

On May 21, 1990, Appellant requested a hearing on the issue of whether there was proper “cause” for his demotion under the provisions of O.C.G.A. § 20-2-942. In response to this request, the Local Board conducted a limited hearing on September 18, 1990 and decided that Appellant’s reassignment was a transfer rather than a demotion. As a result, the Local Board decided that Appellant was not entitled to a hearing under the provisions of O.C.G.A. § 20-2-942. Appellant then filed this appeal to the State Board of Education.

PART III

DISCUSSION

Appellant claims on appeal that his reassignment, specifically his removal from the position of director of the band, constitutes a demotion rather than a transfer. As a result, Appellant maintains that he was entitled to certain procedural safeguards, including notification of charges and a right to a hearing before the Local Board.

O.C.G.A. § 20-2-943 sets forth the definition of what action constitutes a demotion. It provides that a demotion requires a loss of salary, prestige, and responsibility. O.C.G.A. § 20-2-942 affords teachers who have taught for more than three years with the opportunity for a hearing and notice of the reasons for the demotion.

Appellant argues that when the Local Board relieved him from his job as director of the band, he suffered a loss of salary, responsibility, and prestige, i.e., he was demoted. Appellant’s argument that he has suffered these losses is not without merit, as there is substantial evidence to support these contentions. However, the question of whether Appellant’s reassignment constitutes a transfer or a demotion does not turn on a showing that he has incurred the requisite losses, but rather on the question of whether Appellant’s position as band director was part of his primary job or a supplemental position.

Bonner, et al. v. Fulton Cnty. Bd. of Educ., Case No. 1989-24 (St. Bd. of Ed.,), like the instant case, also involved a situation where teachers who formerly held supplemental duties, such as coaches or chairpersons, lost their positions and requested hearings under the provisions of O.C.G.A. § 20-2-940 because of their contentions they had been demoted. In Bonner, the State Board of Education pointed out that the Fair Dismissal Act is applicable only for the primary positions of teacher, principal, and other full-time positions; it is not applicable for supplemental positions.

Appellant argues that his primary position was director of the band, as well as teacher of general music, and he is therefore entitled to the protection of the Fair Dismissal Act. Appellant bases his argument on the fact that his duties as teacher and band director were intimately related. Ninety percent of his students were in both band and music class. He also contends that the learning process is twofold. In class, the students were taught music appreciation and theory, while in band they were given the opportunity to put this theory into practice. Furthermore, Appellant contends that he was hired for both positions and would not have taken the position otherwise.

Although Appellant's argument that the positions were intimately related has some merit, the record cannot be ignored. The Local Board's policy IDE, defines extracurricular activities as

[a]ny school-sponsored program for which some or all the activities are outside the regularly scheduled class day

As part of this definition, the policy provides examples: "all individual and team sports, cheerleading, literary meets, bands...." The policy also provides that participation in extracurricular activities cannot be required. Even though ninety percent of Appellant's class students were in the band, their participation was voluntary. Appellant's 1989-1990 employment contract provides that he was employed as a "teacher", without any reference to his responsibility as band director. Finally, Appellant's compensation as band director was treated as

a salary supplement and determined from the Local Board's "Compensation Guides and Contracts Salary Supplements", which lists band along with the other extracurricular activities. The record, therefore, clearly shows that band is an extracurricular activity and the position of band director is a supplemental position.

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. As pointed out above, there is evidence that Appellant's duties as band director were supplemental duties and not a part of his primary duty as a teacher. 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 a teacher with a hearing and reasons for the loss of the supplemental duty. Bonner, et al. v. Fulton Cnty. Bd. of Educ., Case No. 1989-24 (St. Bd. of Educ.,). Appellant, therefore, does not come within the class of teachers who are entitled to a hearing under the provisions of the Fair Dismissal Act.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board was not required to give Appellant reasons and grant him a hearing to show cause why he lost his supplemental duty of band director. The Local Board's decision, therefore, is

SUSTAINED.

This 21st day of February, 1991.

Larry A. Foster
Vice Chairman For Appeals