STATE BOARD OF EDUCATION

STATE OF GEORGIA

DOUGLAS MAIN,	:	
	:	
Appellant,	:	
vs.	:	**CASE NO. 1991-9**
	:	
GREENE COUNTY BOARD OF EDUCATION,	:	**DEC1SION**
	:	
	:	
Appellee.	:	

This is an appeal by Douglas Main ("Appellant") from a decision by the Greene County Board of Education ("Local Board") not to renew his teaching contract for the 1990-1991 school year because of incompetence, insubordination, willful neglect of duty, and other good and sufficient reasons. Appellant maintains that the evidence did not support the Local Board's decision and that he was denied procedural due process because he was not given a plan for improvement before the decision was made not to renew his contract. The Local Board's decision is reversed.

Appellant taught for the Local Board for 14 years. During the last 10 years, he served as the English Department Chairperson. At the beginning of the 1989-1990 school year, a new principal and new assistant principal were employed in the high school.

The assistant principal visited Appellant's classroom for 25 minutes on November 28, 1989. The class was one of Appellant's basic literature classes, in which the students had a reading ability that spanned the fourth through seventh grades. Appellant had his class engaged in a "round robin" reading exercise where they took turns reading a newspaper article that Appellant had copied. The assistant principal used the Georgia Teacher Observation Instrument ("GTOI") to record her evaluation and she gave Appellant three NI[1] ratings. She recorded that the students were not given an opportunity to participate and practice their skills; Appellant failed to ask questions to determine the main idea, and Appellant failed to engage his students so that he could monitor their knowledge of reading skills. The assistant principal gave Appellant a copy of the observation document but did not discuss its contents with him. The assistant principal testified that she deemed Appellant incompetent based upon this evaluation.

On February 14, 1990, the principal visited Appellant's classroom and performed an unannounced evaluation. The principal remained for the entire period. The principal also used the GTOI to record his observations and gave Appellant four NI ratings. The principal observed that the students read news articles for one-half of the period and then read a poem during the

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[1] Apparently "Needs Improvement".

remainder of the class. The principal felt that Appellant failed to let his class know what objectives were going to be covered during the class; that Appellant should have called on students to answer questions rather than obtaining the answer from a student who volunteered to answer; that Appellant failed to respond properly when students hesitated or did not know the answer to a question, and that Appellant did not use class time effectively because he did not assign the articles as homework and have the students come to class prepared to discuss what they had learned. The principal met with Appellant on February 23, 1990 to discuss the evaluation and explain that Appellant would have to be observed on an extended basis since he had received more than five NI ratings. The extended observation was not made before Appellant was given notice that the Local Superintendent would not recommend renewal of his contract.

Appellant was notified in writing on April 10, 1990, that his contract would not be renewed. He requested a notification of charges and a hearing before the Local Board. The hearing was conducted on December 12, 1990, and at the conclusion of the hearing the Local Board voted to sustain the Local Superintendent's recommendation.

Appellant argues on appeal that he was not afforded due process because the Local Board did not follow the Georgia Teacher Evaluation Program that was established under the provisions of O.C.G.A. § 20-2-210, which provides for annual performance evaluations. We have previously held that O.C.G.A. § 20-2-210 did not add any substantive rights for teachers, but was enacted to improve teacher abilities and that the failure of a school system to evaluate a teacher does not impact on the ability not to renew a teacher's contract. See, Walker v. LaGrange City Bd. of Educ., Case No. 1989-25 (St. Bd. of Ed., Nov. 9, 1989); Fry v. Clayton Cnty. Bd. of Educ., Case No. 1987-27) (St. Bd. of Ed.); Smith v. Bryan Cnty. Bd. of Educ., Case No. 1987-24 (St. Bd. of Ed.). Appellant has not added any new arguments that convince us that our previous holdings should be reversed. We, therefore, conclude that the Local Board could decide not to renew Appellant's contract even if Appellant was not given appropriate evaluations or remedial programs.

Appellant also argues that the evidence was insufficient to support the Local Board's decision. The Local Board failed to specify the grounds upon which it decided not to renew Appellant's contract, but on appeal, the Local Board claims that the evaluations establish that Appellant was incompetent.[2]

The State Board of Education conducts an appellate review and is required to uphold the decision of a local board of education if there is any evidence to support the local board's decision unless the decision is shown to be arbitrary and capricious. Ransum v. Chattooga Cnty.

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[2] In addition to the two evaluations made before Appellant was given notice that his contract would not be renewed, the principal and assistant principal performed two additional evaluations. Even though they were not objected to, these subsequent evaluations cannot be considered to support the decision not to renew Appellant since they were conducted after the decision was made. See, West v. Habersham Cnty. Bd. of Educ., Case No. 1986—53 (Ga. Bd. of Ed., 1987).

Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene Cnty. Bd. of Educ., Case No. 1976-11 (St. Bd. of Ed., Sep. 8, 1976). In this case, the Local Board failed to make any findings of fact, so we have to review the record to determine if there is any evidence that Appellant was incompetent.

The Local System has the burden of proof. O.C.G.A. § 20-2-940(e)(4). In this case, the only relevant evidence presented by the Local System was the results of two short observations that show, at most, a difference of opinion concerning the method of teaching. The principal and the assistant principal objected to Appellant having his students read newspaper articles in the classroom, but there was evidence that this is an accepted teaching practice and Appellant was never told to discontinue the practice. There was also evidence that Appellant did not state a class objective at the beginning of the class and did not summarize what had been learned at the end of the class. We do not think these omissions rise to the level of establishing that Appellant was incompetent.

Although we hold that a school system does not have to follow the evaluation procedures established by the Department of Education before a teacher's contract is not renewed, a school system cannot establish that a teacher is incompetent if a teacher overlooks or fails to accomplish one or two minor details during the course of two short evaluations. At a minimum, there must be a showing that the conduct was not the result of an oversight, or that it was more than a mere difference in educational philosophy. In this case, the Local System has not established that Appellant's conduct was consistent and consistently incompetent, nor has it established that the practices used by Appellant were obviously without educational value. There was, however, uncontradicted evidence that Appellant has always been viewed as a model teacher, that he instituted programs that improved the Scholastic Aptitude Test scores of the students, and that he served on a national conference that is considering educational needs of the future. Such evidence does not establish that Appellant has remained competent, but it does establish a presumption of competence that needs more than has been shown in this case to overcome. We conclude that the Local System failed to carry the burden of proof to establish that Appellant was incompetent. Similarly, we conclude that the Local System failed to carry the burden of proof to establish other good and sufficient reasons not to renew Appellant's contract.

The principal testified that he attempted to set a meeting date with Appellant after the February 23, 1990, meeting but was unable to agree on a date. The Local Board argues that this shows that Appellant was insubordinate. There was, however, no evidence that the principal directed Appellant to appear at a given place at a given time, or to be ready for another evaluation on a particular date. In the absence of any showing that Appellant failed to follow a particular directive, we conclude that the Local System failed to carry the burden of proof to establish that Appellant was insubordinate.

The Local Board has riot pointed to any evidence and has not argued that the evidence shows that Appellant willfully neglected his duties. We deem this cause to have been abandoned by the Local Board.

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board failed to carry the burden of proof that Appellant was incompetent, or insubordinate, or that there was other good and sufficient cause not to renew Appellant's teaching contract. The Local Board's decision, therefore, 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