STATE BOARD OF EDUCATION

STATE OF GEORGIA

DAVID WILNER,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1991-6**
vs.	:	
	:	**DECISION**
	:	
FULTON COUNTY BOARD OF EDUCATION,	:	
Appellee.		

PART I

SUMMARY

David Wilner ("Appellant") appeals from a decision by the Fulton County Board of Education ("Local Board") to adopt a tribunal's finding of incompetence and recommendation to suspend him without pay for five days after Appellant was charged with defacing school property. In addition, Appellant appeals the tribunal's failure to exercise jurisdiction and provide him a hearing concerning his transfer to another school. The Local Board's decision is reversed.

PART II

FACTUAL BACKGROUND

At the beginning of the 1990-1991 school year, the Fulton County School System ("Local System") opened its new Roswell High School. The teachers were instructed to go to their new classrooms during the summer and arrange them in preparation for the new school year. Appellant taught science at the old Roswell High School, where he had been for eight years. Following the instructions from his principal, Appellant went to the new school to arrange his new science classroom.

Appellant arranged his new classroom in the same manner as his old classroom. He removed the bottoms from the storage compartments of the tables that were in the classroom and turned the tables around so that the openings were facing him; he mounted a pencil sharpener on a door that led into a storage room that was adjacent to his classroom, and he covered a window that was in the storage room door with part of one of the storage compartment bottoms. Appellant removed the compartment bottoms and turned the tables around in order to prevent students from cheating. He covered the window in the storage room door to prevent students from observing the scales and chemicals that were stored there. He mounted the pencil sharpener in an effort to help the school system.

The Local System objected to Appellant's actions and sought restitution for replacing the table compartment bottoms. The estimated cost of replacing the bottoms was $620.00. In addition, the Local System moved to suspend Appellant because of willful neglect of duty, insubordination, incompetency, and other good and sufficient causes. At the same time, the Local System removed Appellant from his position as a science teacher and transferred him to another school as a regular substitute teacher without reducing his salary. The transfer was made without providing Appellant with the opportunity for a hearing.

A hearing on the suspension was held on October 23, 1990 by a tribunal constituted by the Professional Practices Commission ("PPC"). Although Appellant sought to have the PPC Tribunal consider the propriety of his transfer to the position of substitute teacher, the Tribunal decided that it did not have jurisdiction over the transfer question.

The PPC Tribunal found that the teachers were instructed to take good care of the new facility and to see that the students did not cause any damage. The Tribunal also found that the teachers were not given any instructions or guidelines about taking care of the facility, such as the mounting or hanging of clocks, pencil sharpeners, periodic tables, or other items commonly found in classrooms. The Tribunal found that pencil sharpeners were mounted on bulletin

boards, blackboards, on the sides of wooden storage cabinets and on doors elsewhere in the school system, but that Appellant had mounted his pencil sharpener in a potentially dangerous location on the door. Additionally, the Tribunal found that the pencil sharpener could be moved and any damage repaired as a matter of routine maintenance. The Tribunal found that Appellant had improperly covered the window in the storeroom door and created a potential fire code violation, but that the covering could be removed and any damage repaired as a matter of routine maintenance. The Tribunal also found that Appellant had not been authorized to modify the science lab tables, the action was unjustified, and damage was caused to school property. The PPC Tribunal found that the Local System had not proven willful neglect of duty or insubordination, but that the evidence showed that Appellant was incompetent and that Appellant had failed to exercise sound and mature professional judgment which constituted other good and sufficient cause for temporary suspension from duty. The PPC Tribunal recommended a five-day suspension. The Local Board adopted the Tribunal's findings and recommendation. This appeal then followed.

PART III

DISCUSSION

Appellant claims that (1) the Local System did not establish a prima facie case of incompetency or other good and sufficient cause for suspension; (2) the notice of the hearing was defective because it failed to include notice of the transfer as a part of the disciplinary action to be taken against Appellant; (3) the Local System violated his statutory rights by transferring him without providing him a hearing on the matter; (4) the Local System violated his contract by placing him in a substitute position when his contract provides that he was hired as a science teacher, and (5) the transfer violated the Local Board's own transfer policy. The Local Board argues that there was evidence of incompetency, that it was not required to grant Appellant a hearing regarding the transfer and its notice, therefore, was not defective. The Local Board also claims that it did not violate Appellant's contract because the contract provides that Appellant

can be transferred at the discretion of the Local System.

O.C.G.A. § 20-2-940(a) provides that:

> [t]he contract of employment of a teacher ... may be ... suspended for the following reasons:
>
> (1) Incompetency;
>
> *****
>
> (8) Any other good and sufficient cause.

O.C.G.A. § 20-2-942(b) (1) provides, in part:

> A teacher ... may be demoted ... only for those reasons set forth in subsection (a) of Code Section 20-2-940.

O.C.G.A. § 20-2-943 provides:

> (a) In exercising its powers in the enforcement of due process under this part, a local board of education shall be authorized:
>
> (1) Under Code Section 20-2-940 to:
>
> (A) Terminate the contract of the teacher
>
> ...;
>
> (B) Suspend a teacher •.. without pay for a period of time not to exceed 60 days ...; or
>
> (C) Reinstate a teacher
>
> (2) Under Code Section 20-2-942 to:
>
> (A) Nonrenew a teacher's ... contract;
>
> (B) Renew a teacher's ... contract; or
>
> (C) Demote a teacher ... from one position in the school system to another position in the school system having less responsibility, prestige, and salary.
>
> (b) Nothing in this part shall be construed as depriving local boards of education and other school officials from assigning and reassigning teachers ... from one school to another or from assigning and reassigning teachers to teach different classes or subjects.

We first consider the question of whether Appellant should have been granted a hearing on the propriety of his transfer. For the reasons set out below, we are of the opinion that the PPC Tribunal should have exercised jurisdiction to determine whether the Local System acted properly.

It is clear that the law permits a local school system to transfer teachers between schools without requiring a hearing. O.C.G.A. § 20-2-943(b). School systems must have the ability to transfer teachers in order to meet the legitimate needs of the school system. Nevertheless, a transfer can have adverse effects upon a teacher. The law permits these adverse effects because of the legitimate needs of a school system to operate effectively. We must, however, assume that the legislature expected the school officials to act in an appropriate manner and not resort to a strict reading of the law in order to engage in punitive actions. If the school officials do not use the transfer to serve the legitimate needs of the school system but, instead, use the transfer for its punitive effect upon the teacher, then the school officials go beyond the expectations of the legislature when it expected transfers from the list of actions that give rise to the right to a hearing. Thus, the decision to transfer a teacher does not require a hearing unless the decision was arbitrary and capricious. See, County Board of Educ. v. Young, 187 Ga. 644, 1 S.E.2d 739 (1939).

O.C.G.A. § 20-2-943 provides for only three forms of disciplinary action: suspension, demotion, and dismissal; transfers are not a permitted form of discipline. A transfer can only be used to serve the legitimate needs of the school system.

In the instant case, the Local Board's policies recognize that transfers are only to be used to promote the needs of the Local System. The Local Board established two classes of transfers, one voluntary and the other involuntary. The policy provides that an involuntary transfer can be made "if deemed in the best interest of the system/teacher, when teachers are designated surplus

in a specific building due to actual or projected decline in student enrollments, school closings/consolidation, program change from the teacher's present school or teacher returning from leave." Local Board Policy GBM.

The only thing the Local Board can point to is that the transfer was "deemed in the best interest of the system". Appellant, however, was transferred into a position that does not require a certificate, He was transferred even though there was no surplus and another school was not closed or opened that required a transfer, nor was there an administrative need for Appellant's skills in another part of the school system that required a transfer. His transfer was simply another form of punishment. Given the lack of any administrative needs for the transfer, it is clear that the Local System abused its authority by making the transfer without permitting Appellant to have a hearing concerning the transfer.

On the merits of whether Appellant's actions amounted to incompetency or other good and sufficient cause to warrant suspension without pay for five days and transfer to another school, Appellant argues that Local Board cannot impose disciplinary measures when it did not inform him that he would not be permitted to arrange his classroom in the same manner as his previous classroom was arranged. The Local Board argues that teachers do not have to be informed about every action, that Appellant should have known that he should not have damaged the door and the desks.

In West v. Habersham Cnty. Bd. of Educ., Case no. 1986-53 (Ga. Bd. of Ed., Feb. 12, 1987), incompetency was defined as "the lack of ability, legal qualification or fitness to discharge the required duty." In West, the State Board of Education held that a teacher was not incompetent when she improperly averaged the grades of her students. The Local Board contends that the evidence shows that Appellant lacked the ability or fitness to discharge the duty of setting up his new classroom for the beginning of school.

We disagree with the Local Board. Appellant did as he was instructed, i.e., he prepared his new room so that it looked like his old room without receiving any instructions or guidelines from the Local Board or the principal. The fact that his exercise of initiative did not comport with the principal's view of how the rooms should be arranged does not amount to incompetence. The removal of the compartment bottoms did not damage the tables; the bottoms merely had to be fastened back on the tables. Regardless of where Appellant mounted the pencil sharpener, holes for the screws would have resulted. The evidence did not establish any particular pattern to where pencil sharpeners were mounted within other classrooms throughout the School System. Appellant's actions did not constitute incompetence; at worst, they simply did not comply with what the principal thought was proper.

A case of this nature should never have to come before the State Board of Education. If the principal had merely told Appellant to replace the table compartment bottoms, turn the tables around, remove the pencil sharpener and uncover the window, this matter would have been concluded without the tremendous cost of multiple hearings.

PART IV

DECISION

Based upon the foregoing and the briefs of counsel, the State Board of Education is of the opinion that the Local Board failed to show that Appellant was incompetent or that there was other good and sufficient cause to suspend and transfer Appellant and the Local Board denied Appellant due process by failing to grant him a hearing concerning the punishment imposed upon him by transferring him into another position. Accordingly, the Local Board's decision is hereby

REVERSED.

This 11th day of April, 1991.

Mr. Blanchard, Mr. Carrell and Mr. Sears were not present.

Larry A. Foster
Vice Chairman For Appeals

Mr. Foster and Mr. Lathem voted to sustain the Fulton County Board of Education.