

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JAMES APPLEWHITE,

Appellant,

vs.

**TURNER COUNTY
BOARD OF EDUCATION,**

Appellee.

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**CASE NO. 1997-29
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DECISION

This is an appeal by James Applewhite (Appellant) from a decision by the Turner County Board of Education to dismiss him because of a reduction in force. Appellant claims that the Local Board failed to establish that there was a reduction in force under the provisions of O.C.G.A. § 20-2-940. The Local Board's decision is sustained.

On April 14, 1997, the Local Board adopted a resolution to reduce the size of the staff in the alternative school by two positions. On April 15, 1997, the Local Superintendent notified Appellant, who was a teacher in the alternative school program, that his contract as a teacher would not be renewed for the 1997-1998 school year because of a reduction in force under O.C.G.A. § 20-2-940. Appellant appealed his non-renewal to the Local Board and the Local Board upheld the non-renewal after conducting a hearing on June 4, 1997.

On appeal, Appellant claims that the Local Superintendent failed to produce evidence to support a reduction in force. He claims that the reduction in force was a pretext to dismiss him because he was a candidate for the position of superintendent in 1988 and 1992, and ran against the current Local Superintendent.

Evidence was presented at the hearing that the Georgia Department of Education was changing to a "full time equivalent" formula rather than using block grants, which would reduce the funding for the alternative school. The Local Superintendent testified that the Local Board would receive approximately \$48,000 under the new plan, whereas it had previously received \$165,500 under the block grant method. There was conflicting testimony about the number of students involved in the program, with the numbers ranging from 16 to 37. The program had two teachers and a principal. The Local Board's action eliminated one teacher and the principal position. The Local Superintendent testified that without the reduction, the Local Board would have to raise the local property tax millage rate.

"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, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). Notwithstanding Appellant's allegations that his non-renewal was politically motivated, there was evidence before the Local Board that supports its decision.

In *Curry v. Dawson County Board of Educ.*, 212 Ga. App. 827, 442 S.E.2d 919 (1994), the Court upheld the elimination of one position under a reduction in force initiated for budget reasons. Appellant claims that *Curry* is inapplicable because of the differing fact circumstances. Despite the factual differences, the principle of *Curry* is directly applicable to the instant case. Here, the Local Board faced decreased state support of its alternative school program where Appellant and one other teacher oversaw the activities of between 16 and 37 students. The Local Board eliminated the two positions, a teacher and an administrator, because of the decreased support. The Local Board did not act in an arbitrary or capricious manner and its action was authorized by O.C.G.A. § 20-2-940.

Appellant claims that the Local Board's action eliminates tenure for Georgia teachers. Teachers in Georgia, however, have never had tenure. Under the Fair dismissal Act, O.C.G.A. § 20-2-940 *et seq.*, teachers who have worked for more than three years have a right to a hearing to determine if their contract was not renewed, or they have been dismissed, because of a statutorily authorized reason. A reduction in force is one of the authorized reasons. O.C.G.A. §20-2-940(a)(6).

The only question for review is whether there was evidence to support the Local Board's decision, or whether the Local Board's decision was arbitrary and capricious. If the sole reason for Appellant's non-renewal was because of political reprisal, then the Local Board's decision would be arbitrary and capricious. Since, however, there was evidence that supports the Local Board's decision, although the evidence was conflicting, the Local Board was authorized not to renew Appellant's contract.

Based on the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision. Accordingly, the Local Board's decision is
SUSTAINED.

This 13th day of November, 1997.

Larry Thompson

Vice Chairman for Appeals