

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROY DALE, :
 :
Appellant, :
 : **CASE NO. 1993-31**
vs. :
 : **DECISION**
CAMDEN COUNTY :
BOARD OF EDUCATION, :
 :
Appellee. :

**PART I
SUMMARY**

This is an appeal by Roy Dale (Appellant) from a decision by the Camden County Board of Education (Local Board) that the non-renewal of his teaching contract was not in violation of his constitutional rights and to uphold the Local Superintendent’s recommendation not to renew Appellant’s teaching contract. Appellant maintains on appeal that there was no evidence to support the decision of the Local Board. The Local Board’s decision is sustained.

PART II

FACTUAL BACKGROUND

Appellant was a nontenured¹ physical education teacher and coach employed by the Local Board. On April 2, 1993, the Local Superintendent sent Appellant a letter to inform him that his contract would not be renewed for the 1993-94 school year. Appellant requested a hearing under the provisions of O.C.G.A. § 20-2-1160 and claimed that the decision not to renew his contract was in retaliation of his exercise of his constitutional right to free speech. Specifically, Appellant maintained that the non-renewal was retaliatory because he had bumper stickers on his motor vehicle that said, “Whitley [Appellant’s principal] Must Go” and “Not a School, Not a Prison, Not Marvin.” The Local Board conducted a hearing on June 9, 1993.

At the hearing, evidence was presented that Appellant’s principal was dissatisfied with Appellant’s performance at the end of the 1991-1992 school year and recommended to the Local Superintendent that Appellant’s teaching contract not be renewed for the 1992-1993 school year.

¹ Georgia does not recognize tenure. Instead, ‘tenure’ is used as a shorthand term to mean that after teaching for three years, a teacher has a right to a hearing and can be dismissed only for cause under the Fair Dismissal Act, O.C.G.A. § 20-2-940, *et seq*

The Local Superintendent testified that in the Fall of 1991 parents had complained about Appellant's lack of enthusiasm as a wrestling coach. Several documents were submitted about incidents that occurred during the 1991-1992 school year. These incidents included improper record keeping, selling cokes and candy to students during the school day and violation of the Local Board's tobacco policy. During the Fall of 1991, Appellant was accused of slamming a student against some lockers. The incident, however, was not written up. Appellant was also accused of academically punishing a student for not participating in weight lifting exercise even though the student had a back injury. The head coach testified that Appellant was following the policies set forth by the school system. In January, 1992, Appellant was accused of telling two of his female students, who were apparently on the verge of fighting, to take their argument into the locker room. Although Appellant denied telling the girls to go to the locker room, several witnesses stated that he made the statement. The two girls subsequently fought in the locker room. Nevertheless, the Local Superintendent gave Appellant another chance and Appellant was considered to be on probationary status for the 1992-1993 school year.

Appellant continued to have problems during the 1992-1993 school year. The Principal sent Appellant a memorandum in the Fall of 1992 and reminded him that he could not leave campus during the school day before securing administrative approval. Appellant testified that he left campus occasionally to do errands for the athletic director. Evidence was also presented that in January, 1993, Appellant failed to submit final grades. On February 10, 1993, Appellant was covering the weight lifting class of the head coach. During the class, two students began arguing. Although one of the students later denied that Appellant told them to "take it to the fifty yard line," the two boys originally told the Principal that Appellant had told them to take their fight to the "fifty yard line." The students understood this to mean that they were to go outside onto the football field to the fifty yard line and settle their argument by fighting. Evidence was also presented that Appellant kept "peeking out the door."

The Local Superintendent testified that he met with Appellant on February 16, 1993, to discuss the transcripts of the Principal's interviews with the students. He testified further that Appellant admitted that his behavior "could be construed as insubordination" and that he may have willfully neglected his duties. The Local Superintendent told Appellant that the options available included suspension, termination of his contract and involving the Professional Practices Commission. The Local Superintendent denied having any knowledge of any bumper stickers concerning the Principal and stated that the decision not to recommend renewal of Appellant's contract was due to Appellant's unsatisfactory performance as a teacher and a coach.

Appellant testified that he put the bumper stickers on his car on March 15, 1993. Appellant admitted that he knew as of the February 16, 1993, meeting with the Local Superintendent that the Local Superintendent was probably not going to recommend renewal of his contract. On March 18, 1993, the Local Superintendent transferred Appellant to St. Mary's Elementary School without giving Appellant any reasons. At the hearing, the Local Superintendent testified that the transfer was because he felt Appellant was encouraging students to get involved in Appellant's problems with the school.

On April 2, 1993, the Local Superintendent sent Appellant the letter advising Appellant that he was not recommending renewal of Appellant's teaching contract. At the conclusion of the

hearing, the Local Board voted to uphold the decision of the Local Superintendent not to renew Appellant's teaching contract and found that the Local Superintendent's decision was not made because Appellant was exercising his right of free speech.

PART III

DISCUSSION

This matter was heard under the provisions of O.C.G.A. § 20-2-1160 to determine whether the non-renewal of Appellant's teaching contract resulted from Appellant's exercise of his constitutionally protected right of free speech. In *Dalton City Bd. of Educ. v. Smith*, 256 Ga. 394, 349 S.E.2d 458 (1986), the Court stated,

“In most instances, the simple non-renewal of a single, one-year contract, standing alone, as opposed to the nonrenewal of the contract of a ‘tenured’ teacher or a breach of contract, will not constitute a matter of local controversy in reference to the construction or administration of school law.”

The Court, however, went on to observe that a teacher has a right to a factual hearing to determine whether the decision not to renew was based upon a reaction to the exercise of a constitutional right.

“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 substantial evidence presented to the Local Board from which the Local Board could conclude that Appellant's display of the bumper stickers was not what motivated the Local Superintendent's recommendation. Appellant knew that he was being given a second chance and that he was on probationary status during the 1992-1993 school year. On February 16, 1993, long before he mounted the bumper stickers, Appellant was aware that his contract probably would not be renewed. Besides his bare allegations, Appellant offered no evidence to show that the Local Superintendent's decision not to renew his contract was improperly motivated. The State Board of Education, therefore concludes that there was evidence before the Local Board that Appellant's free speech rights were not the cause of his non-renewal.

Appellant also claims on appeal that the Local Board Chairman committed harmful error by excluding any reference to O.C.G.A § 20-2-210, which requires a principal to place an educator on a professional development plan if there are perceived professional deficiencies. The development or lack of development of a professional development plan, however, is irrelevant. Once it is shown that Appellant's non-renewal did not violate any constitutional rights, Appellant has no right to produce evidence regarding the merits of the non-renewal.

Appellant also maintains on appeal that his reassignment to St. Mary's Elementary

School was for punitive reasons, which created a right to a hearing and a statement of reasons why the reassignment was made. The Local Board granted Appellant a hearing and there was no evidence that the transfer was punitive. The Local Board, therefore, did not deny Appellant any of his rights to a hearing.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that there was evidence to support the Local Board's decision that there was not any violation of Appellant's free speech rights and to uphold the Local Superintendent's decision not to renew Appellant's teaching contract. The Local Board's decision, therefore, is

SUSTAINED.

This 11th day of November, 1993.

Robert M. Brinson
Vice Chairman for Appeals

