

STATE BOARD OF EDUCATION

STATE OF GEORGIA

| | | |
|----------------------------|---|-------------------------|
| ADRIENNE DOWLING, | : | |
| | : | |
| Appellant, | : | |
| v. | : | |
| | : | CASE NO. 1993-14 |
| ATLANTA CITY | : | |
| BOARD OF EDUCATION, | : | DECISION |
| | : | |
| Appellee. | : | |

PART I

SUMMARY

This is an appeal by Adrienne Dowling (“Appellant”) from a decision by the Atlanta City Board of Education (“Local Board”) not to renew a contract with her as Director of Telecommunications when her contract expired on June 30, 1992. The Local Superintendent charged Appellant with incompetency, willful neglect of duties, and other good and sufficient cause. A tribunal established by the Professional Practices Commission (“PPC Tribunal”) found that the evidence did not support the charges and recommended renewal of Appellant’s contract. On appeal, Appellant claims that the Local Board is bound by the PPC Tribunal’s findings and lacks authority not to renew her contract. We agree with Appellant and reverse the Local Board’s decision.

PART II

FACTUAL BACKGROUND

The Local Board employed Appellant in July, 1986, as the Director of Educational Telecommunications. In this position, she had general management responsibilities for the operation of a radio station and a television station licensed to the Local Board. Appellant has a master’s degree in science education and has been directly involved in telecommunications since 1968. Her position does not require certification and Appellant is not certified by the Professional Standards Commission. Nevertheless, in April, 1990, the Local Board notified

Appellant that she had been granted tenure as a teacher.¹

On April 13, 1992, the Local Superintendent wrote to Appellant that he would not recommend renewal of her contract, which was due to expire on June 30, 1992. Appellant requested a hearing and a list of the charges against her. On May 14, 1992, the Local Superintendent issued a four-page, single-spaced, six-paragraph letter that set forth the charges, e.g.,

you have failed to provide dynamic and effective leadership and management organization for the development and improvement of the telecommunication stations operated by the Atlanta Public Schools....

After a series of letter exchanges between counsel for the parties, and an order from a Superior Court judge, the Local Superintendent charged Appellant with incompetency, willful neglect of duties, and other good and sufficient cause. The Local Superintendent provided a list of eleven generalized specifications. None of the specifications provided Appellant with any dates, times, incidents, or persons involved.

The Local Board initially took the position that it was not required to give Appellant a hearing because she was not certified. On August 20, 1992, however, a Superior Court found that Appellant had been granted a property right in her continued employment because the Local Board had granted her tenure in April, 1990. The Superior Court ordered the Local Board to continue paying Appellant after June 30, 1992,

“until such time as the . . . [Local Board has] complied with all the requirements of due process under the Fair Dismissal Act . . . including, but not limited to, a full predetermination hearing and a final decision by the local board as provided by O.C.G.A. § 20-2-940(b) through (f).”²

A hearing was finally convened before the PPC Tribunal on October 5, 1992. Following three days of testimony, the PPC Tribunal issued a report on October 27, 1992.

The PPC Tribunal made specific findings of fact that Appellant had not violated any policies or was not responsible for the situations found in the operation of the two stations. The PPC Tribunal then concluded that the Local Board failed to carry the burden of proof to sustain the charges. Based upon its findings and conclusions, the PPC Tribunal recommended that the Local Board reinstate Appellant. On November 9, 1992, the Local Board voted not to renew Appellant’s contract.

¹ The Georgia statutory scheme does not recognize tenure. Instead, “tenure” is a shorthand expression for the right to a hearing and the need to show cause for a demotion or non-renewal of a contract after a teacher has been employed at least three years and has entered into service in the fourth year. O.C.G.A. § 20-2-942. Since these rights are only granted to certified teachers, a non-certified employee cannot obtain tenure under the provisions of O.C.G.A. § 20-2-942.

² From a pre-hearing order issued by the PPC Tribunal hearing officer on September 17, 1992. The Superior Court order was not included in the record.

On November 24, 1992, Appellant filed a notice of appeal to the State Board of Education. On March 29, 1993, the Local Superintendent forwarded the appeal to the State Board of Education.

PART III

DISCUSSION

This case involves the non-renewal of the contract of an uncertified employee. The provisions of the Fair Dismissal Act, O.C.G.A. §§ 20-2-940, et seq., require a local board to show cause for terminating or suspending the contract of a teacher, principal, or other employee who has a contract for a definite term. O.C.G.A. § 20-2-940(a). The local board has to provide notice and permit the teacher, principal, or other employee to have a hearing on the sufficiency of the causes for termination or suspension. O.C.G.A. § 20-2-940(b)-(e). Certified teachers who have worked at least three years are given the additional right to receive notice and have a hearing if the local board proposes to demote or fail to renew the teacher's contract. O.C.G.A. § 20-2-942. By its terms, O.C.G.A. § 20-2-942 grants the right to a hearing only to certified teachers; it does not grant the right to a hearing for the non-renewal of a non-certified employee's contract. Thus, under O.C.G.A. §§ 20-2-940 and 20-2-942, a non-certified employee with a contract for a definite term has the right to a hearing only if a local board attempts to terminate the contract during its term, but a right to a hearing does not exist if the contract is not renewed at the end of its term.

The State Board of Education has previously held that it does not have jurisdiction to consider an appeal from a local board decision involving the employment of a non-certified employee who does not have any rights arising under the Fair Dismissal Act, even if the local board holds a hearing. See, Henderson. et al. v. Fulton Cnty. Bd. of Educ., Case No. 1976-17 (Ga. SBE, 1977). See, also, McIntosh v. Gwinnett Cnty. Bd. of Educ., Case No. 1992-33 (Ga. SBE, Mar. 11, 1993)(lack of jurisdiction over duty assignments). If Appellant has any hearing rights, they must arise under O.C.G.A. § 20-2-1160.

O.C.G.A. § 20-2-1160 permits a local board of education to sit as a tribunal to decide matters "of local controversy in reference to the construction or administration of the school law...." O.C.G.A. § 20-2-1160(a). "Normally, the decision to rehire or release a 'non-tenured' employee lies more in the realm of school policy than in the area of school law. Thus, in most instances, the simple non-renewal of a single, one-year contract, standing alone, will not constitute a 'matter of local controversy in reference to the construction or administration of the school law.'"

Dalton City Bd. of Educ. et al. v. Smith, 256 Ga. 394, 349 S.E.2d 458 (1986).

In the instant case, however, a superior court determined that Appellant obtained certain property rights and is entitled to the protection of the Fair Dismissal Act. Because it is our view that a non-certified employee cannot derive any benefits from the Fair Dismissal Act in a non-

renewal proceeding, we will treat the appeal as one arising under O.C.G.A. § 20-2-1160 with Appellant having an expectation of continued employment except for the causes contained in

O.C.G.A. § 20-2-940.

Appellant raises several issues on appeal, but many of them are related. In broad categories, the issues are (1) whether the Local Board is bound by the PPC Tribunal's findings of fact and conclusion that the burden of proof was not met; (2) whether the Local Board gave Appellant adequate notice of the charges; (3) whether the Local Board violated Appellant's due process rights when it suspended her with pay pending a decision by the Local Board; (4) whether Appellant's contract should be automatically renewed because a hearing was not held before June 30, 1992, and (5) whether the Local Board violated Appellant's due process rights by failing to forward the record to the State Board of Education within ten days after receiving the appeal from Appellant.

FINDINGS OF FACT

A local board of education does not have to follow the recommendation made by a hearing tribunal if the facts found by the tribunal support the decision made by the local board. See, Poland v. Cook Cnty. Bd. of Educ., Case No. 1977-4 (Ga. SBE, 1977). The findings of fact made by a tribunal, however, are binding on a local board of education, but "the determination of whether the findings support the charges is a decision which must be made by the local board of education..." Beard v. Laurens Cnty. Bd. of Educ., Case No. 1977-14 (Ga. SBE, Mar. 9, 1978). If the findings of fact made by the tribunal will not support the charges made, then the local board cannot take any action against the employee. See, Balthrop v. Bd. of Public Educ., Case No. 1983-20 (Ga. SBE, Sep. 8, 1983).

The Local Board argues that the State Board of Education should review the record and determine if there is any evidence beyond the PPC Tribunal's findings that will support the Local Board's decision. If there is, then the Local Board argues that the State Board of Education must affirm its decision. Alternatively, the Local Board argues that the PPC Tribunal's findings and conclusions support its decision not to renew Appellant's contract.

The Local Board's argument that the State Board of Education should go behind the PPC Tribunal's findings and look for additional evidence to support the Local Board's decision is without merit. Such an approach would relegate the PPC Tribunal to the status of being a mere information gathering agency and negate the purpose of having a hearing conducted by the PPC Tribunal. The PPC Tribunal acts as the trier of fact and must make decisions concerning the reliability of the evidence. The proper scope of review, therefore, is to determine if there is any evidence to support the findings made by the PPC Tribunal.

Contrary to the Local Board's assertion, a review of the specific findings made by the PPC Tribunal does not support the Local Board's argument that it could determine that Appellant was incompetent, willfully neglected her duties, or there was other good and sufficient cause not to renew her contract. In reviewing each charge, the PPC Tribunal found that the problems encountered by Appellant were primarily the result of the Local Board, or the administration of

the Atlanta Public Schools, establishing unworkable lines of communication and responsibility, failure to provide funds, creating dual lines of responsibility for Appellant, failure to establish deadlines, and creating different standards for Appellant. The PPC Tribunal found that Appellant had reasonably complied with all requests made of her, and had not knowingly violated any policies made by the Local Board. None of these findings will support the Local Board's decision not to renew Appellant's contract. The Local Board is bound by these findings. The State Board of Education, therefore, concludes that there is evidence in the record to support the findings of the PPC Tribunal, and the Local Board's decision not to renew Appellant's contract was arbitrary and capricious.

ADEQUACY OF NOTICE

O.C.G.A. § 20-2-940(b)(1) and (2) require a local board to give notice of the cause for discharge "in sufficient detail to enable ... [the employee] fairly to show any error that may exist therein....," and "[t]he names of the known witnesses and a concise summary of the evidence to be used against ... [the employee]" In a series of four notices, covering the time period from May 14, 1992, through September 11, 1992, the Local Superintendent provided the following charges:

- (a) ... you failed to provide dynamic and effective leadership and management organization for the development and improvement of the telecommunications stations operated by the Atlanta Public Schools (incompetence and other good and sufficient cause);
- (b) ... you have failed to communicate appropriately with your superiors and co-workers regarding significant activities at the telecommunications stations (incompetence and other good and sufficient cause);
- (c) ... you have experienced problems and difficulties with interpersonal relationships with personnel under your supervision and with your senior staff and those interpersonal problems have impaired your ability to provide effective management and leadership at the telecommunications stations (incompetence and other good and sufficient cause);
- (d) ... you have failed to comply with established Atlanta Board of Education procedure regarding personnel policies including hiring of hourly personnel, payroll and work hours for employees at the telecommunications stations (incompetence, willful neglect of duties, and other good and sufficient cause);
- (e) ... you have failed to perform tasks entrusted to you in a timely and efficient fashion and that as a result of such failures you have damaged the public image of the Atlanta Public Schools and the telecommunications stations (incompetence, willful neglect of duties, and other good and sufficient cause);
- (f) ... you have failed to perform administrative tasks entrusted to you, such as personnel evaluations, in a timely and efficient fashion and in accordance with rules and

procedures of the Atlanta Board of Education (incompetence, willful neglect of duties, and other good and sufficient cause);

(g) ... you have failed and continue to fail to utilize established channels of organizational communication and you have failed and continue to fail to provide contracts to the Superintendent for signature on a timely basis and with sufficient advance lead time to enable appropriate review (incompetence, willful neglect of duties, and other good and sufficient cause);

(h) ... you have failed to improve your performance following the formal hearing held in October of 1991 and in accordance with the terms of the Work Improvement Plan issued to you following the Superintendent's reprimand to you in December of 1991 (incompetence, willful neglect of duties, and other good and sufficient cause);

(i) ... you have failed to achieve objectives of the Work Improvement Plan issued to you including your failure to develop a clear, efficient organizational structure for the telecommunications stations, your failure to establish job titles, job descriptions, pay and functions for persons at the telecommunications stations commensurate with the needs of those stations, your failure to secure improved programming for the telecommunications stations, and your failure to reduce the number of hourly employees working at the telecommunications stations (incompetence, willful neglect of duties, and other good and sufficient cause);

(j) ... you have failed to remedy and correct the above-noted deficiencies, despite numerous conferences with you by Dr. Taylor and directions from me (incompetence, willful neglect of duties, and other good and sufficient cause); and

(k) ... in light of those failures on your part, ... you are unable to provide the dynamic and effective leadership needed in the development of the telecommunications stations operated by the Atlanta Board of Education and to enable those stations to become an efficient and effective adjunct to the educational mission of the Atlanta Public Schools (incompetence and other good and sufficient cause).

None of these charges carries with it the specificity needed to permit Appellant to show any error that may exist therein. While Appellant was able to provide a defense through a three—day hearing, the charges amount to mere conclusions without informing Appellant of who, what, where, and when. Defending against such charges is mere guesswork on Appellant's part. If the Fair Dismissal Law was applicable to Appellant, then the Local Board would have denied Appellant due process by not providing her with notice that would permit her "fairly to show any error that may exist therein." Under O.C.G.A. § 20-2-1160, however, the Local Board is not required to give Appellant any notice. The State Board of Education, therefore, concludes that the Local Board did not deny Appellant any due process rights with the notice provided by the Local Superintendent, if this had been a hearing under O.C.G.A. § 20-2-1160.

SUSPENSION PENDING DECISION AND AUTOMATIC RENEWAL

O.C.G.A. § 20-2-940(g) permits a local superintendent to temporarily suspend an employee for up to ten working days “in those cases where the charges are of such seriousness or other circumstances exist which indicate that such teacher or employee could not be permitted to continue to perform his duties pending a hearing without danger of disruption or other serious harm to the school, its mission, pupils, or personnel.” If an employee is suspended, then the local board is required to conduct a hearing within the ten working day period.

Where, as obtains in this case, an employee is performing a year-around job, and the contract terminates so there is not a technical suspension during the term of the contract, the effect is the same as if the employee was suspended during the term of the contract and the ten-day suspension limit is also applicable. In this case, there was no showing that Appellant’s continued employment would have resulted in any danger to the school, its mission, pupils, or personnel. Thus, if the Fair Dismissal Act was applicable to Appellant, then the Local Board would have denied her procedural due process by not holding a hearing within ten working days after the suspension began. O.C.G.A. § 20-2-1160, however, does not contain any provisions governing suspensions, nor were there any policies admitted that showed what expectations Appellant could have by virtue of the Local Board informing her that she had tenure. Appellant also did not suffer any harm because her salary was continued (as a result of the Superior Court order). The State Board of Education, therefore, concludes that the Local Board did not deny Appellant any due process rights by suspending her when her contract term ended.

FORWARDING OF RECORD

Appellant filed a notice of appeal on November 24, 1992. The Local Superintendent did not forward the record to the State Board of Education until March, 1993. The Local Superintendent claims that the record was not forwarded because Appellant failed to file a transcript with the appeal.

O.C.G.A. § 20-2-1160 provides that an Appellant must file a transcript of testimony certified as true and correct by the local school superintendent. The appeal has to be filed within 30 days of the decision of the local board, and the local superintendent is then given ten days to transmit a copy of the appeal to the State Board of Education. O.C.G.A. 5 20-2-1160(b). The statute does not give the local superintendent authority to determine whether the appeal is in proper form. If the transcript is unavailable, it is Appellant’s responsibility to make arrangements for its submission to the State Board of Education.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that Appellant did not have any right to a hearing under the provisions of the Fair Dismissal Act because she was a non-certificated employee. While she may have obtained some property rights in her position by virtue of an employee-employer relationship and promises made by the Local Board, those rights did not arise by virtue of the Fair Dismissal Act or the fact that Appellant was an employee of a school system. Appellant has to look to O.C.G.A. § 20-2-1160 for any relief. The

State Board of Education is of the opinion that the Local Board's decision was arbitrary and capricious under either O.C.G.A. § 20-2-940 or O.C.G.A. § 20-2-1160 because the Local Board failed to carry the burden of proof to show that Appellant was incompetent willfully neglected her duties, or other good and sufficient cause. Accordingly, the Local Board's decision is

REVERSED.

This 8th day of July, 1993.

Mrs. King and Mr. Sessoms were not present. Mr. Al Abrams' seat is vacant due to his resignation effective April 30, 1993.

Robert M. Brinson
Vice Chairman for Appeals