STATE BOARD OF EDUCATION

STATE OF GEORGIA

SANDRA MCLESKEY,	:	
	:	
Appellant	:	
	:	**CASE NO 1991-24**
vs.	:	
	:	**DECISION**
CHEROKEE COUNTY BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by Sandra McLeskey ("Appellant") from a decision by the Cherokee County Board of Education ("Local Board") to terminate her teaching contract because of insubordination, willful neglect of duty, and other good and sufficient causes. Appellant maintains on appeal that the Local Board did not have the authority to terminate her contract because the hearing was held after the end of the contract term. Alternatively, Appellant claims that the evidence did not support the charges made against her. The Local Board's decision is affirmed.

PART II

BACKGROUND

This appeal presents the question: Can a local board of education terminate a tenured[1] teacher's contract when the local superintendent makes charges against the teacher before the end of the contract term and the local board conducts the termination hearing after the contract term has expired? With this question in the background, we review the procedural posture of this case and then set out the facts established at the termination hearing.

A. Procedural Status

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[1] The term "tenure" is used here as a shorthand expression for the rights a teacher obtains under the Fair Dismissal Act (O.C.G.A. § 20-2-940 et seq.) after teaching three consecutive years. Of significance in this case is the right to have a teaching contract renewed unless the teacher has been given a notice of non-renewal and an opportunity to have a hearing on specific charges brought under the provisions of the Act.

The Local Board employed Appellant as an English teacher for four years. On May 14, 1990, Appellant signed a contract for the 1990-1991 school year that ended on June 30, 1991. On April 4, 1991, the Local Superintendent notified Appellant that her teaching contract would not be renewed for the 1991-1992 school year. Appellant requested a notice of charges and a hearing under O.C.G.A. § 20-2-942. On April 22, 1991, the Local Superintendent gave Appellant a list of charges with the names of witnesses and a summary of the evidence to support the charges. The Local Superintendent also informed Appellant that a tribunal established by the Professional Practices Commission ("PPC") would conduct the hearing on Appellant's non-renewal.

On April 22, 1991, Appellant's attorney filed an objection to the charges with the contention that they were insufficient. The Local Superintendent's attorney elaborated on the charges in letters dated May 2, 1991, and May 31, 1991.

During the period between April 4, 1991, and May 31, 1991, the Local Superintendent became aware that Appellant had been conducting a model agency business and soliciting her students to sign agency agreements and pay her an agency fee. In addition, the Local Superintendent became aware of allegations that Appellant had plagiarized the work of one of her students to include in a novel that Appellant was writing. As a result of these discoveries, the Local Superintendent decided to terminate Appellant's teaching contract. The letter that the Local Superintendent's attorney mailed on May 31, 1991, referred to these allegations as an independent basis for terminating Appellant's contract. The letter also informed Appellant that the new charges would be presented at the hearing before the PPC Tribunal, which was scheduled to be held on June 14, 1991.

At a pre-hearing conference with the PPC Hearing Officer, Appellant's counsel objected to the presentation of the new charges because of the possibility of prejudice arising in the minds of the PPC Tribunal. Appellant's counsel requested separate hearings on the non-renewal charges and the termination charges. The PPC Hearing officer agreed with Appellant's counsel and ordered that both a non-renewal hearing and a termination hearing would have to be separately held to consider the different charges by different tribunals. The PPC Tribunal hearing was then postponed.

On June 19, 1991, the Local Superintendent's attorney provided Appellant with the separate termination charges and informed Appellant that the Local Board would serve as the tribunal to hear the termination charges. The termination charges did riot change from the ones the Local Superintendent provided Appellant on May 31, 1991. The parties agreed to have the termination hearing on July 10, 1991, in order to accommodate the schedules of the parties, the Local Board, and the attorneys.

When the Local Board met on July 10, 1991, Appellant moved to dismiss the proceedings because her 1990-1991 teaching contract had expired on June 30, 1991. In addition, Appellant had not yet been offered a contract for the 1991-1992 school year because of the pending non-renewal hearing. As a result, Appellant argued, the 1990-1991 contract no longer existed and a 1991-1992 contract had not been offered so there was no contract over which the Local Board could exercise jurisdiction. The hearing officer employed to conduct the hearing denied Appellant's motion and the hearing proceeded.

B. Termination Hearing

During the hearing, the Local Superintendent produced evidence, and Appellant

admitted, that during the 1987-1988 school year Appellant solicited several of her students to sign contracts to employ Appellant as their agent to obtain modeling assignments. The students paid Appellant a fee to serve as their agent. The contracts provided that Appellant would receive 20% of any earnings the students received from their modeling assignments. Some of the contracts provided that Appellant would serve as agent through the end of the 1990-1991 school year, some expired on June 30, 1991, and two contracts were to expire on July 30, 1991.

Appellant admitted during the hearing that she did not have any modeling or agency experience. She also took photographs of the students and charged them f or the pictures, but she did not have any experience as a photographer. Appellant claimed that she started the agency in an effort to help her students who wanted to become models and because the parents of the students did not want their children to be subjected to any adverse circumstances they associated with modeling agencies. Appellant did riot obtain any contracts after May 12, 1988, and she did not obtain any modeling assignments f or any of her students.

The Local Superintendent learned about the modeling agency in May, 1991, when a parent called about a student's involvement. The Local Superintendent assigned another administrator to make an investigation. When asked, Appellant told the administrator that she had a modeling agency but she refused to provide the administrator with the names of the students who were involved. The Local Superintendent wrote a letter to Appellant and asked for the names of the students with the direction that refusal to provide the names would be considered insubordination. Appellant responded by denying the allegations made by the parent. The Local Superintendent wrote another letter, on May 24, 1991, and asked for the names of the students and directed Appellant to respond or be charged with insubordination. Appellant again refused and said that she did not have to provide the names without her attorney being present.

At the conclusion of the hearing, the Local Board voted to sustain all the charges made by the Local Superintendent and voted to terminate Appellant's contract. Appellant then filed a timely appeal with the State Board of Education.

PART III

DISCUSSION

Appellant makes a novel claim on appeal. On one hand, Appellant claims that the Local Board lacked jurisdiction to dismiss her. She claims that her 1990-1991 contract expired on June 30, 1991, and the Local Board did not grant her a contract for the 1991-1992 school year. As a result, she maintains that a contract did not exist for the Local Board to terminate. On the other hand, Appellant claims that the Local Board has to conduct a non-renewal hearing to decide whether to renew her contract. But if the Local Board conducted a renewal hearing, it would have to decide whether to renew a contract that Appellant claims does not exist.

The problem with Appellant's analysis is that it relies upon a literal reading of O.C.G.A. § 20-2-940 and O.C.G.A. § 20-2-942. As the Local Board argues, this literal reading overlooks the employment relationship between a teacher and a school system. The employment relationship forms the background that both code sections seek to address. O.C.G.A. § 20-2-940 provides the method a local board has to follow to terminate the relationship during the school year. O.C.G.A. § 20-2-942 provides the method a Local Board has to follow if it does not want to continue the employment relationship after the end of a contract period.

Appellant argues that the two code sections stand alone because of two previous State Board of Education decisions, *Vizcarrondo v. Cobb County Bd. of Educ.,* Case No. 1981-13 (Ga. SBE, 1981) and *Byrd v. Taylor County Bd. of Educ.,* Case No. 1983-24 (Ga. SBE, 11/10/83). In

Vizcarrondo, a teacher resigned but the local board attempted to conduct a termination hearing under the forerunner of O.C.G.A. § 20-2-940 after the effective date of the resignation. The State Board of Education held that the local board did not have jurisdiction to conduct a hearing because the teacher had terminated the contract before the hearing in accordance with the terms of the contract. The essence of the holding in *Vizcarrondo* was that the local board lacked jurisdiction because the employment relationship had already been severed.

In *Byrd supra,* the local board attempted not to renew a teacher's contract, but failed to provide the teacher with a notice of charges within the 14-day time limit contained in O.C.G.A. § 20-2-942(b)(2). The local board held a hearing despite the teacher's objections. On appeal, the local board argued that if the hearing was faulty because it did not comply with the non-renewal provisions of O.C.G.A. § 20-2-942, then the hearing should be deemed to be a termination hearing under the provisions of O.C.G.A. § 20-2-940. The State Board of Education held that a local board of education could not treat a non-renewal hearing as a termination hearing in order to avoid the 14-day notice requirement. In the instant case, however, the Local Board did not attempt to avoid any notice or other procedural requirements of the non-renewal statute.

Under Appellant's analysis, the Local Board would have to conduct a non-renewal hearing first. If enough evidence existed not to renew Appellant's contract, then the matter would be over at the Local Board Level. If, however, insufficient evidence existed to sustain the non-renewal proceeding, then the Local Board could hold the termination proceeding that Appellant seeks to block with this appeal. The Local Board, Appellant, and the State Board of Education would then be in the same posture that now exists. We do not believe it is necessary to go in circles needlessly. We do not see that Appellant is harmed by the procedure followed by the Local Board. Accordingly, we hold that a local board of education can proceed with a termination hearing when the local board provides a teacher with timely notice of separate non-renewal charges and termination charges but the termination hearing is postponed until after the teaching contract term but before a new teaching contract has been given to the teacher because of the pending non-renewal hearing.

Appellant also claims on appeal that there was no evidence to support the termination of her contract. She also claims that the Local Board's decision to terminate her contract was arbitrary and capricious and violated her due process rights. In connection with this last claim, she claims that the hearing officer made several erroneous rulings that prejudiced her right to effectively rebut the charges brought against her, and that the Local Board's rules and regulations were arbitrarily applied against her.

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. *Ransum v. Chattooga County Bd. of Educ.,* 144 Ga. App. 783 (1978); *Antone v. Greene County Bd. of Educ.,* Case No. 1976-11 (Ga. SBE, 9/8/76). One of the charges against Appellant was that she solicited some of her students to sign contracts in order for her to represent them as their agent for modeling assignments, which constituted a violation of the code of ethics for teachers employed by the Local Board. Appellant admitted to the actions contained in the charge, but denied that the code of ethics banned her activity. In conjunction with her denial, Appellant argues on appeal that the hearing officer erroneously permitted the Local Superintendent to introduce the Code of Ethics portion of the teachers' handbook. The Code of Ethics provided that teachers could not profit financially from students. Appellant objected to the introduction of the Code of Ethics because the date of adoption by the Local Board was not established. The assistant principal, however, testified that the paragraph was placed in the teachers' handbook before Appellant became a faculty member. Thus, even if it was error for the hearing officer to admit the paragraph, it was harmless error because there was independent evidence concerning the existence of the policy. We, therefore, conclude that Appellant was not denied due process

because of the hearing officer's ruling. We further conclude that there was evidence that Appellant violated the code of ethics. The Local Board, therefore, had the authority to terminate Appellant's teaching contract.

Appellant also claims that the Local Board's decision was arbitrary and capricious because other teachers profit from students and have not been disciplined. There was no evidence that the Local Board was aware of the actions of any other teachers. We do not see that the evidence shows that the Local Board was arbitrary and capricious in taking action against Appellant without taking action against any other teacher.

Appellant's remaining claims on appeal, which relate to erroneous evidentiary rulings by the hearing officer on other charges, do not establish any basis for reversing the Local Board's decision. The evidence concerning Appellant's operation of a modeling agency was sufficient to permit the Local Board to discharge Appellant for other good and sufficient cause under O.C.G.A. § 20-2-940.

PART IV

DECISION

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board had jurisdiction to conduct a hearing on the termination of Appellant's contract; there was evidence to support the decision of the Local Board; the Local Board's decision was not arbitrary and capricious, and the evidentiary rulings by the hearing officer did not deny Appellant any due process rights. Accordingly, the decision of the Local Board is hereby

SUSTAINED.

This 14th day of November, 1991.

Mr. Abrams, Mr. Brinson, Mr. Sears were not present.

Larry A. Foster
Vice Chairman for Appeals