

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ALBERT THOMAS JOHNSON,

Appellant,

vs.

DODGE COUNTY BOARD OF  
EDUCATION,

Appellee.

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CASE NO. 1979-20

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 Dodge County Board of Education herein appealed from is hereby affirmed.

Mr. Lathem was not present.

This 8th day of November, 1979.

  
THOMAS K. VANN, JR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ALBERT THOMAS JOHNSON,	:	CASE NO. 1979-20
	:	
Appellant,	:	
	:	
vs.	:	
	:	
DODGE COUNTY BOARD OF	:	REPORT OF
EDUCATION,	:	HEARING OFFICER
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is an appeal by Albert Thomas Johnson (hereinafter "Appellant") from a decision of the Dodge County Board of Education (hereinafter "Local Board") to reassign him to the position of assistant or associate principal of a high school from his position as principal of a junior high school. The appeal to the State Board of Education was made on the grounds that the Local Board erred in sitting as the trier of fact after Appellant objected, and the decision was arbitrary and denied Appellant substantive due process and equal protection. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II  
FINDINGS OF FACT

During the 1978-79 school year, Appellant was serving as principal of a junior high school. On April 11, 1979, he was notified in writing that he would be assigned the position of assistant principal in a high school. Appellant requested a hearing before the Local Board and list of reasons for the transfer. Appellant was given a written list of reasons and a summary of the expected testimony of the superintendent, who was to be the only witness for the school system. He was also informed that the hearing would take place on May 30, 1979.

The hearing was held before the Local Board on June 27, 1979. Before the hearing started, Appellant, through counsel, filed a motion requesting that the Local Board recuse itself on the grounds the members of the Local Board had already expressed themselves on the efficacy of transferring Appellant to the position of assistant principal and could not, therefore, grant Appellant a fundamentally fair hearing, in violation of the due process and equal protection clauses of the 14th amendment of the constitution of the United States of America. The motion was denied by the Local Board and the hearing proceeded.

At the conclusion of the hearing, the Local Board decided to sustain the previous decision to transfer

Appellant to the position of associate principal at the high school. The Local Board submitted its decision without making any findings of fact. The appeal to the State Board of Education was submitted to the local superintendant on July 17, 1979.

The evidence submitted at the hearing showed that Appellant was first employed by the Local Board as an assistant principal in the high school during the 1975-76 school term. He was then employed as the principal of the junior high school for the next three successive years. Appellant had not been offered a contract for the fourth year as a principal.

During the 1978-79 school year, the Local Board determined that it was necessary to reorganize the structure of the schools in order to eliminate overcrowded conditions. Part of the reorganization plan called for elimination of the junior high school with the transfer of the ninth grade to the high school. The junior high school was then converted into a middle school. The Local Board also decided that the increased enrollment in the high school required another administrative person. Appellant was deemed to be the best qualified for the additional position and it was offered to him with an increase in salary of \$1,300.00 per year over what he was being paid as principal of the junior high school.

PART III

CONCLUSIONS OF LAW

Appellant claims that he was not given a fair hearing because the Local Board did not recuse itself on his motion. The basis for Appellant's request for a hearing was that the transfer from the position of principal at the junior high school to the position of associate principal at the high school constituted a demotion.

The Local Board argues that its decision should stand because Appellant was not entitled to the benefits of Ga. Code Ann. Ch. 32-21c because he was not tenured as a principal since he had served as a principal for only three years and had not signed a contract for the fourth consecutive year. See, Ga. Code Ann. §32-2103c. The Local Board also argues that a demotion did not occur, and the fact of previous familiarity did not disqualify the members of the Local Board so that error was not committed by their failure to recuse themselves.

Although both parties have advanced several arguments concerning the various issues, the Hearing Officer concludes that, based upon the evidence presented, a demotion did not occur. Ga. Code Ann. §32-2104c(b) attaches three tests to determine if there has been a demotion: (1) less responsibility, (2) less prestige, and (3) less salary. There is no question that Appellant will be obtaining a

higher salary in the new position. Appellant testified that he perceived the new position as having less prestige than the old position, but he did not present any evidence that there were any others who perceived the new position in a lesser light than the old position. The superintendent testified that the new position did not have less prestige than the old position. Neither party, therefore, presented any persuasive evidence whether the new position has more or less prestige than the old position. The two positions also had different responsibilities. There was testimony that, as principal, Appellant had supervisory responsibility for approximately fifty-four employees and reported directly to the superintendent. In the new position, he reported to the principal of the high school and did not have the direct supervisory responsibilities. He was, however, to be given new responsibilities for teacher recruitment, community liason, and planning where he was to report to the superintendent. There was not, therefore, a clear lessening of responsibilities in the new position. The Hearing officer, therefore, concludes that with two of the elements necessary for a demotion being clearly missing, the evidence does not support Appellant's contention that he was demoted.

The reasons the superintendent gave for the transfer were not shown to be arbitrary and capricious. The basic reorganization was recommended by the State Department

of Education and Appellant was deemed to be the best-suited for the new position. The Hearing Officer concludes that there was no abuse of discretion in making the transfer.

Ga. Code Ann. §32-2103c permits a teacher or other professional employee who has entered into a contract for the fourth consecutive year to have a hearing in the event the teacher or other employee is demoted from one position to another position having less responsibility, prestige, and salary. In the instant case, there has not been a showing made that Appellant was demoted. The Local Board, nevertheless, granted a hearing and the reasons for the transfer were explored. The evidence does not show that the transfer was arbitrary and capricious, but, instead, shows that the Local Board was carrying out a plan which would aid in the administration of the school system. The position of junior high school principal was abolished in the reorganization, and Appellant was deemed the most capable individual to fulfill the duties of the newly created position. The Hearing Officer, therefore, concludes that the failure of the Local Board to recuse itself did not result in any harmful error to Appellant, if any error was committed. Appellant's transfer was within the sound administrative discretion of the Local Board and no abuse of discretion has been shown.

PART IV  
RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that Appellant was not demoted and that his transfer was not an abuse of discretion on the part of the Local Board. The Hearing Officer, therefore, recommends that the decision of the Dodge County Board of Education be sustained.

  
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L. O. BUCKLAND  
Hearing Officer