STATE BOARD OF EDUCATION

STATE OF GEORGIA

DONALD BONNER, DOTTIE DAVIS,	:	
	:	
and WILLIAM JOHNSON,	:	
	:	
Appellants,	:	
	:	**CASE NO. 1989-24**
v.	:	
	:	**DECIS ION**
FULTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by Donald Bonner, Dottie Davis, and William Johnson ("Appellants" or "Teachers") from a decision by the Fulton County Board of Education ("Local Board") to sustain the decision of a hearing tribunal that Appellants were not demoted and were not entitled to a fair dismissal hearing as a result of their loss of supplemental duties and supplemental pay following the consolidation of eight high schools into three high schools. The decision of the Local Board is sustained.

PART II

FACTUAL BACKGROUND

During the 1988-1989 school year, the Local Board consolidated eight high schools into three high schools. All of these schools were located in the "Tri-Cities"[1] area of Fulton County. The consolidation resulted in a reduced need for teachers and supplemental duties. Supplemental duties are those extra duties performed in a school for which teachers receive extra pay in

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[1] "Tri-Cities" is the designation given in these proceedings to that area of Fulton County south of the City of Atlanta that encompasses the cities of College Park, East Point, and Hapeville.

addition to their basic salary. In Fulton County, the basic pay is dependent upon the number of years the teacher has been employed; the extra duty pay is based upon a percentage of a beginning teacher's basic pay. During the 1987-1988 school year, there were fifty-two supplemental categories that received supplemental pay from the Fulton County School System. Among some of the positions were coaches, attendance officers, team leaders, chairpersons, business managers, cheerleading coaches, drama instructors, and instramural assistants. Because of attrition, the Local Board did not find it necessary to dismiss any teachers. Nevertheless, there were fewer coaching, chairperson, and other supplemental positions available in the three consolidated high schools.

Prior to the 1988-1989 school year, Appellants Harris and Johnson served as chairpersons and Appellant Bonner served as a head basketball coach. Appellant Harris was chairperson of the health and physical education department in hen high school, and Appellant Johnson was chairperson of the science department in his high school. Appellant Davis had served as a chairperson for twenty- two years; Appellant Bonner had served as a head basketball coach for nineteen years, and Appellant Johnson had served as a chairperson for eighteen years. Each of the Appellants received supplemental pay for performing their duties as chairperson or coach. None of the Appellants were selected to continue those positions in any of the three consolidated high schools. As a result, they lost their supplemental pay after the 1988-1989 school year.[2]

The plan to consolidate the high schools in the Tri-Cities area was approved by the Local Board on July 9, 1987, after lengthy study and several public hearings. One of the purposes of the consolidation was to comply with the requirements of the Quality Basic Education Act, Ga. Laws 1985, p. 1657 et seq., O.C.G.A. § 20-2-130 et seq.

Following the Local Board's approval of the consolidation, the Local Superintendent established

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[2] The Local Board continued the supplemental pay of all affected chairpersons and coaches for one year after the consolidation.

a Transition Team to oversee the task of moving and integrating the students, teachers, and administrators into the three schools.

Normally within the Fulton County School System the principals select the teachers they want to serve as chairpersons or coaches within their schools. Because of the large number of people involved[3] and the short time in which to accomplish teacher assignments, the Transition Team established a committee to assist the three principals in the selection of their chairpersons and coaches. It was decided that the committee would only interview the chairpersons and coaches from the eight schools and they were invited to apply and interview for the available positions.

In the selection process adopted by the Transition Team, a committee was selected to interview the candidates for each position that was available. The committees were composed of the three principals of the consolidated schools, a coordinator, a coach or department chairperson from a school that was not involved in the consolidation, and two other administrative people. The candidates submitted their resumes to the committee. Each candidate for a particular position then appeared before the committee established for the position and was asked a series of questions prepared in advance by the coordinator. The interview lasted approximately fifteen minutes for each candidate. After each candidate was interviewed, the committee members individually rated the candidate, without discussion, against the other candidates.[4] After all the candidates had appeared, the individual ratings were totalled and a group rating was obtained. A discussion about the candidates was then conducted. Following the discussion, the three principals made their selections of the person to fill the position in their particular school. In

[3] Within the three consolidated schools, there were to be 27 chairpersons and 18 head coach positions to be filled. Of the chairpersons and coaches in the eight schools who were eligible for positions in the three schools, 32 were not selected to fill a position.

[4] The rating system used was described as a "rank order" system, where each candidate was rated against the immediately preceding candidate without changing the relative rank of any previous candidate.

most instances, the principals made an immediate selection and selected from the top three rated candidates. The principals, however, were not required to select from the top three rated candidates.

Appellants were among the group that were not selected to hold chairperson or coaching positions in the three consolidated schools. Each of them filed a request for a hearing under the provisions of O.C.G.A. §§ 20-2-940 and 20-2-1160. They claimed they were due a hearing under O.C.G.A. § 20-2-940 because they had been demoted, and they claimed they were due a hearing under O.C.G.A. § 20-2-1160 because the selection process resulted in a breach of their contracts and they had been denied constitutional and contract rights. The Local Board denied that Appellants had been demoted or that any rights had been denied.

Rather than go to the expense and time involved in multiple administrative hearings, the parties agreed to combine a hearing under O.C.G.A. § 20-2-940 with a hearing under O.C.G.A. § 20-2-1160. Pursuant to the provisions of O.C.G.A. § 20-2-940(c) (1), the Local Board established a three-member hearing tribunal and appointed a disinterested member of the Georgia bar to serve as a hearing officer. The hearing tribunal conducted a hearing on May 3-6, 1989.

Testimony was received concerning the expectations of the administration and the Teachers concerning supplemental positions, the interview process, the qualifications of the Teachers, and the efficacy of the method of selecting the chairpersons and coaches. Relevant portions of the testimony are discussed below. On June 13, 1989, the hearing tribunal issued its recommendations to the Local Board. The hearing tribunal determined that the Teachers had not been demoted, and thus were not entitled to a hearing under the provisions of O.C.G.A. § 20-2-940. In addition, the tribunal determined that the selection process for chairpersons and coaches was fairly conducted, even though the process had some deficiencies, and did not result in a breach of Appellants' contracts or deny them any rights. The Local Board adopted the

recommendations of the hearing tribunal on June 13, 1989. The Teachers then appealed to the State Board of Education.

The parties have specifically requested the State Board of Education to consider the issues raised under both O.C.G.A. §§ 20-2-940 and 20-2-1160 in order to avoid the administrative time involved in pursuing both courses of action.

DISCUSSION

The overriding issue presented by this appeal is whether teachers have a night to a hearing under the provisions of the Fair Dismissal Act[5] upon the loss of a supplemental duty position that results in a decrease in their total income. O.C.G.A. § 20-2-940, 20-2-942, and 20-2-943 provide that a teacher has the right to request a hearing in the event of a demotion, and a demotion can occur only upon certain specified reasons.[6] In the instant case, it was stipulated by the parties that each of the Teachers suffered a loss of responsibility, prestige and salary. The Local Board, however, maintains that the "discontinuance of part-time extra duties performed by the Teachers did not affect their regular, full-time teaching positions within the school system." As a result, the Local Board claims the Teachers were not entitled to the protection of the Fair Dismissal Act.

> The Teachers argue that O.C.G.A. § 20-2-943(2) (C) protects "positions" and "is not limited only to one's 'primary duty assignment'...." The section states
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> > a local board of education shall be authorized [u]nder Code Section 20-2-942 to [d]emote a teacher or other school employee from <u>one position</u> in the school

[5] Ga. Laws 1975, p. 360 <u>et seq</u>. The Fair Dismissal Act includes O.C.G.A. §~ 20-2-940, 20-2-942, and 20-2-943.

[6] O.C.G.A. § 20-2-940 provides that the contract of "a teacher, principal, or other employee" can be terminated for incompetency, insubordination, willful neglect of duties, immorality, inciting students to violate the law or policies of the local board, to "reduce staff due to loss of student or cancellation of programs", failure to secure educational training, or for "any other good and sufficient cause." In order to terminate the contract, the teacher, principal, on other employee has to be given notice and an opportunity to have a hearing. O.C.G.A. § 20-2-942 provides that in order to demote a teacher who has accepted a contract for the fourth or subsequent consecutive school year, the teacher must be given notice of the intention to demote and an opportunity to have a hearing. O.C.G.A. § 20-2-943 defines a demotion.

> system to another position in the school system having less responsibility, prestige, and salary. (Emphasis added).

The Teachers claim that a "position" includes the primary duty assignment and the supplemental duty assignments. Thus, if a teacher is transferred to a position that does not have the supplemental duty assignments, the teacher would have the night to a hearing before the transfer could be made if the second assignment has less responsibility, prestige, and salary.

In Rockdale County School District v. Weil, 245 Ga. 730, 266 S.E.2d 919 (1980), the Court held that a demotion required the concurrence of a loss of responsibility, prestige, and salary. Subsequently, in Ellis-Adams v. Whitfield County Board of Education, 182 Ga. App. 463, 356 S.E.2d 219 (1987), the Count observed that a loss of salary had to be determined by viewing the totality of the circumstances, and held that when a full-time language arts coordinator was transferred to a teaching position that did not permit her to enjoy the same subsequent salary increases, she had been demoted, even though her salary had not been decreased. In neither or these cases, however, was the question posed on addressed of whether the loss of a supplemental position constitutes a demotion on requires a local board to conduct a hearing. In Copeland v. Clarke Cnty. Bd. of Educ., Case No. 1988-43 (Ga. Bd. of Ed. 1988), we held that in a situation where the supplemental duty was not stated in the contract, the loss of the supplemental duty and its related supplemental pay did not result in a demotion.

A demotion under O.C.G.A. § 20-2-943 occurs under the provisions of O.C.G.A. § 20-2-942. Section 942 is applicable to teachers who have accepted a school year contract for the fourth consecutive year. In O.C.G.A. § 20-2-942(a) (3), a "school year contract" is defined to mean:

> a contract of full-time employment between a teacher and a local board of education covering a full school year. (Emphasis added).

The Local Board presented testimony that the positions of chairperson and coach do not constitute full-time positions. In both situations, the individual has a primary teaching position.

Chairpersons are granted an additional period per day for their duties, i.e., they teach one class less than a teacher who does not have chairperson responsibilities. The Teachers, however, testified that they were on duty as chairpersons and coaches on a full-time basis; they had to answer questions and serve as role models for other teachers and the students throughout the day.

Regardless of the time chairpersons and coaches find they have to devote to their additional responsibilities, we are persuaded that the legislative intent in the use of the language "full time employment" was to provide a measure of protection only for the principal duty of the employees of a school system. The term "position" is not a defined term in the Fair Dismissal Act. O.C.G.A. § 20-2-940(a), which establishes who is eligible to have a hearing, recognizes only three protected classes: (1) teachers; (2) principals, and (3) other employees. The subsequent reference to the term "position" relates back to these three classes, i.e., there are the positions of teachers, principals, and other employees. There is no indication that the word "position" refers to the duties performed by a teacher, a principal, or another employee. After a teacher, principal, or another employee signs their fourth consecutive contract for the position of teacher, principal, or other employee, then they are entitled to the protections provided by O.C.G.A. § 20-2-940. The "tenure"[7] thus obtained is for the position of teacher, principal, or other employee, and not for the duties performed within those classes. Thus, in our view, the provisions of O.C.G.A. § 2002-942 recognize one tenure position for the principal duty of teacher, principal, or other employee, and do not establish multiple tenure tracks for multiple job functions. In O.C.G.A. § 20-2-943(b), the section that defines "demotion", it states:

> Nothing in this part shall be construed as depriving local boards of education and other school officials from assigning and reassigning teachers and other certificated professional employees from one school to another or from assigning and reassigning teachers to teach different classes or subjects.

[7] The term "tenure" is not used in the Georgia statutes. Instead, a teacher who has accepted a fourth or subsequent year contract is granted the right to a hearing before demotion or failure to renew a contract. "Tenure", as used here, is thus a shorthand reference to the right to have a hearing.

If, as contended by the Teachers, multiple tenure tracks are created by the provisions of the Fair Dismissal Act, then a local school board would not be able to assign or reassign a teacher to another school unless both the primary position of teacher and the supplemental position of chairperson, coach, business manager, or other supplemental duty was also available.[8] For example, if a school system had an opening for a science teacher without any supplemental duties in School A, and had an excess science teacher in School B who also served as a drama instructor and a business manager, the school system would not be able to transfer the teacher from School B to School A without first granting a hearing. As pointed out by the Local Board, the Teachers' position would require hearings if a basketball coach was transferred to the position of track coach within the same school in order to determine if a track coach had less prestige than a basketball coach. This situation, effectively, would deprive a local board of education of the ability to assign on reassign a teacher from one school to another.

We, therefore, conclude that the legislature intended to provide a measure of protection to the primary positions of teacher, principal, or other full-time position, and the loss of a supplemental duty, even if it involves the loss of prestige, responsibility, and salary, does not require a local board of education to provide the employee with a hearing and reasons for the loss of the supplemental duty.

Appellants also claim that they have contractual claims to the supplemental pay, thus giving rise to their claim for a hearing under O.C.G.A. § 20-2-1160. The contract of each of the Appellants contained the following language:

> There is incorporated in this agreement all of the existing policies and procedures of the employer.

Based upon this language, Appellants maintain that the Local Board's reduction in force policy

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[8] The evidence showed that in some instances teachers had more than one supplemental duty. Appellant Davis held two supplemental positions.

or transfer policy should have been followed. Under these policies, Appellants maintain that they would have been selected for the chairperson and coaching positions that were available in the three consolidated schools.

The Local Board presented evidence that the reduction in force policy is only applied when circumstances require a reduction in the total number of personnel, i.e., when there has to be some termination of personnel. In the Tri-Cities consolidation, all personnel were absorbed into the consolidated schools; only the number of supplemental positions was reduced. Because there were no personnel reductions, the reduction in force policy was not implemented by the administration or the Local Board.

Appellant's assert that the administration did not have the authority to institute the consolidation moves without requesting the Local Board to place the reduction in force policy into effect. We disagree. Based upon our analysis of the status of supplemental positions, the reduction in force policy was not applicable. The policy was established to provide teachers, principals, and other employees with a measure of protection if they were terminated from their primary position; it was not established to protect supplemental positions. Within Fulton County, the established practice has been that the principals have had absolute discretion to appoint individuals to the supplemental positions on a year-to-year basis. With this background, it is inconsistent to infer that the policy applies to changes in supplemental positions. If there was a change in the method of appointing supplemental positions, the Local Board could have explicitly so stated, and not permitted the former practice to continue.

Finally, the reduction in force policy, by its own terms, is applicable only when there is a reduction in the number of certificated personnel employed by the School System. Again, the number of certificated personnel employed by the School System was not reduced as a result of the consolidation except through normal attrition. We, therefore, conclude that neither the Local Board nor the administration were required to follow the reduction in force policy.

Appellants also maintain that the Local Board should have followed the "transfer policy". Just as with the reduction in force policy, the transfer policy does not apply to assignments of supplemental positions. By its terms, it is addressed to surplus teachers, rather than surplus supplemental positions. Appellants argue that since the word "assignments" is used in the policy, it also applies to supplemental duties. Appellants, however, have focused too narrowly on one word that is taken out of context. Throughout the policy, reference is made to "teachers" and professional certification. We, therefore, conclude that the Local Board's transfer policy was likewise inapplicable to govern the allocation of the supplemental positions.

Finally, Appellants contend that the selection process was flawed. As a result, they were unfairly discriminated against. They contend that the selection process favored the teachers that were initially interviewed. They presented an expert witness who testified that the selection process was improperly conceived to provide everyone an equal opportunity to be selected.

The three-member hearing tribunal also found that the selection process was flawed. It determined, however, that the problems were related to the failure to have a written procedure in place that would permit interviewers and interviewees to know what was involved; how interview questions would be handled, and who had the ultimate authority to make a selection. The hearing tribunal concluded that the process, nevertheless, was fundamentally fair because all candidates were exposed to the same deficiencies.

The Local Board was not required by law to adopt any specific selection process. The administration attempted to institute a process that provided everyone with an equal opportunity to be selected for the available positions. The process was instituted in order to assist the principals, and, ultimately, it was the principals who made the selections. The process used does not appear to be so arbitrary and capricious that it is illegal. We, therefore, conclude that the Local Board did not err in using the process or deciding to uphold the process.

DECISION

Based upon the foregoing, we are of the opinion that the loss of a supplemental position does not constitute a demotion and the Local Board was not required to provide Appellants with a hearing prior to making the assignments of the supplemental positions. The decision of the Local Board, therefore, is

SUSTAINED, upon the unanimous vote of the Board.

This 14th day of December, 1989.

John M. Taylor
Vice Chairman For Appeals