

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DANIEL T. ARP,)	
)	
Appellant,)	CASE NO. 1985-16
)	
v.)	
)	
BREMEN CITY BOARD)	
OF EDUCATION,)	
)	
Appellee.)	REPORT OF STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Daniel T. Arp (hereinafter "Appellant") from a decision of the Bremen City Board of Education (hereinafter "Local Board") to relieve Appellant of his duties as a high school basketball and assistant football coach for the 1982-83 school year. Appellant contends he was entitled to a hearing because the Board's action constituted a demotion within the meaning of O.C.G.A. §20-2-942 and, because the Board did not provide him a hearing, he is entitled to the pay he would have received as a coach. The Local Board contends that O.C.G.A. §20-2-942 does not require a hearing be provided Appellant. The Hearing Officer recommends the decision of the Local Board be sustained.

PART II

FACTUAL BACKGROUND

Appellant taught school and coached athletics at Bremen High School for approximately seven consecutive years prior to the

1982-83 school year. In March of 1982, he entered into a contract with the Local Board to continue teaching for the 1982-83 school year. His contract provided he would receive the "State plus Local" salary. During May, 1982, he requested and received a memo from the Local Superintendent concerning the details of his compensation for the 1982-83 school year which included his compensation as a coach and as a counselor to the Student Council. On June 7, 1982, a board meeting was held with Appellant in attendance and he was advised that he would not be retained as a coach for the 1982-83 school year. Appellant was not given the notice or hearing required under O.C.G.A. §20-2-942 for a teacher who is non-renewed or demoted.

Appellant filed suit in Superior Court against the Local Board on May 5, 1983, seeking judgment for his lost coaching salary plus expenses of litigation, court costs, and restoration of his position as a basketball coach. He alleged in the suit that the Local Board was in breach of contract and in violation of his rights under O.C.G.A. §20-2-942. The Local Board moved to dismiss the suit because Appellant had not exhausted his administrative remedies, i.e., he had not requested a hearing under O.C.G.A. §20-2-1160. The Superior Court granted the Local Board's Motion to Dismiss and ordered the Local Board to give Appellant a hearing under O.C.G.A. §20-2-1160. This decision was upheld on appeal in Arp. v. City of Bremem Board of Education, et al., 171 Ga. App. 560 (1984).

On March 11, 1985, the Local Board held the hearing ordered by the Superior Court. The issue presented by Appellant at that hearing was whether the action by the Board removing Appellant from his coaching duties constituted a demotion as contemplated under O.C.G.A. §20-2-942, thus requiring the Local Board to follow the procedures required by that code section. On May 7, 1985, the Local Board issued its decision concluding that no written contract was entered into concerning Appellant's coaching duties and that the termination of those coaching duties did not come within the purview of O.C.G.A. §20-2-942. It is from that decision which Appellant seeks relief on appeal to the State Board of Education. This appeal was filed June 3, 1985.

PART III

DISCUSSION

Appellant contends on appeal that the decision of the Local Board to relieve him of his coaching duties was a demotion within the meaning of O.C.G.A. §20-2-942 and, thus, the decision of the Local Board should be reversed. That section provides in part:

(b)(1) A teacher who accepts a school year contract for the fourth consecutive school year from the same local board of education may be demoted or the teacher's contract may not be renewed only for those reasons set forth in subsection (a) of Code Section 20-2-940.

(2) A teacher who accepts a school year contract for the fourth consecutive school year from the same local board of education and who is notified that he or she is to be

demoted or that his or her contract will not be renewed has the right to the procedures set forth in subsections (b) through (f) of Code Section 20-2-940 before the intended action is taken. A teacher who has the right to these procedures must notify the superintendent of the local board employing the teacher within 14 days of the day the notice of the intended action is served that he or she requests that the procedures be implemented. Within 14 days of service of the request to implement the procedures, the local board must furnish the teacher a notice that complies with the requirements of subsection (b) of Code Section 20-2-940.

O.C.G.A. §20-2-940 provides that employment contracts of teachers, principals, and other certified professional personnel shall be in writing and shall be signed by the personnel and the superintendent.

O.C.G.A. §20-2-942(a)(3) defines "a school year contract" as a contract of full time employment between a teacher and a local board of education covering a full school year.

"Teacher" is defined in O.C.G.A. §20-2-942(a)(4) as any professional school employee certificated by the State Board of Education.

Considering these Code sections and the facts of this case, a question arises as to whether removing an individual from coaching duties results in a demotion within the terms of O.C.G.A. §20-2-942. It is possible to read into the statute the concern of the general assembly for certificated personnel and reason that the statute only applies in the areas where a certificate exists for the duties to be performed, i.e., one would only have

the rights granted under O.C.G.A. §20-2-942 when administrative or academic areas are involved. However, a contrary reading that a professional employee with a certificate cannot be demoted from any duties assigned, including extracurricular activities, is also possible. Deciding that issue is not necessary under the facts of this case because the statute does contemplate that there be a written contractual obligation and that a demotion under O.C.G.A. §20-2-942 is a demotion from a position under which the individual has a contract to perform.

In this case, the evidence before the Local Board was that Appellant had a contract to teach. His contract to teach provided for a salary based upon the state salary and local supplement. The Local Board offered him the contract to teach in March of 1982, thus renewing his contract from the previous year. No evidence was presented that the contract he was offered for the 1982-83 school year was any different from the contract he was offered for the 1981-82 school year. Appellant contends he had an oral contract to coach for the 1981-82 school year, which was evidenced by the memorandum given him by the Local Superintendent. Under O.C.G.A. §20-2-940, however, employment contracts must be in writing. The only written contract between Appellant and the Local Board was as a teacher with his salary to be the state salary plus the local supplement. The duties he performed and the salary he received as a coach were outside his contract.

Under Appellant's logic, if a teacher was assigned to assist in a special project after the normal work hours, then that project would become a part of the teacher's duties from which he could not be demoted without the procedures in O.C.G.A. §20-2-942 being applied. A more reasonable view of the statute is that an individual cannot be demoted from a position for which there is a written contract, i.e., the special duties and related compensation must be set forth in a contract before there can be a demotion. Here, no showing has been made that Appellant had a binding contract to perform coaching duties in the 1981-82 school year. Thus, no demotion from his previous year's contract has been demonstrated.

Appellant argues on appeal that the Local Board has taken inconsistent positions with respect to the motion to dismiss in Superior Court and the argument at the Local Board hearing that Appellant's remedies lay in a common law action for breach of contract. The only issue before the Local Board was whether Appellant was entitled to a hearing, and the Local Board made the determination that the Appellant was not entitled to a hearing under O.C.G.A. §20-2-942 because a demotion had not occurred. The Local Board did not consider whether it had breached any contractual arrangement with Appellant because that issue was not raised. Thus, the Local Board has not taken inconsistent positions as Appellant alleges.


Appellant further argues that if the Local Board's arguments are accepted, then local boards could arbitrarily fire all athletic coaches, assistant principals, or any other teacher who performs additional duties for which they are paid other than teaching in the classroom. This argument does not take into account the fact that such individuals can seek to have the extra duties spelled out in their teaching contract if they wish those duties to be continued. Also, these individuals would still be entitled to continue their teaching duties, just as Appellant did, if they did not have these extra duties spelled out.

PART IV

RECOMMENDATION

Based upon the foregoing discussion, the record submitted and the briefs and arguments of counsel, the State Hearing Officer is of the opinion that the Local Board was correct in deciding that Appellant was not demoted and, therefore, was not entitled to a hearing under O.C.G.A. §20-2-942. The Hearing Officer, therefore, recommends the decision of the Local Board be

SUSTAINED.



L. O. BUCKLAND
State Hearing Officer