

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DR. KIMBERLY INGRAM,	:	
	:	
Appellant,	:	CASE NO. 2010-27
	:	
vs.	:	
	:	
MITCHELL COUNTY	:	
BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by Dr. Kimberly Ingram (Appellant) from a decision by the Mitchell County Board of Education (Local Board) to terminate her teaching contract because of reduction-in-force under the provisions of O.C.G.A. § 20-2-940. Appellant claims that she was not given proper notice as required under O.C.G.A. § 20-2-211, that her termination was arbitrary and capricious because it was in retaliation for her raising some ethical issues, and that she was denied due process in the conduct of her hearing because her subpoenas were not honored, the Local Board chairman improperly consulted with the remainder of the Local Board when it deliberated although he had recused himself, and she was denied the opportunity to conduct a thorough cross examination of certain witnesses. The Local Board’s decision is sustained.

The Local Board employed Appellant as a principal at its Mitchell Activity Center under a two-year contract that ran through June 2010. On March 24, 2009, the Local Board approved a tentative budget that provided for the closing of the Mitchell Activity Center and the termination of all of the staff at the school. The Local Superintendent informed Appellant of the intended closure and offered her another position, but she refused to accept the other position. The Local Superintendent then informed Appellant that her contract would be terminated because of the reduction-in-force resulting from the elimination of the Mitchell Activity Center. Appellant then requested a hearing on the termination.

The hearing on the termination of Appellant’s contract was held before the Local Board on June 30, 2009. The Local Board’s chairman recused himself because Appellant listed his wife as a witness and the vice-chairman presided. The Local Board’s regular attorney served as a legal advisor to the Local Board during the hearing but did not serve as the hearing officer. At the end of the hearing, the Local Board voted to terminate Appellant’s contract because of the reduction-in-force. Appellant then appealed to the State Board of Education.

Appellant claims the proceedings to terminate her contract were improper because notice of her termination was not given to her by April 15. Appellant's contentions, however, are without merit. O.C.G.A. § 20-2-211 provides that if a teacher or other professional employee certificated by the Professional Standards Commission has not been given a notice of non-renewal by April 15, then "the employment of such teacher or other certificated professional employee shall be continued for the ensuing school year...." O.C.G.A. § 20-2-211(b). By its own terms, this provision applies only to the renewal or non-renewal of an employee's contract, making it inapplicable in a termination proceeding conducted under the provisions of O.C.G.A. § 20-2-940. A termination proceeding can occur at any time, regardless of whether the contract was automatically renewed on April 15.¹ Since the Local Board terminated Appellant's contract under the provisions of O.C.G.A. § 20-2-940(a)(6), the time requirements of O.C.G.A. § 20-2-211 are irrelevant.

Appellant claims her termination occurred as a retaliatory measure because she raised some issues about working with the high school principal. Appellant makes this claim despite the fact that the entire school was closed as part of a cost reduction program, which resulted in the closure of a physical facility and the loss of jobs by several other employees, plus the fact that Appellant was offered another position, which she declined to take. The Local Board properly limited Appellant's questions regarding retaliation since the only issues before the Local Board were (1) was there the elimination of a program, and (2) was Appellant a part of that program. The State Board of Education concludes that Appellant's claim of retaliation is without merit.

Appellant argues several issues concerning her inability to question witnesses about "the charges" against her. Appellant, however, fails to recognize that there were no charges pending against her since this was a hearing about a reduction-in-force where the only issue was whether there was a cancellation of a program.

Appellant claims she was denied due process because her subpoenas were not honored. Appellant did not make any showing of how the documents or witnesses would have been relevant. Appellant argues that since her subpoenas were not honored she could not face her accusers. As pointed out, above, there were no accusations pending and no accusers to face. The State Board of Education concludes that the Local Board did not deny Appellant any due process rights by failing to enforce her subpoenas.

Appellant also claims she was denied due process because the Local Board chairman deliberated with the remainder of the Local Board even though he had recused himself. There was, however, no evidence that the Local Board chairman made any statements to the other members or otherwise acted improperly in any way that denied Appellant any of her due process rights.

¹ In the instant case, Appellant was working under a two-year contract that was not up for renewal until June 2010, thus further making O.C.G.A. § 20-2-211 wholly inapplicable.

"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). In the instant case, there was evidence that the program that Appellant headed was eliminated. Such evidence was sufficient to support the Local Board's decision to terminate Appellant's contract.

Appellant also argues that the Local Board should have transferred her to another position. This argument is made despite the fact that Appellant was offered another position and she refused to take it. There is no requirement to provide an employee with another position when the employee's position has been eliminated under a reduction-in-force program. Even if there was such a requirement, Appellant effectively waived that requirement by refusing to take the position offered to her. The State Board of Education concludes that Appellant's argument is without merit.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision and Appellant was not denied any of her due process rights. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of January 2010.

William Bradley Bryant
Vice Chairman for Appeals