

STATE BOARD OF EDUCATION

STATE OF GEORGIA

CHARLOTTE LESTER, :
 :
 Appellant, :
 v. : **CASE NO. 1993-25**
 :
 ATLANTA CITY : **DECISION**
 BOARD OF EDUCATION, :
 :
 Appellee. :

This is an appeal by Charlotte Lester (Appellant) from a decision by the Atlanta City Board of Education (Local Board) not to grant her a hearing under the provisions of O.C.G.A. § 20-2-940 because of the Local Board's finding that she was not demoted when she was transferred from her position as acting curriculum specialist to teacher. Appellant claims that O.C.G.A. § 20-2-943 requires a hearing whenever there is a transfer from one position to another position having less pay, responsibility, and prestige, regardless whether the position initially held is an acting or permanent position. The Local Board's decision is reversed and remanded for a hearing to be held on the demotion.

The Local Board's policy CGB permits the Local Superintendent to make limited-term appointments for a period not to exceed sixty calendar days. The appointment can be continued past the sixty-day period with Local Board approval. The policy provides that such positions are granted non-competitively and the employee will be paid at the limited-term salary rate if it is greater than the employee's permanent salary. At the end of the limited-term, the policy provides that the employee is to revert to the employee's former classification.

The employment contracts used by the Local Board provide that the employee is hired as a "member of the staff" at a salary rate and for a number of working days. The employee's classification, or position, is contained in the employee's personnel service record, where a six-digit code gives the professional assignment code, or position of assignment, a degree or certificate code, a code for the number of working days for the position, and a salary step code.

Appellant, who has worked for the Local Board since 1965, served as an in-service specialist from September, 1983, until March, 1991. Before September, 1983, Appellant's classification code was 082011, which meant that she was in a teaching position (08) with a masters degree (2) on a 190-day contract (0) at salary step 11 (11). In September, 1983, her classification code became 422011, which meant that she was in an in-service specialist position with a masters degree on a 190-day contract at salary step 11. In 1986, Appellant was moved to salary step 14 so her classification code became 422014. In 1989, she was placed on an annual contract and her classification code changed to 422314. In 1990, Appellant's salary step was reduced to step 11 and her classification code became 422311.

On March 14, 1991, the Local Superintendent notified Appellant in writing of her promotion to the position of acting curriculum specialist. The Superintendent's letter stated:

This assignment is for the 1990-1991 school year only. There is no guarantee of continuation in the assignment after the end of the 1990-1991 school year.

Appellant's classification code became 282388, which meant that she was in the position of curriculum specialist - middle school (28) with a masters degree (2) on an annual contract (3) in an acting personnel salary step (88).

On April 20, 1991, Appellant signed a contract for the 1991-1992 school year. The contract provided a salary at the curriculum specialist rate, i.e., \$47,148.00 for 230 days. During the 1991-1992 school year, Appellant served as a curriculum specialist and her personal service record shows that she was in an acting position.

Upon expiration of the 1991-1992 contract, Appellant was given, and signed, a contract as a teacher at a salary rate of \$39,156.00 for 190 days. Initially, Appellant was assigned as a second grade teacher and then transferred to the position of teacher at the Truancy Center. Her classification code reverted to what it had been in 1983, 082011.

Appellant claimed that she was demoted and requested a hearing before the Local Board. The Local Board conducted a hearing under the provisions of O.C.G.A. § 20-2-1160 and decided that Appellant's transfer did not represent a demotion that entitled her to a hearing under the Fair Dismissal Act, O.C.G.A. § 20-2-940, et seq. For purposes of the hearing, it was stipulated that the position of teacher has less prestige, responsibility, and salary than the position of curriculum specialist. Appellant then filed a timely appeal to the State Board of Education.

Appellant claims that O.C.G.A. § 20-2-943(a)(2)(C), which provides for hearings when an employee is demoted, applies to her situation because she has been transferred from one position to another that has less prestige, responsibility, and salary. O.C.G.A. § 20-2-943 provides:

- (a) In exercising its powers in the enforcement of due process under this part, a local board of education shall be authorized:
- (2) Under Code Section 20-2-942 to:
 - (C) Demote a teacher or other school employee from one position to another position in the school system having less prestige, responsibility, and salary.

O.C.G.A. § 20-2-943 (1993 Supp.). Since the word "position" is not modified, Appellant claims that she is entitled to a hearing before being transferred. The Local Board argues that it has the power to move someone into a position for a temporary period of time without the employee having a right to a hearing when the period of time ends.

The Local Board claims that a demotion did not occur because Appellant should never have had an expectation of permanence in an acting position; she was never promoted in the first instance but was simply filling a slot temporarily that was never advertised within the system. In effect, the Local Board claims that it should not have to hold a hearing to establish that the temporary period had ended.

We agree with the Local Board's position that under its power to control and manage its schools, it has the authority to move an employee into a position temporarily without the necessity of holding a hearing when the temporary period has ended. The Fair Dismissal Act was not designed to completely eliminate the flexibility a local board of education needs to effectively manage the school system. As implemented, and applied against Appellant, however,

we conclude that the Local Board has violated the provisions of the Fair Dismissal Act.

The Local Board's policy permits temporary appointments by the Local Superintendent for sixty days, but it permits unlimited "temporary" appointments that have been approved by the Local Board. An employee could, therefore, be in a so-called temporary position for several years and then be transferred back to an old position without any possibility of having a hearing. As Appellant points out, such a system permits the Local Board to undermine the protection of the Fair Dismissal Act. It also circumvents policies that require openings to be posted for open competition within a school system. The system is also unnecessary for the flexibility local boards of education need to manage and control their school systems. A temporary appointment should have some fixed termination date and some operational necessity.

In Appellant's case, the last time she served as a teacher was in 1983. Now, nine years later, the Local Board proposes to transfer her "back" to her permanent position as a teacher. The result is that Appellant's salary will be reduced to less than it was in 1989-1990 school year. There is nothing in the record to show that her position as in-service specialist was temporary. The Local Board claims that a teacher and an in-service specialist are on the same classification level. The record, however, shows that Appellant is receiving a lower salary than she received as an in-service specialist, and there was no evidence that a teacher has the same responsibility and prestige as an in-service specialist. Based upon the record before us, we conclude that Appellant was demoted, both from her position as curriculum specialist and from her position as in-service specialist.

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board improperly demoted Appellant without giving her a hearing under the provisions of the Fair Dismissal Act. The Local Board's decision, therefore, is REVERSED AND REMANDED for a hearing to be held on the demotion.

This 9th day of September, 1993.

Mrs. King, Mr. Sears, Mr. Shurbutt and Dr. Thomas were not present.

Robert H. Brinson
Vice Chairman for Appeals