STATE BOARD OF EDUCATION

STATE OF GEORGIA

DR. BILLIE JEAN ELLINGTON,	:	
	:	
Appellant,	:	
vs.	:	
	:	**CASE NO. 1991-26**
BUFORD CITY	:	**DECISION**
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Dr. Billie Jean Ellington ("Appellant") from a decision by the Buford City Board of Education ("Local Board") to dismiss her as part of a reduction in force policy. Appellant claims that the Local Board did not have the authority to eliminate her position as Director of Curriculum and Instruction. Additionally, Appellant appeals from a decision by the Local Board not to grant her a hearing on the reasons the Local Board eliminated the position of Director of Curriculum and Instruction. The State Board of Education is without jurisdiction to decide the merits under O.C.G.A. § 20-2-1160 without a hearing before the Local Board of Education. The Local Board's decision is sustained.

On August 2, 1991, the Local Superintendent notified Appellant that her contract of employment was terminated as of July 31, 1991, due to a reduction-in-force because of the elimination of positions and other good and sufficient cause under the provisions of O.C.G.A.§ 20-2-940. A date was also set for a hearing. Upon request of Appellant's counsel, Appellant received another letter, dated August 12, 1991, that stated that the Local Board had eliminated Appellant's position because of "fiscal shortfalls or budget cutbacks, program changes or reduction, the need to eliminate or consolidate positions within the system, loss of students or cancellation or programs, and other good and sufficient cause." A hearing requested by Appellant was held before the Local Board on August 22, 1991.

The Local Board hired Appellant in August, 1989, to fill the position of Director of Curriculum and Instruction. Appellant received a contract for the 1991-1992 school year, which she signed on May 15, 1991.

In June, 1991, the Local Board directed the Local Superintendent to reduce the school system's expenses by $250,000 because the City was unable to fund the Local Board's proposed budget. Additionally, the Local Board directed the Local Superintendent to reduce the expenses in the central office and avoid making any reductions at the schools. The Local Superintendent eliminated positions at the central office based solely upon seniority with the school system. This process resulted in the elimination of seven positions. The Local Superintendent presented the plan to the Local Board on July 24, 1991, and the Local Board adopted the plan.

At the hearing on August 22, 1991, Appellant tried to contest the Local Board's July 24, 1991, decision, but the hearing officer ruled that Appellant could not introduce any evidence about the original decision to eliminate positions. Appellant showed, however, that the Local

Superintendent moved another person, who had more seniority than any of the terminated employees, to the central office to assume duties that were not performed by Appellant. Appellant also showed that there had not been a reduction in the number of students and that no programs had been eliminated. Appellant attempted to show that the projected revenues were greater than the previous year's revenues, but the evidence was inconclusive. The Local Superintendent testified that the Appellant's projections were based upon preliminary estimates that were invalid because the City of Buford had informed the Local Board that revenues would be reduced.

After the hearing, the Local Board voted to cancel Appellant's contract because of a reduction-in-force policy that eliminated Appellant's position. On August 26, 1991, Appellant filed a request for a hearing under the provisions of O.C.G.A. § 20-2-1160 to inquire into the propriety of the Local Board's decision to eliminate her position. The Local Board denied Appellant's request on the grounds it was filed more than thirty days after the action taken. Appellant then filed a timely appeal with the State Board of Education.

On appeal, Appellant maintains that the Local Board erred in not granting her a hearing under the provisions of O.C.G.A. 20-2-1160. Additionally, Appellant claims that the evidence did not support the Local Board's contention that expenses needed to be reduced. Appellant further claims that the Local Board does not have the authority to eliminate a position and then terminate the employee who filled that position. Appellant claims that she was entitled to be placed in another position.

Appellant's claim that a budget cut was unnecessary is not supported by the record. Appellant points to the budget as showing anticipated revenues of $6.7 million, while the prior year's budget was $6.4 million. Based upon the increase in anticipated revenues, Appellant claims that a reduction in force based upon monetary concerns was not justified. 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 (Ga. SBE, 9/8/76). In this case, the Local Superintendent testified that the budget figures introduced in evidence were preliminary projections and that the City of Buford had informed the Local Board that the preliminary projections were too high and the City would be unable to furnish the Local Board with the amount of money needed to meet the budget. There was, therefore, evidence that the budget had to be reduced. We conclude that the Local Board had to reduce its expenses to stay within its budget.

Appellant also claims that the Local Board could not eliminate her position under the provisions of O.C.G.A. § 20-2-940 because there was no loss of students or programs. She also claims that she was entitled to be moved into another position. In Curry v. Dawson Cnty. Bd. of Educ., Case No. 1991-7 (Ga. SBE, 4/11/91), we held that local boards of education could eliminate positions and cancel a teacher's contract based upon the elimination of the position. We also stated that a local board of education did not have to provide a teacher with another position. Appellant argues that Curry was decided incorrectly. According to Appellant, Curry strips teachers of the protection that the Legislature intended to grant in the Fair Dismissal Act, O.C.G.A. § 20-2-940 et seq. We believe that Curry was correctly decided and that Appellant misconstrues the Fair Dismissal Act as a grant of tenure to teachers. The Fair Dismissal Act does not grant tenure to teachers. Instead, it provides that teachers cannot be dismissed except for the reasons stated in the Act. Appellant's dismissal falls within those reasons, i.e., there has been a loss of a program. O.C.G.A. § 20-2-940(a)(6).

Appellant cites Hatcher *vs.* Board of Public Educ. and Orphanage, 809 F.2d 1546 (11th Cir. 1987), for the proposition that the Local Board must provide her with another position

within the school system. Appellant's reliance upon Hatcher is misplaced. In Hatcher, the local board did not give the teacher a hearing when she was demoted from principal to media specialist/librarian. The Court decided that a teacher who was demoted because of a school closing had a due process right to a hearing under the provisions of O.C.G.A. § 20-2-940. Here, the Local Board gave Appellant a hearing under the provisions of O.C.G.A. § 20-2-940. We, therefore, conclude that the Local Board did not deny Appellant any due process right by not assigning her to another position.

Appellant's final claim on appeal is that the Local Board erred in not granting her a hearing on the propriety of eliminating her position. Appellant argues that she was entitled to a hearing under the provisions of O.C.G.A. § 20-2-1160. The Local Board decided to eliminate Appellant's position on July 24, 1991. Appellant filed her request for a hearing on August 26, 1991, thirty-two days after the Local Board's decision. The Local Board argues that Appellant filed her request for a hearing too late.

In addition to the request she filed on August 26, 1991, Appellant tried to present evidence about the propriety of the Local Board's decision to eliminate her position at the hearing on August 22, 1991. The Local Board's attorney objected because the hearing was being held under the provisions of O.C.G.A. § 20-2-940 and, therefore, was limited to the question of whether the Local Board could cancel Appellant's contract. The hearing officer agreed with the Local Board's attorney and refused to permit Appellant to inquire into the facts about elimination of her position. The hearing officer, however, permitted Appellant's attorney to make a proffer of what the evidence would show if allowed.

O.C.G.A. § 20-2-1160 does not require filing a request for a hearing within 30 days. The Local Board, therefore, erred in not granting Appellant a hearing for the reason stated. Since the Local Board of Education did not grant a hearing the State Board of Education lacks jurisdiction to consider any issue the Appellant seeks to raise pursuant to O.C.G.A. § 20—2—1160. In our view, however, the Local Board's decision not to grant a hearing was correct.

The Local Board's decision to adopt a reduction-in-force policy that resulted in the elimination of Appellant's position was an administrative decision by the Local Board that did not involve the interpretation of school law. Appellant, therefore, was entitled to a hearing under O.C.G.A. § 20-2-1160 only if she can show that the Local Board denied her some constitutionality protected right. Dalton City Board of Education v. Smith, 256 Ga. 394, 349 S.E.2d 458 (1986).

If we accept Appellant's proffer of evidence as the facts for purposes of analysis, there would not be a showing that the Local Board acted arbitrarily, capriciously, or without authority, nor did the Local Board deny Appellant any of her constitutionally protected rights. The Local Board was faced with what it perceived to be a shortfall in revenues that required expenses to be reduced by $250,000. Whether the perception was correct or incorrect is immaterial. The essential fact is that it was the perception that guided the Local Board to decide to reduce expenses by $250,000. The decision was not arbitrary or capricious. As the constitutional mandated managers of the school system, the Local Board also had the authority, and the duty, to reduce its expenses by $250,000.

The Local Board could have adopted any number of plans to reduce its expenses by $250,000. Whatever plan the Local Board adopted was an administrative decision that the State Board of Education will not question. The plan was only one of any number of undesirable courses of action the Local Board could have taken, but there was no evidence that it was designed to cause Appellant's dismissal. Indeed, the Local Superintendent only had praise for Appellant's ability and performance. We conclude that the Local Board would not be required to give Appellant a hearing under O.C.G.A. § 20-2-1160.

Based upon the foregoing, it is the opinion of the State Board of Education that the evidence supported the Local Board's decision to cancel Appellant's contract and the Local Board had the authority to terminate Appellant's contract without offering her another position within the school system. Accordingly, the decision of the Local Board is hereby

SUSTAINED.

This 14th day of November, 1.

Mr. Abrams, Mr. Brinson, Mr. Sears and Mrs. King were not present

Larry A. Foster
Vice Chairman for Appeals

Mr. Abrains, Mr. Brinson, Mr
A. Foster
Chairman for Appeals