

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

**MARY ANN FLEMING and
KAREN WHITE**

:
:

Appellants,

:
:

CASE NO. 1986-50

VS.

:
:

**WALKER COUNTY BOARD
OF EDUCATION**

:
:

DECISION

Appellee

:
:

PART I

SUMMARY

This is an appeal by Karen White and Mary Ann Fleming (hereinafter "Appellants") from a decision of the Walker County Board of Education (hereinafter "Local Board") that denied their request for additional pay. Appellants contend that their positions were reclassified and, under Local Board policy, individuals occupying a reclassified position should not lose salary. The Local Board contends Appellants positions were not reclassified, but that Appellants' positions were abolished, and Appellants were offered new positions. The decision of the Local Board is sustained.

PART II

FACTUAL BACKGROUND

Appellants are noncertified, non-contracted employees of the Local Board. For the 1985-1986 school year, both Appellants were assigned positions at Rossville Junior High School. In July, 1984, Rossville Junior High School was destroyed by fire. Although the school was destroyed, the Local Board maintained the entity during the 1985-1986 school year, but housed the entity in separate facilities. Prior to the 1986-1987 school year, the Local

Board decided to no longer maintain the entity of Rossville Junior High School. One of the consequences of this decision was that Appellants were not offered the jobs they held during the 1985-1986 school year. The Local Board did, however, offer Appellants jobs which were classified as "4-8 clerk." Appellants were offered a significantly lower salary as "4-8 clerks" for the 1986-1987 school year than they made when they were classified as "general clerical II's" during the 1985-1986 school year.

The Local Board's policy OCA, concerning classified personnel, provides in part:

TV. (A) When a position is reclassified from one position grade to another, affected personnel shall be placed on the first step on the new position grade which would provide a raise over earned placement on the previous position grade. One additional step may be added if necessary to provide an increase at least equal to one-step difference at the new position grade.

Appellants presented a grievance under the grievance procedures of the Local Board and contended that the above quoted provision applied to their situation, and that they O.C.C.A. § 20-2-1160, that the parties be notified of their appeal rights.

Appellants filed this appeal by letter dated October 15, 1986.

PART III

DISCUSSION

Appellants contend on appeal that Local Board policy OCA, Section IV, applies to their circumstances and thus the decision of the Local Board should be reversed. Appellants carry the burden of proof in establishing by the evidence that their positions were reclassified, and that Local Board Policy GCA, Section IV, applies to the facts of their situation. As is argued by the Local Board in its brief, Appellants failed to present any evidence to establish their contentions. Both the grievance hearing, and the hearing before the Local Board, consisted simply of arguments made by counsel for both sides.

Arguments by counsel do not constitute evidence, thus there was no evidence to establish the position argued by Appellants.

If the arguments of counsel could be accepted as evidence, then the decision of the Local Board would still have to be sustained. The State Board of Education abides by the rule that if there is any evidence to support the decision of the Local Board, its decision must be sustained.

Ransum v. Chattooga Cnty. Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty. Ed. of Ed., Case No. 1976-11. If the arguments of counsel could be considered evidence, then the assertions of the attorney *for* the Local Board that Appellants old jobs were abolished, that Appellants were given new jobs rather than being reclassified, and that Local Board Policy GCA, Section IV, was inapplicable to Appellants, would be at least some evidence.

PART IV

DECISION

Based upon the foregoing discussion, the record presented, and the briefs of counsel, the State Board of Education determines that Appellants failed to present evidence to carry their burden of proof to establish any of their contentions. The decision of the Local Board is, therefore,

SUSTAINED.

Dated this 8th day of January, 1987.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals