**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

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| **JOANN D. COX, BARRY LAWRENCE, PATRICIA T. MILLER, CHRIS V. MOSER.** | : | |
| **Appellant,** | : | **CASE NO. 1996-30** |
| **vs.** | : | |
| **ATLANTA BOARD OF EDUCATION,** | : | **DECISION** |
| **Appellee.** | : | |

## PART I
## SUMMARY

This is an appeal by Joann D. Cox (Cox), Barry Lawrence (Lawrence), Patricia T. Miller (Miller), and Chris V. Moser (Moser) (collectively Appellants) from a decision by the Atlanta Board of Education (Local Board) to reverse a decision of the Atlanta Civil Service Commission (Commission), which reversed the termination of Appellants' contracts as employees of the Local Board. Appellants were employed at the Local Board's television station when the Local Board transferred operation of its public radio and television stations to a non-profit entity. Appellants claim that the Local Board improperly failed to apply the proper standard of review, the Local Board was estopped from denying them employment because of the representations made by members of the administration of the Atlanta Public School System, and the Commission's decision was clearly authorized and proper. The Local Board has filed a motion to dismiss the appeal on grounds the State Board of Education does not have jurisdiction. The Local Board also argues that the Commission exceeded its authority in ordering reinstatement of Appellants, the Commission's decision was contrary to law because only a board of education can make employment agreements, and the Commission erroneously ordered reinstatement of Cox and Lawrence into positions currently occupied by other employees. The Local Board's decision is sustained.

## PART II
## BACKGROUND

For many years, the Local Board operated a public television station and a public radio station, WPBA-TV and WABE-FM, under license from the Federal Communications Commission. In August, 1994, the Local Board created Atlanta Educational Telecommunications Collaborative, Inc. (AETC) as a non-profit organization to assume responsibility for the operation of the two stations under a lease agreement with the Local Board. Appellants' contracts were terminated when the operation of the two stations was transferred to AETC.

Before AETC was created, the administration of the Atlanta Public School System (Local System) informed the employees of the stations that their positions would be eliminated because the Local Board would no longer be involved in operating the stations. The station employees were also told that they might obtain positions with AETC. In addition, administrators from the Local System told Appellants that efforts would be made to place them in comparable positions within the Local System. Appellants were given a list of job openings and urged to apply for the available positions. On August 31, 1994, Appellants were notified that their employment with the Local System would be terminated because their positions had been eliminated.

None of Appellants is certified as a teacher. Appellant Cox is employed by AETC as a Program Director, the same position she had as an employee of the Local Board. The move to AETC, however, resulted in Cox losing her seniority, her participation in a pension plan, and accumulated sick leave.

After a brief interruption in service, Appellant Lawrence accepted a position with the Local Board. The new position, however, pays approximately one-third less than he was making before his termination. Appellant Lawrence claimed that he was retaliated against because he, in his capacity as a union official, questioned the conditions under which employees could obtain employment with
AETC.

Appellant Miller is not employed by either AETC or the Local Board. She requested a transfer before her termination, but has not been offered a position by the Local Board. She claimed the Local Board retaliated against her because she urged the Local Board to merge the radio and television stations with the Georgia public stations rather than creating a new organization to operate the stations.

Appellant Moser similarly is not employed by either AETC and the Local Board. He applied for a position with the Local Board, but was not selected. He also urged the Local Board to merge the radio and television stations with the Georgia public stations.

The Commission held hearings over four days from September 28, 1995, through October 17, 1995. The Commission ruled that the dismissals were improper because the Local Board failed to honor commitments made to Appellants. On April *15,* 1996, the Local Board voted to reverse the Commission's decisions. An appeal was then made to the State Board of Education.

## PART III
## DISCUSSION

The Local Board has moved to dismiss the appeal on the grounds that the State Board of Education does not have jurisdiction because (1) Appellants are non-certified employees who do not have any rights under the Fair Dismissal Act, O.C.G.A. § 20-2-940 *et seq.,* and (2) the Local Board did not hold a hearing that would confer jurisdiction under the provisions of O.C.G.A. §

20-2-1160. The Local Board's arguments are without merit.

The Local Board argues that the holdings in *Henderson v. Fu/ton Cnty. Bd. of Educ.,* Case No. 1976-17 (Ga. SBE, 1977), and *McIntosh v. Gwinnett Cnty. Bd. of Educ.,* Case No. 1992-33 (Ga. SBE, Mar. 11, 1993), establishes the principle that the Fair Dismissal Act does not apply to non-certified personnel.

The Fair Dismissal Act provides, in part, that "the contract of employment of a teacher, principal, or other employee having a contract for a definite term may be terminated ...." O.C.G.A. § 20-2-940(a)(emphasis added). It is clear that the Fair Dismissal Act applies to non-certified employees who have a contract for a definite term. *Henderson* involved two employees who did not have contracts. It is, therefore, inapplicable in the instant case because it does not appear from the record or the briefs of the parties that Appellants were employed without a contract.[1]

*McIntosh is* also inapplicable because it merely involved an appeal from a grievance decision concerning a change in duties rather than a termination or suspension.

The Local Board's second argument is that it did not hold a hearing, but, instead, sat as a reviewing or appellate body, and did not make a decision regarding the construction or administration of school law. O.C.G.A. § 20-2-1160 provides:

> Any party aggrieved by a decision of the local board rendered on a contested issue after a hearing shall have the right to appeal therefrom to the State Board of Education.

O.C.G.A. § 20-2-1160(b).

The Local Board, however, cannot avoid its responsibilities and duties by creating a sub-level hearing process that would then deny employees their due process rights to appeal to the State Board of Education. Hearing tribunals are permitted under O.C.G.A. § 20-2-940(e)(1) and (f).

> Where the hearing is before a tribunal, the tribunal shall file its findings and recommendations with the local board within five days of the conclusion of the hearing, and the local board shall render its decision thereon within ten days after the receipt of the transcript. Appeals may be taken to the state board in accordance with Code Section 20-2-1160....

**O.C.G.A.** § 20-2-940(0.

The State Board of Education concludes that it has jurisdiction to consider these appeals

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[1] Contracts were not contained in the record, but the burden of proof was upon the Local Board to establish that Appellants were working without contracts.

and, therefore, the Local Board's motion is denied.

Appellants argue that the Local Board was required to apply the "any evidence" rule in its review of the Commission's decision and let the decision stand if there is any evidence to support the Commission's decision. "A local board is not bound by either Findings of Fact which are not supported by the record, or by any conclusions made from the facts by the hearing tribunal." *Balthrop v. The Bd. of Public Educ.,* Case No. 1983-20 (Ga. SBE, Sep. 8, 1983). Additionally, there is no requirement for a local board of education to adopt the recommendations of a hearing tribunal. *Woodsy. Fu/ton Cnty. Bd. of Educ.,* Case No. 1991-13 (Ga. SBE, Jun. 13, 1991); *Poland v. Cook Cnty. Bd. of Educ.,* Case No. 1977-4 (Ga. SBE, 1977). In the instant case, the Commission found that Appellants were told they would obtain positions with the Local System. The Commission's decision, however, is only a recommendation to the Local Board, which the Local Board can accept or reject. The "any evidence" rule permits the Local Board to base its decision upon any fact found by the Commission that is supported by the record, but it does not operate as a mandate that requires the Local Board to also adopt the Commission's recommendation.

Appellants maintain that the representations made by administrators of the Local System are binding upon the Local Board, and that the Local Board was required to place them into positions for which they were qualified that became available after their positions were abolished. Individual actions of employees of the Local Board, however, cannot constitute actions of the Local Board. The Local Board acts as a body, which requires a vote. The individual employees can only perform those ministerial acts that have been approved by the Local Board. There is no evidence in the record that the Local Board approved any offers of positions to Appellants, individually or as a group. Appellants point to the testimony of the administrators that were authorized by the Local Board to make the offers, but an examination of the testimony establishes only that the administrators were acting on the direction of the Local Superintendent. Their testimony does not establish that the Local Board voted to grant Appellants any positions.

The Local Board, however, cannot avoid its responsibilities and duties by creating a sub-level hearing process that would then deny employees their due process rights to appeal to the State Board of Education. Hearing tribunals are permitted under O.C.G.A. § 20-2-940(e)(1) and (0.

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The State Board of Education concludes that it has jurisdiction to consider these appeals and, therefore, the Local Board's motion is denied.

Appellants argue that the Local Board was required to apply the "any evidence" rule in its review of the Commission's decision and let the decision stand if there is any evidence to support the Commission's decision. "A local board is not bound by either Findings of Fact which are not supported by the record, or by any conclusions made from the facts by the hearing tribunal." *Balthrop* ***v.*** *The Bd. of Public Educ.,* Case No. 1983-20 (Ga. SBE, Sep. 8, 1983). Additionally, there is no requirement for a local board of education to adopt the recommendations of a hearing tribunal. *Woods v. Fulton Cnty. Bd. of Educ.,* Case No. 199 1-13 (Ga. SBE, Jun. 13, 1991); *Poland v. Cook Cnty. Bd. of Educ.,* Case No. 1977-4 (Ga. SBE, 1977). In the instant case, the Commission found that Appellants were told they would obtain positions with the Local System. The Commission's decision, however, is only a recommendation to the Local Board, which the Local Board can accept or reject. The "any evidence" rule permits the Local Board to base its decision upon any fact found by the Commission that is supported by the record, but it does not operate as a mandate that requires the Local Board to also adopt the Commission's recommendation.

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Despite all the arguments advanced by both parties, the only issue in this appeal is whether the contracts of Appellants could be canceled. O.C.G.A. § 20-2-940 provides that an employee's contract can be terminated "[t]o reduce staff due to ... cancellation of programs." It is unquestioned that there was a cancellation of programs, and that Appellants were employed in those programs. The Local Board, therefore, had the authority to terminate their contracts.

Appellants cite *Hatcher v. Board of Public Education and Orphanage for Bibb County,* 809 F.2d 1546 (11th Cir. 1987) as authority that the Local Board was required to find positions for them. The *Hatcher* case, however, does not stand for the proposition that a school system has to find another position for an employee whose position has been eliminated. Instead, *Hatcher* only requires a hearing for an employee who was demoted as the result of the loss of a program.

When a local board eliminates a program, it is not required to find positions for the employees whose positions have been eliminated. *Curry v. Dawson Cnty. Bd. of Educ.,* 212 Ga. App. 827, 442 S.E.2d 919 (1994); *Ellington v. Buford City Bd. of Educ.,* Case No. 1991-26 (Ga. SBE, Nov. 14, 1991); *Curry v. Dawson Cnty. Bd. of Educ.,* Case No. 1991-7 (Ga. SBE, Apr. 11,

1991). The State Board of Education, therefore, concludes that the Local Board did not err in reversing the Commission's recommendation to reinstate Appellants.

## PART IV
## DECISION

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not improperly terminate Appellants' contracts and was not required to follow the decision of the Commission. The Local Board's decision, therefore, is SUSTAINED.

This 8th day of August, 1996.

Mr. Brinson, Mr. Sessoms, and Ms. King were no present. The seat for the Eleventh District is vacant.

J. T. Williams, Chairman
State Board of Education