

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ULIANA GANCEA,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2010-07
	:	
ATLANTA CITY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is the second appearance of this case before the State Board of Education. In the first appearance, *Gancea v. Atlanta City Bd. of Educ.*, Case No. 2009-35 (Ga. SBE, May 14, 2009), the State Board of Education reversed the decision of the Atlanta City Board of Education (Local Board) to terminate the contract of Uliana Gancea (Appellant) because she did not have a teaching certificate. The State Board of Education stated in its order: "... it is the opinion of the State Board of Education that the Local Board erred in dismissing Appellant because she did not have a teaching certificate. Since, however, the Local Board may not have been aware of the fact that Appellant had a teaching certificate at the time the Local Board made its decision, the decision is REVERSED and the case is REMANDED to the Local Board to reconsider in light of any evidence that Appellant can present that she has a teaching certificate." Without a hearing or any other action, the Local Board entered a decision on June 8, 2009, that stated: "... the Board was aware at the time of its order entered January 12, 2009 that the Employee had secured certification following the Tribunal hearing but prior to the Board's action, but bound by precedent precluding the Board from substituting its own findings of fact for those of the Tribunal; NOW THEREFORE, the Board affirms its decision entered on January 12, 2009 terminating Employee for lack of certification."¹ The Local Board argues that the State Board of Education's decision was erroneous because Appellant failed to prove at the tribunal hearing that she had a teaching certificate.²

We again reverse the Local Board's decision, but without remand. The Local Board's argument places the burden of proof on Appellant to establish that she had a certificate.³ The Local Board's order admits that it knew that Appellant had a certificate

¹ Appellant's certification was as of July 1, 2008, not some time after the tribunal hearing.

² If the Local Board believed that the State Board of Education's decision was erroneous, it could have appealed the decision to the superior court.

³ The burden of proof rests with the Local Board. O.C.G.A. § 20-2-940(e)(4).

at the time it entered its order, although the basis for its dismissal was because she did not have a certificate. Knowing that the basis for its order was wrong, but nevertheless proceeding to dismiss Appellant, was arbitrary and capricious.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the Local Board's decision was arbitrary and capricious. Accordingly, the Local Board's initial decision and its decision upon remand are both REVERSED.

This _____ day of October 2009.

William Bradley Bryant
Vice Chairman for Appeals