

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JENNY BETH PEDDLE,

)

Appellant,

)

)

v.

)

CASE NO. 1986-42

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**COBB COUNTY BOARD
OF EDUCATION,**

)

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Appellee.

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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 decision of the Cobb County Board of Education herein appealed from is hereby sustained.

This 11th day of December, 1986.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEOROTA

JENNY BETH PEDDLE,

Appellant,

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CASE NO. 1986-42

PART I

SUMMARY

This is an appeal by Jenny Peddle (hereinafter "Appellant") from a decision of the Cobb County Board of Education (hereinafter "Local Board") not to renew her teaching contract for the 1986—1987 school year. Appellant was charged with incompetency, willful neglect of duties, and other good and sufficient cause. This is the second appearance of this case. In the first case, Peddle v. Cobb Cnty. Bd. of Ed. Case No. 1985-31, the Local Board had to reinstate Appellant because it failed to comply with the fourteen-day notice rule contained in O.C.C.A. §9-2-942. Appellant contends on appeal that her motion to dismiss should have been granted, that the decision of the Local Board is barred by the previous proceedings between the parties, that public policy dictates a decision in her favor, and that her rights to due process and equal protection were violated. The Local Board contends that the previous decision was not a decision on the merits and does not preclude it from bringing the action below on the merits to non-renew Appellant's contract. The Hearing Officer recommends the decision of the Local Board be sustained.

PART II

FACTUAL BACKGROUND

In 1985, Appellant was notified that her teaching contract would not be renewed. She made a timely request for reasons and a hearing, as provided for by O.C.G.A. § 20-2-942, but the Local Board failed to respond within the fourteen days required by law. The Local Board proceeded with the non-renewal and contended that the fourteen-day requirement was not mandatory. Appellant appealed the Local Board's decision to the State Board of Education, and, in Case No. 1985-31, the State Board of Education reversed the decision of the Local Board. The Local Board then appealed the State Board of Education's decision to the Superior Court of Cobb County. The Superior Court of Cobb County affirmed the State Board of Education's decision. The Local Board then applied to the Georgia Court of Appeals for a discretionary appeal, but the Georgia Court of Appeals refused to grant the discretionary appeal.

During the time Case No. 1985-31 was awaiting final resolution, the Local Board notified Appellant that if she was rehired for the 1985-1986 school year by operation of law, as *was* to be determined on appeal, then her contract for the 1986-1987 school year would not be renewed for the same reasons as the Local Board belatedly set forth for nonrenewal of Appellant's contract for the 1985-1986 school year. Because the Local Board did not allow Appellant to teach while her nonrenewal was on appeal, the Local Board does not allege that there are *any* additional reasons for her nonrenewal beyond those which existed prior to the 1985-1986 non-renewal action.

Appellant filed a motion to dismiss the nonrenewal and argued the motion before a hearing tribunal appointed by the Local Board to hear Appellant's nonrenewal. Appellant contended the issues raised in the second nonrenewal were *res judicata* because

of the first proceeding, thus preventing the parties from relitigating the same issues in a second proceeding.

The Local Board contended the previous action was dismissed for lack of jurisdiction and no determination on the merits was ever made. It contended that since the dismissal was for technical reasons, the dismissal did not operate to prevent a later action on the same charges which would have been raised in the earlier action had the Local Board been given an opportunity to raise those charges. The hearing officer ruled that the previous action had resulted in a dismissal for lack of jurisdiction and denied the motion to dismiss.

Appellant raised a subsequent motion to dismiss based upon the decision in Byrd v. Taylor County Board of Education, Case No. 1983-34, in which a termination was denied when the local board failed to comply with the fourteen day rule. Appellant contended that the local board in Byrd was estopped to bring the same charges forward to terminate the teacher after a failure to comply with the fourteen day rule and the same reasoning would apply in the instant case to prevent the Local Board from bringing the same charges for a subsequent nonrenewal. The hearing officer ruled that the decision in Byrd was to ensure the employee had a contract for the subsequent year if the fourteen-day rule had not been complied with and that the subsequent years nonrenewal would not be barred.

At the hearing, the Local Board presented testimony from which the tribunal concluded that Appellant was incompetent, willfully neglected her duties, and that other good and sufficient cause existed for nonrenewal of her contract. The tribunal then recommended Appellant's contract not be renewed. The Local Board adopted the

Findings of Facts and Conclusions of Law of the Hearing Tribunal as its own and did not renew Appellant's contract for the 1986- 1987 school year. The Local Board issued its decision September 5, 1986. Appellant subsequently filed this appeal.

PART III

DISCUSSION

Appellant contends the Local Board's decision to non-renew her contract is barred under both the ruling of Byrd v. Taylor Cnty. Bd. of Ed., Case No. 1983-24, and the principles of res judicata. The Local Board contends Byrd is inapposite because the previous decision was based on a lack of jurisdiction and, therefore, does not preclude the Local Board's decision below. The Local Board also contends it is entitled to an adjudication on the merits which it was only able to reach with the nonrenewal action for the 1986-1987 school year.

The first issue to be decided is whether the decision in Byrd prevents the Local Board from instituting the present action. Byrd recognized that the General Assembly enacted the fourteen-day provision to give notice of the charges to the teacher in sufficient time to give the teacher ample time to look for other employment, and to preclude long delays on the part of a local board. The decision in Byrd made it clear that for the fourteen day provision to have any meaning it must have some enforceability to provide the statutorily desired benefits mentioned above to a teacher. Thus the decision in Byrd provided for the automatic renewal of the teacher for the next year by operation of law and prohibited a local board from terminating a teacher after it had failed to comply with the statutory requirement. The Byrd decision thus provides a method of accomplishing the fourteen-day rule after that rule has been violated by a local board. Byrd does not,

however, prevent a local board from instituting nonrenewal proceedings in a subsequent year based upon the same facts as the original nonrenewal proceeding. The basic principle behind Byrd was that a teacher's right to timely notice should be respected in order to provide the teacher with an opportunity to obtain further employment, and a local board of education could not subvert that right by changing the nature of the proceeding. In the instant case, when the Local Board provided the notice of nonrenewal for the 1986-1987 school year, it followed the proper procedures and complied with the fourteen day rule. At that time, Appellant had received the benefits of the fourteen-day rule for both the 1985-1986 school year and the 1986-1987 school year. In other words, Appellant was granted an opportunity to seek employment elsewhere, and the Local Board's action of reinstating nonrenewal proceedings did not effect any harm to Appellant. She had the opportunity to defend against the charges brought, even though they related to a prior year. The Hearing Officer, therefore, concludes that the decision in Byrd does not preclude the Local Board *from* its decision to nonrenew Appellant for the 1986-1987 school year.

Appellant also argues that the Local Board is precluded from asserting the same charges for the 1986-1987 school year based upon the actions which formed the basis of the nonrenewal action for the 1985-1986 school year because of the doctrine of res judicata. O.C.G.A. §9-12-42 provides as follows:

Where the merits were not and could not have been in question, a former recovery on purely technical grounds shall not be a bar to a subsequent action brought so as to avoid the objection *fatal* to the first. For a former judgment to be a bar to subsequent action, the merits of the case must have been adjudicated.

Since the first nonrenewal proceeding was dismissed because of the Local Board's failure to comply with the fourteen day rule, the Local Board was not allowed to bring into issue the question of Appellant's

competency. Thus the Local Board was never allowed to reach the merits of the case, and, under O.C.G.A. §9-12-42, the prior decision is not a bar to the decision of the Local Board in the present proceeding.

Appellant's final two arguments on appeal, that public policy dictates a decision in her favor, and that her due process and equal protection rights have been violated, also provide no grounds for reversal of the decision of the Local Board. As discussed above, the public policy behind the fourteen-day rule is met when a local board is required to renew a teacher for one year after violating the rule. There is no significant public interest in forever prohibiting a local board from bringing allegations which it would have brought absent the violation. Public policy would more likely require a local board to bring such action in order to protect the welfare of the students. A teacher in such a position still has every right to present a defense against any charges. Appellant's arguments with respect to her due process and equal protection rights have been unargued in Appellant's brief and appear to be without merit.

PART IV

RECOMMENDATION

Based upon the foregoing discussion, the record presented, and the briefs and arguments submitted, the Hearing Officer is of the opinion the Local Board was not precluded from bringing the nonrenewal action on the same grounds as it was precluded from raising in the previous nonrenewal action. The Hearing Officer, therefore, recommends the decision of the Local Board be

SUSTAINED.

**L. O. Buckland
Hearing Officer**