

STATE BOARD OF EDUCATION

STATE OF GEORGIA

STEPHEN RICE,)
Appellant,)
v.) CASE NO. 1985-14
UNION COUNTY BOARD OF EDUCATION,)
Appellee.)

O R D E R

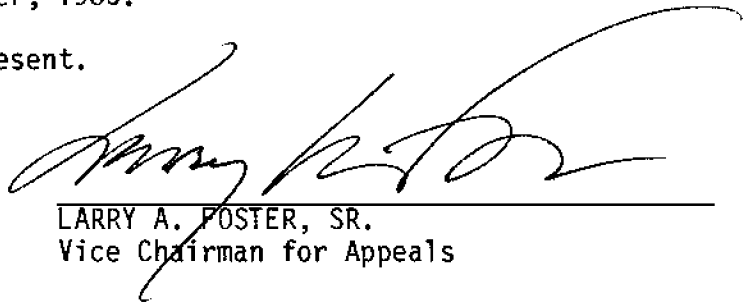
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 Union County Board of Education herein appealed from is hereby SUSTAINED.

This 10th day of October, 1985.

Mr. Temples was not present.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

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STEPHEN RICE,)	
)	
Appellant,)	
)	CASE NO. 1985-14
v.)	
)	
UNION COUNTY BOARD)	
OF EDUCATION,)	
)	REPORT OF STATE
Appellee.)	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Stephen Rice (hereinafter "Appellant") from a decision of the Union County Board of Education (hereinafter "Local Board") not to renew Appellant's teaching contract for the 1985-86 school year due to a loss of students and cancellation of programs. Appellant contends certain evidence presented was inadmissible due to a lack of compliance with the Fair Dismissal Act (hereinafter the "Act") and that there was no admissible evidence to support the decision. The Local Board contends the notice provided was adequate and that there was sufficient evidence to support the Local Board's decision. The State Hearing Officer recommends the decision of the Local Board be sustained.

PART II

FACTUAL BACKGROUND

Appellant is a tenured¹ teacher who holds a DT-5LD certificate. He was notified by letter dated April 9, 1985 that his contract would not be renewed for the 1985-86 school year due to a reduction in the State allocation of teaching units to the Local Board. On April 17, 1985, Appellant requested a hearing before the Local Board. The Local Superintendent responded by letter dated April 30, 1985 which stated that he did not recommend Appellant due to a loss of students and cancellation of programs and that a plan was developed under Local Board policy by the Director of Special Education for the elimination of two positions, one of which was Appellant's position. The letter also informed Appellant that certain witnesses might testify regarding the loss of allotments, the development of the plan, and the state and local criteria which had to be considered in developing the plan.

The hearing was held on May 20, 1985. Evidence was presented at the hearing which showed that the Local Board had twelve units allotted for special education teachers for the 1984-85 school year and would only have ten such units allotted for the 1985-86 school year. The evidence further established

¹ After a specified period of employment, O.C.G.A. §20-2-942 grants teachers certain rights which are commonly called "tenure" rights, even though the statute does not use the term "tenure."

that the Local Superintendent had asked the Special Education Coordinator (hereinafter "Coordinator") to develop a plan pursuant to Local Board policy on reduction-in-force. The Coordinator developed a plan which provided for nonrenewal of Appellant and one other teacher and presented it to the Local Superintendent. The Superintendent testified that he presented the plan to the Local Board and the Local Board approved it.

The Local Board's reduction-in-force policy, upon which the plan was based, provides that the criteria used to select those employees whose contracts are to be considered for termination will be years of experience and "...certification (degree, status, as related to the position(s) to be filled)." The Coordinator's plan recommended that Appellant be non-renewed instead of another individual (hereinafter "Renewed Teacher") who, according to the information the Coordinator had received and set out in the plan, had two more years' experience than Appellant. All teachers, other than the Renewed Teacher, who had less experience than Appellant were discussed in the plan. The discussion of the other teachers gave the reasons why they should be retained because of their areas of certification. The Coordinator showed why each discussed teacher had areas of certification in special education that were needed to provide a continuum of services in the Local System. She testified that she considered only Special Education certification in making her report.

At the hearing, it was pointed out that the Renewed Teacher actually had less experience than Appellant had, but a mistake had been made in counting the years of experience. The Coordinator testified that had she been aware of this fact, she would have recommended that the Renewed Teacher be non-renewed instead of Appellant.

The Local Superintendent acknowledged the error in the plan in terms of years of experience but testified that he would have made the same recommendation regardless of the error. He testified he personally looked at every certificate he had in the file and that the error in determining years of experience between the Renewed Teacher and Appellant would not have made a difference with respect to the non-renewal of Appellant because the Renewed Teacher had a certificate which qualified him to teach grades K-8 in addition to an LD certificate, while Appellant only had an LD certificate. The Local Superintendent further testified, over objection, that he still recommended the non-renewal of Appellant, based upon certification differences, even in light of the error that had been shown. Appellant's objection was based upon the fact that the charge letter notified him that the non-renewal was based upon the plan submitted, and that the testimony objected to was based upon information which was not considered at the time the plan was made because at the time the plan was made the Local Board was of the opinion the renewed teacher had more experience than Appellant.

The Local Board issued a decision finding that the initial decision to non-renew Appellant was based upon both time served in the Local System and the State of Georgia and certification, and that the preponderance of the evidence supported the position that the Appellant's contract not be renewed.

PART III

DISCUSSION

Appellant's first contention is that allowing the testimony of the Superintendent that he would have recommended the Renewed Teacher over Appellant, even in light of the error, violated the Act. He contends that the law limits the Local Board to considering the facts set forth in the notice. Since the notice stated that a plan was developed by the Coordinator of Special Education under Local Board policy eliminating his position, then the Local Board should have restricted itself to considering only the plan prepared by the Coordinator. Appellant contends that the Superintendent's testimony that he would have recommended the non-renewal of Appellant because of certification considerations exceeded the notice provided. Appellant takes the position that he was unable to defend against the newly contrived factual allegation because he was not given notice of it prior to the hearing. He contends that, because testimony was admitted beyond that provided for in the notice and that testimony was relied upon by the Local Board in reaching its decision, this was error and it requires reversal of the Local Board's decision.

Appellant's second contention is related to the first in that it relies on the inadmissibility of the Superintendent's testimony. Because the Superintendent's testimony is inadmissible and the plan was in error, there was no evidence to support the non-renewal of Appellant over the Renewed Teacher.

The Local Board contends that the notice letter provided that the non-renewal was based upon the Local Board's reduction-in-force policy. They contend that the policy clearly states that certification will be a factor. Further, Appellant stipulated that the notice was sufficient and he chose to defend only on the basis of experience rather than certification when he knew the plan recognized certification as a factor. Because the Superintendent testified he relied on both years of experience and on certification, the Local Board contends there is evidence to support their decision and, therefore, the Local Board's decision must be sustained.

The Act requires that written notice of the charges be provided Appellant. That notice has to state the cause of non-renewal in sufficient detail to enable the non-renewed teacher to fairly show any error that may exist. The purpose of this provision is to assist the teacher in preparing a defense. In the present case, the cause for non-renewal was, as is listed in O.C.G.A. §20-2-940, loss of students and cancellation of programs. This was stated in the charge letter. It is the cause required to be provided as notice. If the letter had stopped at stating this as the cause, then there would be little

question that it would have been sufficient. Non-renewal due to a loss of students or cancellation of programs is not the type of action where a person is accused of any wrongdoing. It is an action which is taken without any misfeasance on the nonrenewed individual's part. A loss of students and a cancellation of programs was proven at the hearing and is not contested on appeal.

After cause is shown to exist as a result of a loss of students, the Local Board must have some method of determining which teacher is to be non-renewed. While the Local Board may not be arbitrary and capricious in making this decision, they may choose to rely on certification as well as experience. Greene v. Clarke Cnty. Bd. of Ed., Case No. 1985-20. Thus, the Local Board developed a policy which included certification as a factor in determining who would be non-renewed. Appellant does not contest the fact that certification may be a factor in a reduction-in-force policy.

The alleged error in this case is that the notice was based upon a plan which contained an error in calculating experience. This is an allegation that initially the Local Board policy was not followed and the method used was incorrect. The Superintendent acknowledged the error in the plan but contended that the Appellant's non-renewal is still consistent with the policy. Appellant, however, contends that the Superintendent could not make that recommendation at the hearing because the notice provided him did not include considerations with respect to his certification as compared to the Renewed Teacher's certification.

The Local Board was the final decision maker with regard to whether the non-renewal was consistent with its policy. The Local Board considered its policy and considered Appellant's certification and years of experience. They then determined that Appellant's non-renewal was consistent with the policy.

The fact that the notice provided Appellant also included the method used to follow the Local Board policy does not warrant reversal of the Local Board's decision because the method was incorrect. The notice gave Appellant the opportunity to defend against the cause for non-renewal and to contend that it was arbitrary and capricious or not consistent with Local Board policy. After Appellant showed that the plan submitted by the Superintendent had an error in calculating years of experience, and after the Superintendent testified the non-renewal was still consistent with the Local Board policy, Appellant had the opportunity to present his defense. No delay was requested to prepare another defense. No allegation was made, or has been made, as to what other defense might be available. Appellant's defense relied upon objecting to the Superintendent's testimony for lack of notice and attempting to discredit the Superintendent's testimony that certification was a factor.

Appellant was aware prior to the hearing that the Superintendent was going to testify and Appellant had the opportunity

to present evidence to the Local Board to discredit that testimony. Indeed, the discovery of the error surprised the Superintendent and, if anything, served to benefit Appellant in attempting to discredit the Superintendent's testimony. However, the Local Board either chose to believe the Superintendent, or, if they did not, they chose to institute the nonrenewal on their own belief that Appellant's non-renewal was consistent with their policy.

PART IV

CONCLUSION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Hearing Officer is of the opinion that the Appellant was given adequate notice of the reasons for his non-renewal, and that there was evidence in the record to support the reasons for non-renewal. The Hearing Officer, therefore, recommends the decision of the Local Board be

SUSTAINED.



L. O. BUCKLAND
STATE HEARING OFFICER