

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JOHN TROTTER,

Appellant,

v.

**DALTON CITY
BOARD OF EDUCATION,**

Appellee.

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CASE NO. 1985-4

ORDER

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 appeal is hereby dismissed because of lack of jurisdiction.

Mrs. Cantrell, Mrs. Baranco, Mr. Foster and Mr. Temples were not present.

This 8th day of August, 1985.

JOHN M. TAYLOR
Vice Chairman For Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JOHN TROTTER,)	
)	
Appellant,)	
)	CASE NO. 1985-4
v.)	
)	
DALTON CITY BOARD)	
OF EDUCATION,)	
)	REPORT OF
Appellee.)	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This appeal by John Trotter (hereinafter "Appellant") and eight citizens of Dalton City (hereinafter "Citizens") is based upon the non-renewal of Appellant's contract of employment as an assistant principal by the Superintendent of the Dalton City School System (hereinafter "Local Board"). Appellant requested that the Local Board grant him a hearing to hear a matter of local controversy, namely, his non-renewal, under O.C.G.A. § 20-2-1160. The Local Board's attorney notified Appellant that the Local Board declined his request for a hearing. Appellant and Citizens filed this appeal questioning whether O.C.G.A. § 20-2-1160 requires the Local Board to convene as a tribunal to inquire into the circumstances surrounding Appellant's non-renewal, alleging that the decision not to renew Appellant was arbitrary and capricious, was an abuse of discretion, and was based on political or other constitutionally impermissible reasons; i.e., his activity in the Georgia Association of Educators. The Local Board maintains that Appellant and Citizens were not entitled to a hearing under O.C.G.A. §20-2-1160 because, under O.C.G.A. § 20-2-942, a first year teacher is not entitled to a hearing when a contract is non-renewed and no hearing was granted, thus denying the State

Board of Education jurisdiction over this appeal. The Hearing Officer recommends the appeal be dismissed.

PART II
FACTUAL SUMMARY

The record in this case consists of a copy of Appellant's personnel file together with exchanges of correspondence between counsels for the parties. The record shows that Appellant was employed by the Local Board under a contract dated July 23, 1984 with his term of employment to begin August 1, 1984. Appellant had no previous employment experience with the Local Board but had been previously employed in other school systems. His personnel file submitted shows that none of his previous employment experiences had exceeded two years with the same local board of education. On April 11, 1985, he was notified that, based upon administrative consensus, he would not be renewed for the 1985-86 school year. On April 12, 1985, through council, he requested the Local Board grant him a hearing to hear a matter of local controversy, namely, his non-renewal under O.C.G.A. § 20-2-1160. Counsel for the Local

Board responded to the April 12 request by stating that the Dalton Public Schools declined Appellant's request. By letter of April 25, 1985, Appellant notified the Local Board attorney that he intended to appeal to the State Board of Education the decision denying him a hearing, that the Citizens had requested a hearing and were joining the appeal if a hearing were not granted, and further requested a reconsideration under State Board Policy BCAEA. By letter of May 6, 1985, counsel for the Local Board reiterated, on behalf of the Dalton Public Schools, that his firm was taking the position that the law did not mandate a hearing. Appellant and Citizens requested this appeal by letter of May 20, 1985.

PART III
DISCUSSION

Appellant and Citizens claim, on appeal to the State Board of Education, that O.C.G.A. § 20-2-1160 “requires the Local Board to convene as a tribunal for inquiry into the circumstances surrounding Appellant’s non-renewal, including allegations that the non-renewal decision was arbitrary and capricious, was an abuse of discretion, and was based on political or other constitutionally impermissible reasons.” They contend that, if the Local Board had granted Appellant’s request for a hearing, they would have demonstrated that Appellant performed his job in an exemplary manner, that he was extremely popular with his faculty, students and parents, and that the non-renewal decision was arbitrary and capricious and an abuse of discretion. They further contend that they would have shown that Appellant has been active in the Georgia Association of Educators, as well as politically active, and that the real reason for the non-renewal decision was retaliation for his constitutionally protected activities.

The State Board of Education is empowered to hear appeals from a decision of a local board rendered on a contested issue after a hearing by the local board. O.C.G.A. § 20-2-1160. In the absence of a hearing, however, the State Board of Education lacks jurisdiction to hear an appeal. *Boney v. County Bd. of Ed.*, 203 Ga. 152 (1947); *Owen v. Long County Bd. of Ed.*, 245 Ga. 647 (1980). Since there is no evidence in the record submitted that a hearing has been held by the Local Board in the instant case, the State Hearing Officer concludes that the State Board of Education is without jurisdiction to entertain the appeal.

Appellant argues that the State Board of Education has the authority to order the Local Board to conduct a hearing. The State Hearing Officer, however, is unaware of any authority which grants power to the State Board of Education to order a local board of education to conduct a hearing. Appellant’s and Citizens’

remedy is to seek mandamus in the superior court, or to seek a remedy in federal court. If the law requires the Local Board to grant a hearing, the Superior Court will mandate that to be done. Generally, an appellant is required to exhaust all administrative remedies before seeking intervention of the courts, *Arp v. Bremen Bd. of Ed.*, 171 Ga. App. 560 (1984), and, in this instance, the filing of an appeal to the State Board of Education appears to be aimed at such exhaustion before mandamus is sought. While an abundance of caution may dictate the filing of an appeal, the act of filing does not confer jurisdiction on the State Board of Education. Only a proper hearing will permit jurisdiction.

PART IV
RECOMMENDATION

Based upon the foregoing, the record submitted, and the briefs and arguments of counsel, the State Hearing Officer is of the opinion the State Board of Education lacks jurisdiction in the instant case because there has not been a hearing before the Local Board as required under the provisions of O.C.G.A. § 20-2-1160. The State Hearing Officer, therefore, recommends that the appeal herein be DISMISSED.

L. O. BUCKLAND
State Hearing Officer