STATE BOARD OF EDUCATION

STATE OF GEORGIA

GREG E. ADCOX, et. al.,

Appellant,

vs.

FULTON COUNTY
BOARD OF EDUCATION,

Appellee.

- CASE NO. 1997-7
- DECISION

This is an appeal by Greg E. Adcox, Alan G. Goldman, Charlotte Ladd, Michael Nova, Carolee J. Pearce and Shirley F. Watkins (Appellants) from a decision by the Fulton County Board of Education to uphold the decision of the Local Superintendent to reduce their work year from 240 days to 220 days as part of a budget reduction program. Appellants claim that the Local Board's decision was arbitrary and capricious. The Local Board's decision is dismissed.

During 1996, the Local Board faced budget problems for the 1997 fiscal year because of increased student enrollment without an increase in tax revenues. The School District conducted a study to determine where it could decrease expenditures. One of the measures initiated was to decrease the number of days the school psychologists worked from 240 days to 220 days. Appellants are all school psychologists. With the exception of Appellant Carolee Pearce, Appellants were notified before April 15, 1996, that they would work only 220 days during the 1996-1997 school year, which reduced their pay for the year. Appellants were further notified that the reduction in work days was not considered to be a demotion, but Appellants would, nevertheless, be afforded a hearing under the provisions of O.C.G.A. §~ 20-2-940 *et seq.* When Appellants asked for a hearing and for the reasons why their pay was reduced, the Local Superintendent notified Appellants that the changes were made because of the cancellation of programs and for other good and sufficient cause. The Local Board then appointed a tribunal to hear Appellants' complaints.

The tribunal conducted the hearing on November 20, 1996. The tribunal concluded that there had not been a reduction in programs, but that the reduction in work days was justified for any other good and sufficient cause under O.C.G.A. ~ 20-2-940(a)(8). The Local Board adopted the tribunal's decision and Appellants appealed to the State Board of Education.

The arguments advanced by Appellants and by the Local Board revolve around whether the Local Board can reduce the salary of an employee for fiscal reasons under O.C.G.A. § 20-2-940(8). The arguments advanced by both parties, however, fail to take into consideration that the facts do not establish that Appellants have any standing to raise any issues under O.C.G.A. §~ 20-2-940 *et seq.*

Under O.C.G.A. § 20-2-940, a local board of education can dismiss or suspend a principal, teacher, or other employee only if at least one of eight different reasons exists. The reasons are:

1. Incompetency;
2. Insubordination;
3. Willful neglect of duties;
4. Immorality;
5. Inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board of education;
6. To reduce staff due to loss of students or cancellation of programs;
7. Failure to secure and maintain necessary educational training; or
8. Any other good and sufficient cause.

O.C.G.A. § 20-2-940(a). A principal, teacher, or other employee is also given the right to have a hearing on the dismissal or suspension. O.C.G.A. § 20-2-940(e). The same reasons and necessity for a hearing apply if a teacher or other school employee is demoted. O.C.G.A. § 20-2-943(a)(2)(C). To constitute a demotion, there has to be a transfer from one position in the school system to another position that has less responsibility, prestige, and salary. O.C.G.A. § 20-2-943(a)(2)(C). If there has not been a loss of responsibility, plus a loss of prestige, plus a loss in salary, a demotion is not deemed to have occurred. Rockdale County School Dist. v. Well, 245 Ga. 730, 266 S.E.2d 919 (1980).

In this appeal, Appellants' pay was reduced, but there was no loss in prestige or loss in responsibility. Consequently, they cannot be deemed to have been demoted. Since they have not been demoted, Appellants do not have any standing to look for relief under the provisions of O.C.G.A. §~ 20-2-940 *et seq.* and there is no necessity for the existence of one of the eight reasons set forth in O.C.G.A. § 20-2-940(a). In the absence of a dismissal, suspension, or demotion, the provisions of O.C.G.A. §~ 20-2-940 *et seq.* are wholly inapplicable. The appeal, therefore, must be considered under the provisions of O.C.G.A. § 20-2-1160, which permits the State Board of Education to review the decisions of a local board of education when it sits as a tribunal to consider the administration or interpretation of school law.

Neither the Local Board nor Appellants have pointed to any statute, regulation, policy, or case law that provides that a local board of education cannot reduce the salary of its employees for any reason, provided the reduction is not the result of a demotion. Unless there has been an allegation that a demotion occurred, the simple reduction of salary, without more, does not rise to the level of involving the administration or interpretation of school law and the State Board of Education, therefore, would not have jurisdiction to review the local board's decision. See, Dalton City Bd. of Educ. v. Smith, 256 Ga. 394, 349 S.E.2d 458 (1986).

The Local Board has not argued or taken the position that a demotion did not occur. Instead, it argues that a pending budget deficit is "any other good and sufficient cause" to permit it to demote its employees. Appellants argue that since the Local Board failed to take the position that demotions did not occur, the State Board of Education must accept as fact that demotions occurred. In this case, there was no evidence that any of the Appellants had any loss of prestige or responsibility. Thus, regardless of the Local Board's failure to raise the issue, demotions did not occur and the provisions of O.C.G.A. §~ 20-2-940 *et seq.* are not applicable. Both the Appellant and the Local Board urge that since a hearing was conducted and a decision was made by the Local Board, an appeal can be taken to the State Board of Education under the provisions of O.C.G.A. § 20-2-1160. The parties, in effect, have agreed to the jurisdiction of the State Board of Education even though the administration or interpretation of school law is not involved. The State Board of Education, being a body of limited jurisdiction, however, cannot assume jurisdiction in a matter which is outside its statutory responsibility even if the parties agree to such jurisdiction. See, e.g., *Smith et al. v. Upshaw,* 217 Ga. 703 (1962). There being no other grounds for jurisdiction shown, the State Board of Education, therefore, must hold that the appeal in the instant case be dismissed. Henderson et al. v. Fulton County Bd. of Educ., Case No. 1976-17 (Ga. SBE, 1977). The State Board of Education, therefore, concludes that the Local Board's failure to raise the jurisdiction issue does not confer jurisdiction on the State Board of Education to review the Local Board's decision.

Based upon the foregoing, it is the opinion of the State Board of Education that the reduction of salaries does not fall within the provisions of O.C.G.A. §~ 20-2-940 *et seq.,* and that the issues raised by Appellants do not otherwise involve the administration or construction of school law under the provisions of O.C.G.A. § 20-2-1160. Accordingly, the Local Board's decision is DISMISSED.

This 10th day of April, 1997.
Dr. Bill Grow, Ms. Willou Smith, and Mr. J.T. Williams were not present.
Mr. Larry Thompson recused.

Mr. Johnny Isakson
Chairman