STATE BOARD OF EDUCATION

STATE OF GEORGIA

BETTY C. BOYS,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1986-47**
v.	:	
	:	
AMERICUS CITY BOARD OF EDUCATION,	:	**DECISION**
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by Betty C. Boys (hereinafter "Appellant") from a decision of the Americus City Board of Education (hereinafter "Local Board") not to renew her teaching contract for the 1986-1987 school year. Appellant's nonrenewal was the result of a reduction-in-force policy brought about because of a financial exigency that existed with the Local Board. Appellant contends on appeal that the Local Board violated its own reduction-an-force policy. The decision of the Local Board is sustained.

PART II

FACTUAL BACKGROUND

In April, 1986, the Local Board faced a deficit financial situation. In order to remedy the situation, the Local Board adopted a reduction-in-force policy that it the teachers who, based upon the reduction-in-force policy, was not recommended to have her contract renewed for the 1986-1987 school year. Appellant requested a hearing under the Fair Dismissal Act to determine whether the Local Board acted properly in refusing to renew her contract. A hearing tribunal

established by the Professional Practices Commission (the "Tribunal") heard the case on July 11, 1986.

The Local Board's reduction-in-force policy provided in part:

> 5. In the event procedures [sic) items 3 and 4 fail to reduce the staff to the required number, then tenured employees shall be selected as a third means of staff reduction with the following considerations:
>
> a. Individual qualifications such as degree(s), multi-certification areas and certification level.
>
> In. Operational requirements as are deemed necessary by the superintendent as mandated by Georgia Board of Education Policies and Executive Procedures, requirements of law, state and federal regulations, court orders, and local board of education policy and administrative procedures.
>
> C. Where the foregoing criteria [are] substantially equal, the tenured personnel selected for staff reduction shall be those with the least number of years service in the school system.
>
> d. In the event that all of the above are [substantially] equal, the board may exercise discretionary judgment which serves to the best interest of the school system in making a selection between (among) two or more ...

At the hearing, the testimony established that procedures 3 (attrition) and 4 (reduction of non—tenured[1] personnel) did not adequately reduce the staff to the required number. Additionally, the interim superintendent testified that a reduction from five to two teachers was necessary in the Art Department. The Superintendent also testified that all five Art Department teachers were tenured and thus section five of the reduction-in-force policy came into consideration. Two of the teachers, Mary Beth Rogers and Appellant, did not have qualifications comparable to Bonnie Lewis. The Superintendent explained that Appellant had completed a BS in Art Education, which qualified her for a T4 certificate, and a Master's Program, which qualified her for a T5 certificate. Appellant was credited with six and one-half years of experience for five part-time years and four full-time years with the Local System. Mary Beth Rogers had a Bachelor of Fine Arts,

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[1] Neither the Local Policy nor Georgia law defines the term 'tenure', but the tern has popularly come to mean a teacher who has completed three years of teaching and has signed a teaching contract for the fourth consecutive year. See, OC.G.A. § 20-2-942 .

which qualified her for a T4 certificate, and had earned graduate credits of 90 to 100 hours compared to 55 to 60 hours that Appellant had earned. The interim superintendent testified that Appellant and Mary Beth Rogers were considered to be substantially equal. Nary Beth Rogers had seven years of experience with the Local Board. She worked four consecutive years, took three years maternity leave, and had two consecutive years of service with the Local Board before the hearing.

Based upon the circumstances, the Local Board's administrators determined that Appellant and Mary Beth Rogers had substantially similar qualifications, but that Nary Beth Rogers had longer service in the Local System. Thus, the determination was made that Appellant would be nonrenewed and Nary Beth Rogers would be offered a contract for the 1986—1987 school year.

The Tribunal found that the Local Administration's interpretation and application of the reduction—in—force policy was correct and in the solid exercise of professional judgment and was neither arbitrary, capricious nor discriminatory. The Tribunal then recommended that Appellant's contract not be renewed.

The Local Board adopted the report of the Tribunal on September 8, 1986 and Appellant filed this appeal on September 19, 1986. The appeal and record were forwarded to the State Department of Education on October 10, 1986.

PART III

DISCUSSION

Appellant contends on appeal that the Local Board failed to follow its reduction-in—force policy and, therefore, her contract should be renewed. Appellant bases her contention on her argument that Mary Beth Rogers was not a tenured teacher, and that Appellant was better qualified than Mary Beth Rogers, it is Appellant's position that the intent of the reduction—in—force policy was to sequentially first consider individual qualifications, such as degrees and certification level,

then operational requirements, and then seniority as between tenured personnel, and, finally, only under subparagraph 5(d), the Local Board had discretion to weigh subjective factors.

The Local Board contends on appeal that Appellant failed to raise the issue of whether Nary Beth Rogers was tenured at the hearing below, and thus is not allowed to raise that issue on appeal, and that even if this issue could be raised, the facts demonstrate that Mary Beth Rogers was a tenured teacher. Additionally, the Local Board argues that there is evidence to support its decision that Appellant should be nonrenewed before Mary Beth Rogers.

Under O.C.G.A. § 20-2—1160, the State Board of Education lacks jurisdiction to consider issues not raised in the hearing below. Sharpley v. Hall Cnty. Bd. of Ed., 251 Ga. 54 (1983); Owen v. Long Cnty. Bd. of Ed., 245 Ga. 647 (1980); Boney V. Cnty. Bd. of Ed., 203 Ga. 152 (1947). It is clear from the record that the issue of whether Mary Beth Rogers was tenured was not raised in the initial hearing. The State Board of Education, therefore, determines that this issue cannot be considered on appeal.

Appellant's contention that the Local Board failed to follow its own reduction-in-force policy also does not warrant reversal of the Local Board's decision. The State Board of Education follows the rule that if there is any evidence to support the decision of the Local Board, that decision must be upheld, absent an abuse of discretion or clear violation of law. See, Ransum v. Chattooga Cnty. Bd. of Ed., 144 Ga. App. 783 (1978); Antone V. Greene Cnty. Bd. of Ed., Case No. 1976-11. Appellant's argument assumes that subparagraph 5(a) of the reduction—in-force policy limits consideration of individual qualifications to sequential examination of degree(s), multi—certification areas and certification level. If one teacher exceeds another teacher in the sequence, then the next item is not considered, and there are no other items that can be considered. Section 5(a), however, is not so expressly limited, and the Local Board is in the best position to interpret

the policy. The listing of degrees and certification levels are examples only and do not require a sequential examination. The interpretation given by the Local Board, that the policy allows for consideration of hours of educational training, as well as certification, is not so unreasonable as to be deemed arbitrary and capricious. The State Board of Education, therefore, determines that, under the Local Board's reduction-in-force policy, the Local Board could consider the total educational hours acquired by a teacher as well as the degrees obtained.

PART IV

DECISION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Board of Education determines that the reduction-in-force policy was followed by the Local Board, and, therefore, the decision of the Local Board not to renew Appellant's teaching contract for the 1986-1987 school year is hereby

SUSTAINED.

This 5TH day of January, 1987.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals