STATE BOARD OF EDUCATION

STATE OF GEORGIA

LEE BYRD,	:	
Appellant,	:	**CASE NO. 2010-70**
vs.	:	
RANDOLPH COUNTY BOARD OF EDUCATION,	:	
Appellee.	:	
LARRY CALLOWAY,		
Appellant,	:	**CASE NO. 2010-71**
vs.	:	
RANDOLPH COUNTY BOARD OF EDUCATION,	:	
Appellee.	:	
TYRONE KELLOGG,		
Appellant,	:	**CASE NO. 2010-72**
vs.	:	
RANDOLPH COUNTY BOARD OF EDUCATION,	:	
Appellee.	:	
SHEILA TAYLOR,	:	

Appellant, **CASE NO. 2010-73**

vs.

RANDOLPH COUNTY BOARD OF EDUCATION,

Appellee.

ELMA VANAGURE,

Appellant, **CASE NO. 2010-74**

vs.

RANDOLPH COUNTY BOARD OF EDUCATION, **DECISION**

Appellee.

These are appeals by Lee Byrd (Byrd), Larry Calloway (Calloway), Tyrone Kellogg (Kellogg), Sheila Taylor (Taylor), and Elma Vangure (Vangure), collectively "Appellants", from decisions by the Randolph County Board of Education (Local Board) to terminate their contracts as administrators because of a reduction-in-force under the provisions of O.C.G.A. § 20-2-940(a)(6). The appeals have been consolidated because they all arise out of the same set of facts and have essentially the same issues. Byrd served as the principal of the Randolph County High School, Calloway served as the principal of the Randolph County Elementary School, Kellogg served as the assistant principal of the Randolph County High School, Taylor served as the Randolph County Middle School graduation coach, and Vangure served as the director of the Randolph County alternative school. All five educators contend that (1) the superintendent was not properly elected and, therefore, all of her actions in selecting them to be terminated should be declared void; (2) they were denied due process because the superintendent did not follow the reduction-in-force plan; (3) the Local Board was biased, and (4) the Local Board could not base any decision on the testimony of the Local Superintendent because she lacked credibility. Each appellant also has appealed separate issues, which are set out later. For the reasons hereinafter set forth, the decisions of the Local Board are sustained.

The Local Superintendent was elected to office on September 18, 2009, at a special meeting of the Local Board attended by only three of the five Local Board members. The Local Superintendent determined that the school system was operating at a deficit. The school system experienced declining enrollment and declining revenues from

the state since the 2005-2006 school year. The Local Board adopted a reduction-in-force policy, Policy GBKA, on November 10, 2009. The Local Superintendent proposed the termination of the contracts of at least 16 people on the administrative staff, which was approved by the Local Board on December 8, 2009. The Local Superintendent's principal criterion was the amount of the salaries paid, i.e., the Local Superintendent selected the highest paid staff to be dismissed. The Local Superintendent accomplished this by restructuring the administrative staff, eliminating some positions and combining other positions. Among the administrative changes made, the positions of high school principal and middle school principal were eliminated and combined into a single position where one person would serve as principal of both the high school and the middle school.[1] The assistant high school principal position was eliminated, as was the position of director of the alternative school. The position of middle school graduation coach was eliminated, with the duties combined with those of the high school graduation coach. The Local Superintendent's recommendations resulted in annual savings of more than $700,000 for the school district.

The appellants asked for hearings when they were notified that their contracts were being terminated. Hearings regarding the five appellants were combined and extended over five days. At the conclusion of the hearing on each appellant, the Local Board voted to uphold the Local Superintendent's recommendation to terminate the contract.

All of the appellants claim that the Local Superintendent is not the lawful superintendent because her election was not made at a properly held meeting and there were no Local Board minutes that showed that she was elected. During the hearings, the Local Board introduced some handwritten notes pertaining to the meeting that a member of the Local Board had made during the meeting, but there was no other evidence of the validity of the Local Superintendent's election. Counsel for the school system remarked that the issue of the Local Superintendent's election had already been decided by a local court, but the judge's decision was not entered into evidence.[2]

None of the appellants has provided any legal support for the proposition that the State Board of Education has the authority to look into and decide the propriety of the election of a local superintendent. O.C.G.A. § 20-2-1160 limits the State Board of Education's jurisdiction to cases and controversies involving the construction and administration of school law. The propriety of the actions taken by elected public officials is not a subject on which the State Board of Education has any special expertise. Such actions properly are decided in a court of law, which the school system's attorney said had already been done.

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[1] The elementary school, middle school, and high school are all housed in the same complex.

[2] If a court order has been entered, Appellants' are making a collateral attack on that order, which cannot be done.

Appellants, in effect, are attempting to prosecute a quo warranto proceeding before the Local Board and the State Board of Education without going through the requirements of a quo warranto proceeding. Under the provisions of O.C.G.A. § 9-6-60, a quo warranto proceeding, which is a proceeding to inquire into the right of a person to hold a public office, has to be filed by a person who is claiming the office and requires that person to file an application with the superior court. *See, e.g., Richardson v. Phillips*, 285 Ga. 385, 677 S.E.2d 117 (2009). Under these procedures, the State Board of Education does not have any jurisdiction to decide a quo warranto proceeding. For these reasons, the State Board of Education concludes that it does not have jurisdiction to decide whether the Local Superintendent rightfully holds her office and that her actions must be deemed to have been taken under authority of law. Appellants' claims that the Local Superintendent's actions should void the proceedings, therefore, are without merit.

Appellants also claim they were denied due process because the Local Superintendent failed to follow the reduction-in-force policy adopted by the Local Board because she did not review any annual evaluations and she used salaries as a criterion for determining who would be released. The Local Board's reduction-in-force policy, Policy GBKA, provides that the Local Superintendent is to prepare a plan for the reduction-in-force. The plan then provides:

> Factors to be considered by the Superintendent in drafting a RIF plan shall include, first and foremost, the professional expertise, effectiveness, and overall job performance of individual employees as reflected in annual evaluations as well as the Superintendent's own observations and knowledge. Only where demonstrated competence and expertise are equal among employees shall other factors such as program needs, training, tenure status, level of certification, and length of continuous service be considered in order to make recommendations for termination or downgrading of an employee's position.

The evidence showed that the Local Superintendent did not review any annual evaluations in making her recommendations. Appellants claim, without citing any authority, that the Local Superintendent's failure to review any annual evaluations requires the Local Board's decisions to be set aside. We disagree.

As also stated in Policy GBKA, the policy does not grant employees any additional "due process rights greater than are available to a specific employee under the Fair Dismissal Act...." The policy serves as the Local Board's guide to the superintendent on how employees are selected for dismissal; the Local Superintendent's failure to follow each item in the policy does not result in a denial of due process. In the instant case, the Local Superintendent testified that her main concern was to reduce expenses and she selected those with the highest salaries; job performance was not an issue with any of the Appellants under the reduction-in-force program.[3] It was, therefore, unnecessary to

[3] With Appellant Byrd, additional charges were made that called performance into question regarding a specific incident. The Local Superintendent testified that

review the annual evaluations. Additionally, the school system is small enough that the Local Superintendent was personally aware of each person's capabilities without the need to review their evaluations. With an awareness of the budget situation and the Local Superintendent's approach, the Local Board approved the Local Superintendent's choices, approving the use of salaries as the basis in the process. O.C.G.A. §20-2-940(a)(6) requires a showing of a loss of students or the cancellation of programs. Both have been shown in the instant cases. The State Board of Education, therefore, concludes that the Local Board did not deny Appellants any of their due process rights because the Local Superintendent did not review their evaluations and used salaries as the basis for selection.

Appellants also claim that the Local Board could not base its decision on the testimony of the Local Superintendent because the Local Superintendent was not credible. The credibility of witnesses, however, was for the Local Board to determine. "The tribunal sits as the trier of fact and, if there is conflicting evidence, must decide which version to accept. When that judgment has been made, the State Board of Education will not disturb the finding unless there is a complete absence of evidence." *F. W. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1998-25 (Ga. SBE, Aug. 13, 1998). "It is the duty of the hearing tribunal to determine the veracity of the witnesses and the State Board of Education will not go behind such determination if there is any evidence to support the decision." *David L. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1996-1 (Ga. SBE, Apr. 11, 1996). The Local Board was free to accept parts of the Local Superintendent's testimony and disregard parts of the Local Superintendent's testimony. The essential facts that the Local Superintendent testified about were that the school system needed to reduce expenses immediately, there was a loss of students, and programs (positions) were being eliminated. Appellants' claims regarding the credibility of the Local Superintendent's testimony are without merit.

Appellants also claim that the Local Board was biased and had decided before the hearings to eliminate their positions. Appellants' claims are based on the hearsay testimony of one of the Local Board members who opposed the reduction-in-force. "'In this state even in the absence of objection, hearsay is without probative value to establish any fact.' (Citations and punctuation omitted.) Williams v. Piggly Wiggly Southern, 209 Ga. App. 490 (490 S.E.2d 676)(1993). We have held this to be the rule even in administrative hearings. Finch v. Caldwell, 155 Ga. App. 813, 815 (273 S.E.2d 216)(1980)." *McGahee v. Yamaha Motor Mfg. Corp.*, 214 Ga. App. 473, 474, 448 S.E.2d 249 (1994). The testimony of the dissenting board member did not provide any evidence of prejudgment. There was no other evidence that the Local Board members prejudged the evidence or the outcome. The process involves an initial decision by a local board to terminate an employee under a reduction-in-force program before hearings are held. The initial decision by a local board regarding a particular employee does not constitute a prejudgment of the issues when the employee requests a hearing on whether a reduction-

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performance issues regarding the other Appellants were insignificant and did not warrant termination.

in-force is warranted. The State Board of Education, therefore, concludes that there was no evidence of bias on the part of the Local Board.

In adopting its resolution approving the Local Superintendent's recommendations on personnel terminations, the Local Board, in a "Whereas" clause, stated that the reduction-in-force plan was necessary to "protect the jobs of those not subject to the reduction in force plan." Appellants claim, without citing any law, that the plan, therefore, exceeded the reasons for a reduction-in-force set forth in Policy GBKA and must be set aside. As set forth above, Policy GBKA did not provide Appellants with any additional due process rights; it was the Local Board's guide to the Local Superintendent. When the Local Board approved the plan set forth by the Local Superintendent, it effectively approved any differences between its guidance and the final proposal. The language in the whereas clause was merely precatory and did not change anything. Appellants' claim that the Local Board's reference to saving jobs rendered all further actions a nullity is, therefore, without merit.

Appellants Calloway, Kellogg, Taylor, and Vangure claim they were denied due process because the charge letters issued to them did not make any reference to performance issues, but the Local Superintendent discussed performance issues during the hearing. Although there was some discussion about performance, much of which was brought out by Appellants' counsel's cross-examination, the evidence shows that Appellants were not released because of any performance issues or any rating with other employees other than salaries. Since Appellants were not dismissed because of any performance issues, the failure to mention performance in the charge letters did not deny Appellants any due process.

Appellant Byrd argues that the reduction-in-force was inapplicable in his situation because his position as principal of the high school was not eliminated. The evidence, however, does not support Appellant Byrd's argument. The position of high school principal was eliminated and a new position was created that combined the duties of the high school principal and the middle school principal. The fact that the duties of a high school principal are still being performed does not establish that the position still exists.

Appellant Byrd was also charged with insubordination and willful neglect of duty. Appellant Byrd claims that there was no evidence to support these charges. The Local Board did not specify whether it found Appellant Byrd guilty of these charges; it merely affirmed the Local Superintendent's recommendation to terminate Appellant Byrd's contract. Since there was evidence of the loss of students and the elimination of the high school principal position, there was sufficient evidence to support the termination of Appellant Byrd's contract, thus making the issue of insubordination and willful neglect of duty moot.

Appellant Taylor claims that there was no showing that there was a decrease in the number of students in the middle school, thus obviating the need for a reduction-in-force in her position as middle school graduation coach. Although the evidence showed that the middle school population increased, the evidence also showed that the population

of the high school had decreased and the position of middle school graduation coach was being eliminated and a new position of middle school/high school graduation coach was created. The evidence, therefore, does not support Appellant Taylor's claim.

Appellant Kellogg claims that he was denied due process because the Local Board chairman commented at the close of evidence but before retiring to the executive session that he had already decided the outcome. Appellant Kellogg's allegations, however, do not establish any bias on the part of the Local Board, or that the chairman was biased. The comment was made after all of the evidence was introduced and the members of the Local Board could have arrived at a conclusion based upon that evidence. The State Board of Education, therefore, concludes that Appellant Kellogg was not denied any due process because of the remark.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the Local Board did not deny any of the Appellants any of their due process rights and there was evidence to support the reduction-in-force termination of their contracts. Accordingly, the Local Board's decision in each of the cases is SUSTAINED.

This _____ day of July 2010.

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Mary Sue Murray
Vice Chair for Appeals