STATE BOARD OF EDUCATION

STATE OF GEORGIA

DR. BOB ROBERTS,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1990-26**
v.	:	
	:	**DECISION**
FAYETTE COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by Bob Roberts ("Appellant") from a decision by the Fayette County Board of Education ("Local Board") not to grant him a hearing on why his contract for the 1990-1991 school year was not issued after the Local Board had voted to hire him and he had acted in reliance upon that vote. The Local Board's decision is reversed and this case is remanded for hearing.

PART II

FACTUAL BACKGROUND

Appellant was employed in Tuscaloosa, Alabama, where he served for several years as an administrator. On February 5, 1990, the Local Board voted unanimously to employ Appellant as a principal. A written contract was not issued by the Local Board at the time of the vote. Nevertheless, Appellant made several trips from Alabama to Fayette County. Appellant interviewed prospective employees and the Local Board issued ten contracts to teachers that Appellant recommended. The school system sent memoranda to Appellant as "principal". Appellant placed his Tuscaloosa home on the market for sale and he signed a contract to

purchase a house in Fayette County. Appellant's wife resigned a position as a graduate assistant at the University of Alabama.

On May 21, 1990, the Local Board voted to reconsider its selection of Appellant as a principal. On June 4, 1990, the Local Board voted to have the Professional Practices Commission conduct an investigation. The Professional Practices Commission recommended that a contract should be issued to Appellant. On July 19, 1990, the Local Board voted against adopting the Professional Practices Commission's recommendation. Appellant then requested a hearing under O.C.G.A. § 20-2-1160 to inquire into the propriety of reconsidering the vote taken on February 5, 1990 to employ Appellant. The Local Board voted to deny Appellant a hearing and this appeal was then made.

PART III

DISCUSSION

Appellant maintains that the Local Board should have conducted a hearing under the provisions of O.C.G.A. § 20-2-1160 because disputes concerning educator contracts involve a "local controversy in reference to the construction or administration of the school law". Appellant cites Servicemaster Management Services Corp. v. Cherokee County School System, 257 Ga. 60, 354 S.E.2d 424 (1987), in support of his proposition. The Local Board argues that its decision should be affirmed because the issues raised by Appellant do not address matters of local controversy involving the construction or administration of school law because Appellant was never employed by the Local Board. The Local Board also cites Servicemaster to support its argument. Additionally, the Local Board cites Dodd v. Board of Education of Forsyth County, 46 Ga. App. 235, 167 S.E. 309 (1932), and Orr v. Riley, 160 Ga. 480, 128 S.E. 765 (1925) to support its argument that a principal's contract has to be in writing in order to be binding. Alternatively, the Local Board argues that even if Appellant is deemed to be an employee of the Local Board, he would not be entitled to a hearing because of the provisions of the Fair

Dismissal Act. [1] The Local Board cites Dalton City Board of Education v. Smith, 256 Ga. 394, 349 S.E.2d 458 (1986) to support this position. Finally, the Local Board argues that since a hearing was not held, the State Board of Education cannot assume jurisdiction under the holding in Mallard v. Warren, 222 Ga. 731, 152 S.E.2d 380 (1966).

> O.C.G.A. § 20-2-1160 provides, in part:
>
> (a) Every county, city, or other independent board of education shall constitute a tribunal for hearing and determining any matter of local controversy in reference to the construction or administration of the school law . When such local board has made a decision, it shall be binding on the parties; provided, however, that the board shall notify the parties in writing of the decision and their right to appeal the decision to the State Board of Education ....
>
> (b) Any party aggrieved by a decision of the local board rendered on a contested issue after a hearing shall have the right to appeal therefrom to the State Board of Education. ...

Subsection (c) of O.C.G.A. § 20-2-1160 permits a party aggrieved by a decision of the State Board of Education to appeal to a superior court.

O.C.G.A. § 20-2-940 provides that the contract of employment of a teacher or principal "having a contract for a definite term may be terminated or suspended" for eight specified reasons, that notice has to be provided to the teacher, and that a "hearing shall be conducted before the local board" and appeals may be taken to the State Board of Education. Contrary to the Local Board's assertions, O.C.G.A. § 20-2-940 applies to the termination of any teacher's, principal's, or employee's contract; it is not limited to teachers who have been employed more than three years. The so-called "tenure" provisions of O.C.G.A. § 20-2-943 apply only in the case of contract non-renewal; they are not applicable when a teacher's or principal's contract is terminated.[2]

In the instant case, Appellant's contract, if there was a contract, was terminated. Under the provisions of O.C.G.A. § 20-2-940, the Local Board is obligated to give Appellant reasons, conduct a hearing, and render a decision why Appellant could not assume his position. The Local

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[1] O.C.G.A. §§ 20-2-940 et. seq.

[2] The term "tenure" does not exist in the Georgia statutes. The term is used here as a shorthand phrase for the teachers covered by O.C.G.A. § 20-2-943, i.e., a "teacher who accepts a school year contract for the fourth consecutive school year from the same local board of education". O.C.G.A. § 20-2-943(b) (1).

Board's reliance upon Dalton City Board of Education v. Smith, 256 Ga. 394, 349 S.E.2d 458 (1986) is misplaced. In Dalton City, the petitioners sought a hearing when the teacher's contract was not renewed. As a result, O.C.G.A § 20-2-940 was inapplicable and the petitioners sought a hearing under O.C.G.A. § 20-2-1160. The Court reversed the trial court's grant of a petition for mandamus for the local board to hold a hearing under O.C.G.A. § 20-2-1160 with the observation that "the simple non-renewal of a single, one-year contract, standing alone, will not constitute a 'matter of local controversy in reference to the construction or administration of the school law.'

The instant case, however, concerns the question of whether Appellant's contract was wrongfully terminated. Appellant has raised a matter of local controversy involving the construction or administration of the school law. The Local Board should have conducted a hearing to determine if a contract existed, and, if so, Appellant should have been provided notice and a hearing on whether his termination was for cause.

In Servicemaster, the Supreme Court decided that it was unnecessary to exhaust administrative remedies when a contract dispute existed between a service provider and a local board of education because the contract dispute did not involve a local controversy concerning the construction or administration of the school law. Appellant points to the Court's observation that teacher contract disputes are matters of school law; the Local Board takes a broader view and argues that contract disputes in general do not involve the construction or administration of school law. We think Appellant's position correctly interprets case law. Servicemaster shows that there are some disputes, such as in the commercial contracts area, that do not involve school law. Teacher contracts, however, are specifically covered by school law. We, therefore, conclude that Servicemaster supports Appellant's position.

Finally, the Local Board contends that the State Board of Education lacks jurisdiction to consider this appeal because the Local Board did not conduct a hearing. The Local Board also

contends that Appellant must file a mandamus action in the superior court in order to obtain any relief. The State Board of Education conducts an appellate review based upon the record of what occurred before a local board of education. Normally, the State Board of Education does not have anything it can base a decision upon if a hearing has not been conducted. In the instant case, however, a sufficient record exists for the State Board of Education to determine that Appellant was improperly denied an initial hearing on whether a contract existed. Under these circumstances, we believe the State Board of Education can exercise jurisdiction to determine if the Local Board acted properly.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board should have granted Appellant a hearing on the issue of whether a contract existed and, if so, why the contract was terminated. Accordingly, the Local Board's decision not to conduct a hearing is reversed and this matter is remanded back to the Local Board to provide Appellant a hearing.

This 14th of February, 1991.

Larry A. Foster
Vice Chairman For Appeals