STATE BOARD OF EDUCATION

STATE OF GEORGIA

PERRY BACON,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1990-22**
	:	
V.	:	
	:	**DECISION**
BRYAN COUNTY BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Perry Bacon, Superintendent of the Bryan County School System ("Local Superintendent") from a decision by the Bryan County Board of Education ("Local Board") to renew the contract of Dr. Sallie Brewer as principal for the 1990-1991 school year. The Local Board's decision is sustained.

This case arises out of the employment history of Dr. Sallie Brewer. Dr. Brewer was employed by the Local Board during the mid-l970s. She served contismiously in various capacities until 1983 when she was appointed superintendent to complete the unexpired term of the previous superintendent. The following year, Dr. Brewer ran successfully for superintendent. In 1988, however, the Local Superintendent defeated Dr. Brewer. After the election, the Local Board appointed Dr. Brewer as a principal for the 1989-1990 school year. On April 13, 1990, the Local Superintendent notified Dr. Brewer that he was not going to recommend renewal of her 1990-1991 contract. When Dr. Brewer requested reasons for her non-renewal, the Local Superintendent asserted that he did not have to give her any reasons because she had not been employed as a principal for three or more years.[1] Dr. Brewer then requested a hearing before the Local Board.

The Local Board scheduled a hearing for Dr. Brewer. The Local Superintendent filed an action in Superior Court and attempted to halt the hearing, but the Court dismissed the action. On May 28, 1990, the Local Board proceeded to conduct a hearing.

During the hearing, the Local Superintendent did not offer any reasons for not renewing Dr. Brewer's contract. Instead, he claimed that Dr. Brewer did not have a right to a hearing because she had not been employed as a principal for three or more years. As a result, the Superintendent claimed, it was unnecessary to give any reasons. Dr. Brewer, however, asserted that the Local

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1 O.C.G.A. § 20-2-943 and 20-2-942 provide that a local board of education can non-renew the contract of a teacher who has been employed for three or more years only for cause and the teacher has a right to a hearing under the provisions of O.C.G.A. § 20-2-940.

Superintendent dismissed her because she had been his opponent in the race for superintendent. As a result, she claimed that the Local Superintendent was attempting to deny her first amendment rights of free speech.

The Local Superintendent claims that the Local Board does not have the power to renew Dr. Brewer's contract because he did not recommend her employment. In addition, the Local Superintendent claims that the Local Board improperly granted Dr. Brewer a hearing and its decision should therefore be reversed.

O.C.G.A. § 20-2-211(a) provides in part that:

> All teachers, principal ... and other personnel of a local unit of administration shall be employed and assigned by its governing board on the recommendation of its executive officer.

In Van Layson v. Putnam Cnty. Bd. of Ed., Case No. 1982-6 (St. Bd. of Ed., Aug. 12, 1982), this Board stated that local boards of education did not have the authority to hire a teacher without the recommendation of the local superintendent. This followed the holding in Tripp v. Martin, 210 Ga. 284 (1954) that a local board of education could not require a local superintendent to sign contracts with teachers selected by the local board rather than the local superintendent.

Under O.C.G.A. § 20-2-940, 20-2-942 and 20-2-943, a teacher who has taught three or more years has a right to a hearing before a local board can dismiss the teacher or non— renew the teacher's contract. If cause is not established, then the teacher's contract will be renewed notwithstanding the lack of the local superintendent's recommendation. It can thus be seen that the recommendation of the local superintendent is not necessarily a prerequisite for a teacher to be employed by a local board of education.

A general rule of statutory construction is that statutes should be interpreted so that they harmonize, giving each statute equal force where possible. In order to reconcile O.C.G.A. § 20-2-211(a) with O.C.G.A. § 20-2-940, 20-2-942 and 20-2-943, and the holdings in Tripp and Van Layson, it appears that a local board of education cannot employ a teacher without the local superintendent's recommendation only when the teacher is initially hired. The Local Superintendent in the instant case argues that the recommendation is necessary when a teacher has not been employed for three or more years. In Dalton City Bd. of Ed. v. Smith, 256 Ga. 394 (1986), however, the Court pointed out that a local board would have to grant a hearing if a teacher alleged that a dismissal or non-renewal resulted from constitutionally protected activity, even if the teacher had not taught for three or more years. The teacher's contract would have to be renewed if the hearing established that the local superintendent's failure to recommend was based upon some constitutionally protected activity on the part of the teacher. The only remaining situation where the local superintendent's recommendation is necessary is when a teacher is initially hired. After a teacher has been hired, the local superintendent's recommendation is necessary only when the teacher's contract is renewed without a hearing. If, however, the local superintendent fails to recommend a teacher for renewal and the local board grants the teacher a hearing, then the superintendent's recommendation is unnecessary.

The Local Superintendent in the instant case argues that the Local Board should not have granted Dr. Brewer a hearing because she was not entitled to a hearing since she had not held the position of principal for three or more years. The fact that Dr. Brewer had not held her position as principal for three or more years is immaterial in connection with the question of whether the Local Board could grant a hearing. O.C.G.A. § 20-2-942 grants a teacher a right to a hearing that the local board cannot deny, but it does not impose any prohibition against a hearing by the local board. Thus, if the contract of a teacher who has been teaching for three or more years is not renewed, then the local board is required to conduct a hearing, but a local board can either grant or deny a hearing when the contract of a teacher who has been employed for less than three or more years is not renewed. The granting of a hearing to a teacher who has been employed less than three or more years is discretionary with the local board except when some constitutional violation has occurred. If a local board grants a teacher a hearing, renewal of the teacher's contract is dependent upon the local board's decision based upon the evidence presented.

In the instant case, the only ground advanced for reversing the Local Board's decision is the illegality of the hearing before the Local Board. As indicated above, the decision whether to grant a hearing was discretionary with the Local Board. The Local Board's decision, therefore, is

SUSTAINED.

This 8th day of November, 1990.

Larry A. Foster
Vice Chairman For Appeals