin v. Benefield, these provisions had to have reference to future transfers and future salary classifications in effect to which the teacher might be assigned. If the provisions were interpreted to mean that the salary level was fixed at the time the contract was signed, then the provisions would be redundant. There also does not appear to be any language in the contract which would permit only upward mobility without having any downward mobility of the salary paid. It therefore appears that the contract provided for the situation and was not breached by the Local Baord by transferring Appellant to another professional position which had a lower salary schedule than the one she anticipated at the time the contract was signed. Similarly, there was no impairment of the contract and thus no violation of the constitutional prohibition against impairment.

It is also the opinion of the Hearing Officer that the demotion was in compliance with the provisions of the Fair

Dismissal Act, Ga. Code Ann. §32-2101c et seq. Appellant argues that there existed a requirement for the Local Board to notify Appellant by April 15 if she was to be demoted because of the provision of Ga. Code Ann. §32-2103e which requires that written notification of a decision to demote be "given to such teacher or employee not later than April 15 prior to the ensuing school year. . . ."

It is apparent from the record that prior to April 15 there had not been a tentative decision to demote Appellant. Additionally, the demotion was not the result of any derogatory actions on Appellant's part, nor was it the result of any action on the part of the Local Board directed specifically against Appellant. The demotion resulted from the Local Board lawfully exercising its administrative powers to operate the local school system. The question to be decided in whether Ga. Code Ann. §32-2103c prevents a demotion if the teacher has not been notified by April 15 when the demotion is the result of administrative action rather than disciplinary action. It is the opinion of the Hearing Officer that Ga. Code Ann. §32-2103c does not prevent a demotion that results from administrative action even though the teacher was not notified of the demotion prior to April 15.

The legislative purpose of the Fair Dismissal Act, taken as a whole, is to provide tenured and non-tenured

teachers with a measure of protection from arbitrary and capricious actions by the school system. The Act does not prevent a teacher from being demoted, suspended, terminated, or non-renewed. It does provide that if any of these actions are to be taken, then the teacher is guaranteed certain safeguards so that any decision reached will not be arbitrary and capricious.

The Fair Dismissal Act provides for two courses of action by a local school board. Ga. Code Ann. §32-2104c. An action for termination or suspension under Ga. Code Ann. §32-2101c may be taken at any time, and the local board can terminate, suspend, or reinstate the teacher as a result of such action. Ga. Code Ann. §32-2104c(a). In Harrison v. Salisbury, Case No. 1976-19, the State Board of Education stated that a local board's power to terminate under Ga. Code Ann. §32-2101c also included the power to demote. Action may also be taken under Ga. Code Ann. §§ 32-2102c and 32-2103c to nonrenew or demote a teacher and the local board can non-renew, renew, or demote a teacher as a result of such action.

If an action is brought under Ga. Code Ann. §32-2101c, there are only certain reasons permitted for terminating, suspending, or demoting the teacher. Among these reasons is any reduction in staff due to loss of students or cancellation of programs. Ga. Code Ann. §32-2101c(a)(6).

The same limitations do not exist with respect to a demotion or a contract non-renewal under the provisions of Ga. Code Ann. §§32-2102c and 32-2103c. These latter sections provide for notice and hearing to the teacher no later than April 15, but there are not listed any statutory reasons required for the termination or the renonrenewal of the teacher. Thus, if a local board proceeds under either Ga. Code Ann. §32-2102c or Ga. Code Ann. §32-2103c, it is not limited to the reasons set forth in Ga. Code Ann. §32-2101c, but it must notify the teacher prior to April 15. If the local board proceeds under Ga. Code Ann. §32-2101c, it can take the action at any time during the school year, but it is limited to the eight reasons for such action that are provided by the statute.

In the present case, the Local Board could proceed under Ga. Code Ann. §32-2101c(6), i.e., it could demote Appellant, or any other teacher, at any time during the year due to a cancellation of a program resulting from the reorganization of the school system. It was not necessary for the Local Board to notify Appellant prior to April 15 that the reorganization would result in her demotion. Appellant's appeal, therefore, cannot be sustained on the grounds that the Local Board violated the provisions of Ga. Code Ann. §32-2101c.

PART IV

RECOMMENDATION

Based upon the above findings and conclusions, the record submitted, and the briefs and arguments of counsel, it is the opinion of the Hearing Officer that the reorganization and Appellant's attendant demotion were properly carried out by the Local Board. The Hearing Officer therefore recommends that the decision of the Board of Education for the City of Savannah and the County of Chatham be sustained.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer