

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

**KATHY ROBERTS,** :  
 :  
 **Appellant,** :  
 : **CASE NO. 1987-9**  
 v. :  
 : **DECISION**  
 **NEWTON COUNTY BOARD** :  
 **OF EDUCATION,** :  
 :  
 **Appellee.** :

**PART I**

**SUMMARY**

This is an appeal by Kathy Roberts (hereinafter “Appellant”) from a decision by the Newton County Board of Education (hereinafter “Local Board”) to accept a recommendation by a tribunal of the Professional Practices Commission (hereinafter “Tribunal”) not to renew Appellant’s teaching contract for the 1986-1987 school year. The Local Board did not renew Appellant’s teaching contract on the grounds of willful neglect of duties, insubordination, and other good and sufficient causes. Appellant contends the Local Board failed to comply with the mandatory notice requirements under the Fair Dismissal Act, that evidence from prior school years was improperly admitted, and there was no evidence to support the Local Board’s decision. The decision of the Local Board is sustained.

**PART II**

**FACTUAL BACKGROUND**

Appellant is a tenured<sup>1</sup> teacher who had taught with the Local Board for six years. Appellant was timely notified by the Local Board that it did not intend to renew her teaching

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<sup>1</sup> After a specified period of employment, O.C.G.A. §20-2-942 grants teachers certain rights which are commonly called “tenure” rights, even though the statute does not use the term “tenure”.

contract for the 1986-1987 school year. On April 18, 1986, Appellant sent the Local Board a certified letter requesting the reasons for her nonrenewal. On May 5, 1986, seventeen days after Appellant mailed her request for reasons and fourteen days after the Local Board received Appellant's request for reasons, the Local Board personally served its response on Appellant and mailed Appellant notice by certified mail.

The Local Board requested the Professional Practices Commission to establish a Tribunal to hear the case and make a recommendation to the Local Board. The Professional Practices Commission appointed a hearing officer to rule with respect to the legal issues involved.

Appellant filed a motion to dismiss the nonrenewal action based upon the Local Board's failure to respond within fourteen days of the date Appellant mailed her request for reasons. In filing her motion, Appellant relied upon the language of O.C.G.A. §20-2-942, O.C.G.A. §20-2-940, and the decisions of the State Board of Education in Byrd v. Taylor County Board of Education, State Board of Education Case No. 1983-24 and Peddle v. Cobb County Board of Education, State Board of Education Case No. 1985-31. Each of those cases involved situations where the Local Boards failed to meet the fourteen day timeline. In both Byrd and Peddle, the local boards took over thirty days to respond to the teachers' requests, and no reasons were given for failure to meet the timelines. In both cases, the State Board of Education reversed the decisions of the local boards for failure to make a timely response.

The Hearing Officer concluded that the Local Board had substantially complied with the requirements of O.C.G.A. §20-2-942 and there was no prejudice to Appellant. He, therefore, ruled against Appellant's motion to dismiss.

The hearing then went forward with the Local Board presenting evidence to support its charges. The Local Board presented witnesses who testified the teacher was out of her classroom, leaving her students unsupervised on one occasion for over a half hour; she was often

late to class; and that students came and went during her class, disrupting other classes. Additionally, the Local Board presented witnesses who testified regarding erratic behavior by Appellant.

The Tribunal concluded that Appellant was guilty of willful neglect of duties, insubordination, and other acts constituting good and sufficient cause for nonrenewal of her teaching contract and the Tribunal recommended that the Local Board nonrenew Appellant's teaching contract.

The Local Board unanimously accepted the findings of fact, conclusions of law, and recommendations of the Tribunal at a special called meeting on February 10, 1987.

Appellant filed this appeal on March 2, 1987.

### **PART III**

#### **DISCUSSION**

Appellant contends on appeal that the Local Board failed to comply with the mandatory notice requirements under the Fair Dismissal Act, that evidence from prior school years was improperly admitted, and there was no evidence to support the Local Board's decision.

At the time this case arose, O.C.G.A. §20-2-942(b) (2) read as follows:

A teacher who accepts a school year contract for the fourth consecutive school year from the same local board of education and who is notified ... that his or her contract will not be renewed has the right to the procedures set forth in subsections (b) through (f) of Code Section 20-2-940 before the intended action is taken. A teacher who has the right to these procedures must notify the superintendent of the local board employing the teacher within 14 days of the day the notice of the intended action is served that he or she requests that the procedures be implemented. Within 14 days of service of the request to implement the procedures, the local board must furnish the teacher a notice that complies with the requirements of subsection (b) of Code Section 20-2-940.

O.C.G.A. §20-2-940(c) reads as follows:

Service. All notices required by this part may be served either personally or by certified mail. Service shall be deemed to be perfected when the notice is deposited in the United States mail addressed to the last known address of the addressee with sufficient postage affixed to the envelope.

Appellant contends that, since O.C.G.A. §20-2-940 provides that service is perfected when the notice is deposited in the mail, the Local Board was required to respond within fourteen days after she mailed her request and that, since the Local Board failed to respond within the fourteen days, then the Local Board was estopped from not renewing her teaching contract.

The Local Board argues that the fourteen-day periods for both the teacher and a local board begin to run on the day of receipt; a response by certified mail by either a local board or a teacher within fourteen days after receipt fulfills the statutory requirements.

O.C.G.A. §20-2-942(b) (2) provides that a teacher has to respond “within 14 days of the day the notice ... is served

•• .“, and the school board has to respond “[w]ithin 14 days of service ....“ Although the wording is not identical, both parties have to respond within fourteen days of service from the other party. The question is whether service, for the purpose of determining compliance with the fourteen-day rule, begins to run from the time of mailing, or from the time of receipt. In literal terms, the statute addresses only a part of the question, i.e., it only answers when the responses have to be made, and when they can be considered as having been performed. Under Appellant’s interpretation, if one of the parties failed to receive a notice that was mailed, and thus did not respond within fourteen days after the mailing, then the party would be precluded from any further action. Thus, if a local board mailed a notice to a teacher and the teacher received the notice fifteen days after the mailing, then the teacher would be precluded from requesting a

hearing. Since the intent of the act is to provide for timely notices, Appellant's interpretation fails to lead to a proper result. The interpretation argued by the Local Board, however, is the proper interpretation.

Under this interpretation, service is perfected when a notice is mailed. Thus, a local board has to give notice to the teacher by April 15, and this can be performed by personal notice or by mailing by certified mail. The teacher then has fourteen days after receipt of the personal notice or the mailed letter in which to respond. If the teacher gives personal notice or submits a certified letter within fourteen days after receipt of the notice, then the teacher has complied with the response timeline. The local board then has fourteen days after receiving the personal notice, or after receiving the mailed letter, in which to respond to the teacher. If the local board gives personal notice or submits a certified letter within fourteen days after receipt of the notice from the teacher, then the local board has complied with the response timeline. The State Board of Education, thus, determines that the Local Board responded to Appellant within the required time and the hearing officer properly went forward with the hearing.

Appellant's second contention is that it was error to allow evidence of acts occurring during prior school years to be admitted when the teacher had been renewed in spite of those acts. Appellant contends it was highly prejudicial to allow such evidence to be presented.

Appellant has cited no authority to support the proposition that a Local Board may not consider acts from prior years in deciding whether to nonrenew a teacher. While a case might arise which would justify such a proposition, without some authority cited, it does not appear from the record that this is the case.

Appellant's third contention is that there was not sufficient evidence to nonrenew Appellant's teaching contract. The State Board of Education is bound by the rule that if there is any evidence to support the decision of the local board the State Board of Education must sustain

that decision absent a clear abuse of discretion on the part of the Local Board. See, Ransum v. Chattooga Cnty. Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty. Bd. of Ed., Case No. 1976-11.

In the present case, there was evidence to support the decision of the Local Board that Appellant was guilty of willful neglect of duty, insubordination, and other good and sufficient actions justifying nonrenewal of her teaching contract. There was testimony that Appellant was often tardy to her class, that Appellant left early when she was told not to, that Appellant refused to provide a truthful explanation of her absence from her classroom, and that Appellant acted erratically during conferences with her supervisors. Such evidence is sufficient to satisfy the any evidence standard'' applicable to review by the State Board of Education.

#### **PART IV**

#### **DECISION**

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Board of Education concludes that the Local Board complied with the requirements of the Fair Dismissal Act, that the Local Board was allowed to consider evidence from previous years, and that there was evidence to support the decision of the Local Board. The decision of the Local Board is therefore,

SUSTAINED.

Larry A. Foster, Sr.  
Vice Chairman for Appeals