STATE BOARD OF EDUCATION

STATE OF GEORGIA

WILLODENE LEE,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1990-25**
V.	:	
	:	**DECISION**
THOMAS COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

Willodene Lee ("Appellant") appeals from a decision of the Thomas County Board of Education ("Local Board") to terminate her teaching contract because of a loss of students. Appellant claims that the Local Board did not have any evidence to support its decision. The State Board of Education affirms the Local Board.

Appellant retired from full-time employment with the Local Board in 1982. Beginning in September, 1988, the Local Board employed Appellant as a part-time teacher in the alternative high school. She worked during the 1988-1989 and 1989-1990 school years. During the spring of 1990, the Local Board offered, and Appellant accepted, a contract to teach during the 1990-1991 school year. She turned down an offer to work with another school system after she accepted the contract with the Local Board.

In June, 1990, Appellant attended a computer training program at the request of her principal. On June 26, 1990, the principal told Appellant that her services would not be needed during the 1990-1991 school year because of a decrease in the number of students enrolled in the high school. On July 18, 1990, the Local Superintendent gave Appellant official notice that her contract would be terminated because of the decrease in enrollment. Appellant appealed the termination of her contract to the Local Board. The Local Board held a hearing on August 22, 1990, and voted to terminate Appellant's contract.

During the hearing, evidence was presented that the school administration had not projected the number of students who would enroll for the 1990-1991 school year when contracts were issued to teachers in the spring of 1990. Student pre-registration was conducted shortly before the end of the 1989-1990 school year. In June, 1990, the high school administration used the pre-registration figures and projected a decrease of approximately 125 students for the 1990-1991 school year. With this projected decrease, the high school administration decided that four and one-half teaching positions should be eliminated. The administration was able to re-schedule the duties of full-time teachers to perform Appellant's part-time duties.

Evidence was also presented that the high school administration did not use any statistical methods to project the number of students who would enroll in September, 1990. By the time Appellant was given notice that her contract would be terminated, the anticipated decrease in the number of students had dropped to 57.

Appellant maintains that the Local Board failed to prove that there was an actual loss in the number of students. Additionally, Appellant maintains that the Local Board is estopped to terminate her contract because the loss of students did not occur after she was granted a contract. Appellant argues that O.C.G.A. § 20-2-940(a) (6) permits termination only when a loss of students occurs after a contract has been issued, but in this instance, if there was a loss of students, the loss occurred before the contract was issued and her termination is unlawful. Finally, Appellant claims that O.C.G.A. § 20-2-940(a) (6) is unconstitutional because it permits the taking of property without compensation.

The Local Board argues that Appellant is not entitled to the protection of O.C.G.A. § 20-2-940 because she was a part-time employee, i.e., Appellant's contract could be terminated without cause. Additionally, the Local Board maintains that even if Appellant can only be terminated for cause, there was evidence to support the loss of students.

O.C.G.A. § 20-2-940(a) (6) provides:

> The contract of employment of a teacher having a contract for a definite term may be terminated for the following reasons:
>
> (6) To reduce staff due to loss of students or cancellation of programs....

A "school year contract" is defined in O.C.G.A. § 20-2-942(a) as being a "contract of full-time employment between a teacher and a local board of education covering a full school year." The Local Board argues that an interpretation of O.C.G.A. § 20-2-940 must take this definition into consideration. The Local Board then argues that since Appellant was a part-time employee, she could be dismissed without cause.

We do not agree with the Local Board's interpretation. The "school year contract" definition merely defines the period of time necessary in order for a teacher to qualify for a hearing if the teacher's contract is not renewed. The definition does not have any application when a teacher's contract is being terminated. O.C.G.A. § 20-2-940 does not make any reference to a "school year contract", but, instead, is limited to a "contract of employment for a definite term". We conclude that the Local Board was required to conduct a hearing upon Appellant's request, and it was required to show cause for the termination.

The next issue is whether the Local Board is somehow estopped to terminate Appellant's contract. Appellant contends that the high school administration was negligent by not projecting the number of students before she was issued her contract. Appellant's position is based on the premise that the projections could have been made before the pre-registration. There was, however, no evidence that the high school administration could have made the projections without the pre-registration figures.

O.C.G.A. § 20-2-940(a) (6) does not contain any time limitations on when a contract can be terminated because of a loss of students. Implicit in the right to terminate a contract is the assumed existence of a contract. The statute, therefore, contemplates that the loss of students will be determined after a contract has been signed by a teacher. Arguably, as posited by Appellant, school administrators could use mathematical models to make advance projections of student populations that would be statisti-

cally valid. Thus, under the assumption that the demographics of a school district are controlled by economic and political factors that change in advance of any demographic changes, a school administration could make projections for years in advance that would remain valid until the basic assumptions changed. The statute, however, does not impose any requirements upon local administrators to use particular methods that might provide a basis for making earlier decisions. It may be a prudent management technique to make projections before teacher contracts are issued. Nevertheless, even if the assumption is made that all the factors were in place so that the loss of students could have been determined before the teacher contracts were issued, the statute does not require the Local Board to determine if a loss had occurred before the contracts were issued.

The testimony indicates that the methods used by the Thomas County high school administrators to project student populations and teacher needs have been reliable. Their decision, and the Local Board's decision, therefore, was not arbitrary or capricious, nor should it be characterized as negligent. The Local Board did not make any false representations or conceal any facts when it entered into the contract with Appellant since it was unaware that there would be a loss of students until the pre-registration was completed. Thus, if the doctrine of estoppel is applicable in this situation, the Local Board cannot be estopped to terminate Appellant's contract because a fundamental requirement of estoppel is missing. See, Calhoun v. Williamson, 76 Ga. App. 91, 45 S.E.2d 87 (1947) (estoppel requires misrepresentation or concealment).

Appellant also maintains that there was no credible evidence to support the conclusion that there was a loss of students. The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion, or the decision is so arbitrary and capricious as to be illegal. See, Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11. The evidence showed that 1,291 students were enrolled in September, 1989. In May, 1990, only 1,206 students pre-registered. The principal testified that the number of students that pre-registered was normally close to the number that enrolled in the subsequent fall. At the time of the hearing, the principal was of the opinion that the decrease in students would be approximately 50. Additionally, the principal thought that all of the classes would

be covered by the number of teachers hired. Appellant claims that there were 224 graduating seniors in May, 1990, and 305 eighth graders who would enroll as ninth graders. Appellant argues that this indicates an increase in the student population of 81. Notwithstanding Appellant's approach, the evidence before the Local Board was that there was a decrease from 1,291 students in September, 1989 to an anticipated 1,206 in September, 1990. We, therefore, conclude that there was evidence presented to support the Local Board's decision.

It is beyond our power to rule on the constitutionality of O.C.G.A. § 20-2-940(a) (6), but we do observe that the Fair Dismissal Act was ruled constitutional in Holley v. Seminole County Dist., 755 F.2d 1492 (11th Cir., 1985).

Based upon the foregoing, the State Board of Education is of the opinion that there was evidence to support the Local Board's decision to terminate Appellant's teaching contract because of a loss of students, and that the termination could occur in the summer after the teaching contract was signed. The Local Board's decision, therefore, is

SUSTAINED.

This14th day of December, 1990.

Larry A. Foster
Vice Chairman For Appeals