

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

RENZA ISRAEL,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2010-21
	:	
MILLER COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
	:	
Appellee.	:	

This is an appeal by Renza Israel from a decision by the Miller County Board of Education (“Local Board”) non-renewing his employment contract due to the elimination of his position pursuant to O.C.G.A. § 20-2-940(a)(6). The Local Board concluded that Appellant’s employment contract was properly non-renewed pursuant to O.C.G.A. § 20-2-940(a)(6).

Appellant asserts as error on appeal that the Local Board erred because the Reduction in Force policy is discriminatory and was applied arbitrarily and capriciously to Appellant. For the reasons set forth below, the decision of the Local Board is sustained.

I. PROCEDURAL BACKGROUND

Appellant was employed as a Physical Education Teacher with the Local Board. On or about March 20, 2009, Appellant was timely notified that his annual contract for the 2009-2010 school year was not being renewed. Appellant appealed the non-renewal of his employment contract. The Local Board provided the Appellant a hearing with the opportunity to present evidence. After hearing the evidence, the Local Board non-renewed Appellant’s employment contract. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

II. FACTUAL BACKGROUND

At the hearing, the Superintendent testified about the reasons for non-renewing the Appellant’s employment contract. The Local Board eliminated Appellant’s position due to financial problems and the loss of approximately \$250,000.00 in funding. The Superintendent advised the Local Board that he would need to eliminate staff and faculty in order to reduce the budget. The Superintendent waited for retiring faculty to provide him notice so that he could reduce those positions. The Superintendent then non-renewed faculty members that did not have tenure. After doing so, the Superintendent determined that he still needed to reduce the budget approximately \$800,000.00. The Superintendent determined that he would need to implement a Reduction in Force (“RIF”) in order to reduce the budget. The Superintendent created a RIF

plan that provided that the highest paid teacher in a category would be selected for termination. The Local Board approved the RIF plan.

In applying the RIF, the Superintendent looked at the employees that would be affected by the consolidation of the school into a single K-12 school. The Superintendent looked at the overstaffed positions which were paid by local funds. The Superintendent then applied the RIF to the highest paid salary in the overstaffed areas. Physical Education was placed in the category of Subject Specialist. In the area of Subject Specialist, Appellant was the highest paid. As a result, Appellant's contract was non-renewed.

III. ERRORS ASSERTED ON APPEAL

A. The Reduction In Force Policy.

Appellant contends that the Local Board's decision constitutes discrimination and is arbitrary and capricious. This Board is required to affirm the decision of the Local Board if there is any evidence to support the decision of the Local Board, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 8, 1976). For the reasons set forth below, the State Board finds that the record contains legally sufficient evidence to support the decision of the Local Board.

It is well settled that O.C.G.A. § 20-2-940(6) allows a local board to reduce staff due to budgetary reasons. Curry v. Dawson County Bd. of Educ., 212 Ga. App. 827 (1994). "The essential question is whether the reduction in force program is required. Once the necessity of the reduction in force program has been shown, a local board can adopt, or approve, any number of methods for selecting which employees will be terminated." Hinton v. Warren County Bd. of Educ., Case No. 2004-19 (Ga. SBE, Dec. 2003). "The only [other] 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." Applewhite v. Turner County Bd. of Educ., Case No. 1997-29 (Ga. SBE, Nov. 1997).

In this case, the record contains ample evidence that a RIF was required. The Local Board was undergoing significant budgetary issues. The Local Board was also overstaffed, in part due to the consolidation of its schools into a single school. Appellant has failed to provide any evidence to dispute these budgetary issues. Thus, this Board finds that a RIF was required.

Appellant does not contend that the Local Board improperly applied the RIF policy. Rather, Appellant contends that the decision to rely upon the highest salary in implementing the RIF was arbitrary and capricious.¹ However, as set forth above, the Local Board has the authority to adopt and approve a method to select employees under a RIF. Contrary to the Appellant's contention, the Local Board is not required to base its decision on longevity or tenure. McCluster v. Webster County Bd. of Educ., Case No. 2006-11 (Ga. SBE, Oct. 2005). In this case, the Local Board chose to select the highest paid in order to get the greatest decrease in the budget. This Board does not find any evidence to support Appellant's assertion that this decision was arbitrary and capricious.

B. Discrimination.

Appellant contends that relying on the highest paid salary constitutes discrimination. Appellant fails to identify the type of discrimination he contends exists in this case. Moreover, in the context of age discrimination, the Age Discrimination Act "does not prohibit an employer from making an employment decision on the basis of higher salaries. . . ." See Broadus v. Florida Power Corp., 145 F.3d 1283, 1287 (11th Cir. 1998). Moreover, the record is devoid of any evidence to suggest that age or any other legally recognized protected category was a factor in the decision to select Appellant for termination under the RIF. Thus, this Board finds that the Local Board's chosen method of selecting employees for the RIF based upon the highest salary is not discriminatory. Therefore, the Local Board did not err by non-renewing Appellant's contract pursuant to O.C.G.A. § 20-2-940(6).

IV. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board and it is, therefore, SUSTAINED.

This _____ day of January 2010.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS

¹ Appellant contends that prior to Appellant's non-renewal, the Appellant's Principal sought to terminate Appellant's contract for alleged violations of GHSA rules and procedures. However, the record does not contain any evidence showing that the Local Board's decision was based upon these reasons. Rather, the record shows that the reason for the non-renewal of Appellant's contract was based upon the RIF.