STATE BOARD OF EDUCATION

STATE OF GEORGIA

CHARLES DAWSON,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2008-13**
	:	
DAWSON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

This is an appeal by Charles Dawson (Appellant) from a decision by the Dawson County Board of Education (Local Board) to terminate his teaching contract because of a reduction in force under the provisions of O.C.G.A. § 20-2-940(a)(6). Appellant claims that the Local Board could not terminate his contract because the total teacher population was not reduced and because the Local Board decided before April 15, 2007, to eliminate his position as a construction instructor. In addition, Appellant claims he was denied due process because (1) the Local Board did not appoint an independent tribunal to hear his case, (2) he was denied an opportunity to *voir dire* the members of the Local Board, and (3) subpoenas were not issued to him in a timely manner. The Local Board's decision is sustained.

On May 29, 2007, the Local Board voted to eliminate the construction program from the technical career preparation program because of declining enrollment. Elimination of the program caused the elimination of Appellant's position. Appellant's principal had met with him on March 1, 2007, to tell him that a recommendation would be made to eliminate the construction program. Appellant wrote to the Local Superintendent to protest elimination of the program. On April 16, 2007, citizens addressed the Local Board to protest elimination of the program.

On July 16, 2007, the Local Superintendent gave Appellant notice that he would seek termination of Appellant's teaching contract because of a reduction in force pursuant to O.C.G.A. §20-2-940. Appellant requested the appointment of an independent tribunal to hear his case, but the Local Board decided to hear the case.

At the start of the hearing, Appellant asked to *voir dire* the members of the Local Board to determine when they had made a decision to eliminate the construction program. The Local Board denied Appellant's request to *voir dire* them. At the conclusion of the hearing, the Local Board voted to terminate Appellant's teaching contract. Appellant then filed an appeal to the State Board of Education.

On appeal, Appellant claims that he was denied due process because (1) the Local Board did not appoint an independent tribunal to hear his case, and (2) because he was denied an opportunity to *voir dire* the members of the Local Board to determine when they had decided to eliminate the construction program. In addition, Appellant claims that since his contract automatically renewed on April 15, 2007, the Local Board could not take into consideration any events that occurred before then in deciding whether to eliminate his position. Appellant also claims that there was not reduction in force as contemplated by O.C.G.A. § 20-2-940(6) because there was not an overall reduction in staff for the 2007-2008 school year.

As pointed out by the Local Board, Appellant's arguments arise from a misapplication of *Moulder v. Bartow County,* 267 Ga. App. 339, 599 S.E.2d 495 (2004). The *Moulder* decision upheld the State Board of Education's position that a teacher's termination cannot be based on known misconduct that occurred before the renewal of the teacher's contract.[1] The rationale for this decision is that if a local board is aware of misconduct by a teacher but nevertheless enters into a new contract with the teacher, the local board, as a matter of equity and contract law, waives its ability to use the misconduct that occurred under a previously completed contract as a basis for terminating a new contract that the teacher has not violated. This decision, however, is looking at the actions – misconduct – of the teacher that occurred under the prior contract, and not at the actions of the local board.

A reduction in force under O.C.G.A. § 20-2-940, however, does not involve any actions on the part of the teacher. Instead, a reduction in force involves the efficient administration of the school system and the need to adjust how the school system is operated, regardless of when the need arises. *See, Curry v. Dawson Cnty. Bd. of Educ.*, Case No. 1991-07 (Ga. SBE, Apr. 11, 1991). Since the teacher's conduct is not an issue in a termination because of a reduction in force, the date on which a local board of education decides to adopt a reduction in force plan is immaterial to whether the teacher can be terminated and *Moulder* and *Patterson* are inapplicable to any analysis of the termination. The only issue involved is whether there was a reduction in force.

Appellant's arguments that he was denied due process because an independent tribunal was not appointed, that he was unable to voir dire the Local Board members, and that he was not given timely subpoenas, all go to when the Local Board made its decision to terminate the construction program. Since the date on which the Local Board made its decision is immaterial in a reduction in force termination, all the issues raised by Appellant relating to the timing of the Local Board's decision are, therefore, without merit.

Appellant claims that there was not a reduction in force because the total teacher population was not reduced for the 2007-2008 school year. Appellant bases his argument upon the wording of the reduction in staff provision, which states that a teacher's contract may be terminated "[t]o reduce staff due to loss of students or cancellation of programs...." O.C.G.A. § 20-2-940(a)(6) (emphasis added). The record shows that the teaching staff was not reduced because a teacher was employed in another program that replaced the construction program. The

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[1] *See, Patterson v. Brooks Cnty. Bd. of Educ.*, Case No. 1990-29 (Ga. SBE, Dec. 13, 1990), *r'vsd. on other grounds, Brooks Cnty. Bd. of Educ. v. Peterson,* CA 91-CV-43 (Brooks Cnty. Ga. Superior Court, Aug. 2, 1991).

State Board of Education and the courts, however, have previously taken the position that the "reduce staff" language permits the cancellation of a program or position, and the attendant dismissal of a teacher. *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). The State Board of Education, therefore, concludes that O.C.G.A. § 20-2-940(a)(6) does not require an overall reduction in the number of teachers employed by a school system.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny Appellant due process and that the Local Board properly terminated Appellant's contract because of a reduction in force. The Local Board's decision, therefore, is SUSTAINED.

This _____ day of December 2007.

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William Bradley Bryant
Vice Chairman for Appeals