STATE BOARD OF EDUCATION

STATE OF GEORGIA

VELMA COOPER AND JAMES V. BERTO,	:	
Appellant,	:	
	:	**CASE NO. 2005-08**
vs.	:	
ATLANTA CITY BOARD OF EDUCATION,	:	**DECISION**
Appellee.	:	

This is an appeal by Velma Cooper and James V. Berto (Appellants) from a decision by the Atlanta City Board of Education (Local Board) not to renew their contracts as vocational supervisors under the provisions of O.C.G.A. § 20-2-940(a)(8), any other good and sufficient cause, due to a reorganization. Appellants claim that the hearing tribunal was biased, that the evidence failed to support the Local Board's decision, and the Local Board failed to follow the procedures of the Fair Dismissal Act, O.C.G.A. § 20-2-940 *et seq.* The Local Board's decision is reversed.

Appellants held the position of vocational supervisor in their respective high schools. In these positions, they were evaluated by the principal and were on the organizational chart of their high schools as part of the administration; they were not included in the organizational charts of the Office of Technology/Career Education Department. Appellants' salaries were based upon length of service and educational level within their category, while the salaries within the Office of Technology/Career Education Department were not based upon degrees.

In February, 2004, Appellants were told to attend a meeting at the central offices on the next day. At the meeting, Appellants were told that their positions were going to be eliminated effective June 30, 2004. On March 8, 2004, the Local Board voted to approve the plan submitted by the Local Superintendent to reorganize the Office of Technology/Career Education Department. Ostensibly, the reorganization plan resulted in the loss of 15 positions, including Appellants' positions, but Appellants were told they could apply for new positions created as a part of the reorganization. The new positions, while they may have involved minor duty changes, had essentially the same job descriptions as Appellants' eliminated positions, but the salaries were at a much lower

level and Appellants were not assured of obtaining the positions, which were posted nationally.[1]

On April 28, 2004, Appellants were given written notice that their contracts would not be renewed because of other good and sufficient causes under the provisions of O.C.G.A. § 20-2-940(a) because of the reorganization. A hearing was scheduled for May 20, 2004.

A hearing before a three-member tribunal took place on May 28, 2004. At the beginning of the hearing, Appellants moved to disqualify the tribunal on the grounds the tribunal had heard an earlier case involving other employees whose contracts had not been renewed because of the reorganization. The motion was denied and the hearing proceeded.

While there is a possibility that a tribunal that has made a decision in another case that involved the same factual situation could be biased toward that decision, the mere possibility is insufficient to declare, as a matter of law, that the tribunal was biased. There was no evidence that the tribunal had reached a decision in the previous case. Appellants have not cited any law or facts that would establish that it was improper for the tribunal to hear the case. The State Board of Education, therefore, concludes that it was not an error for the tribunal to deny Appellant's motion to recuse the tribunal.

Appellants claim that the tribunal did not issue its report to the Local Board until June 24, 2004, and the Local Board did not make a decision until July 12, 2004. O.C.G.A. § 20-2-940(f) provides that if a tribunal hears a case for a local board, then the tribunal

> shall file its findings and recommendations with the local board within five days of the conclusion of the hearing, and the local board shall render its decision thereon within ten days after the receipt of the transcript. (Emphasis added).

O.C.G.A. § 20-2-940(f) (2003).

The Local Board claims that Appellants were not harmed by the delay of the tribunal in making its recommendation and of its delay in making a decision based on the recommendation because they were made aware in February, 2004, that their positions would be eliminated, which afforded them ample opportunity to seek a position elsewhere. The Local Board's argument, however, assumes that Appellants should have accepted the termination decisions in February 2004 and not availed themselves of their rights to a hearing and their right to receive a speedy resolution of their situation, which is the very antithesis of our system of jurisprudence. The language of the statute is clear

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[1] Appellant Berto was making a salary of approximately $81,000 per year and Appellant Cooper was making $78,840 per year. The highest salary offered for the new positions was $67,000.

and mandatory – "the tribunal shall file its findings … with the local board within five days of the conclusion of the hearing."

The record, however, is devoid of any evidence of when the tribunal made its recommendation to the Local Board. Similarly, there is no evidence of when the Local Board received the transcript of evidence. In the absence of any such evidence, the State Board of Education can only conclude that the report was regularly delivered by the tribunal, that its actions were proper, and that the Local Board timely issued its decision after receipt of the transcript.

Appellant's final claim is that there was no evidence to support the Local Board's action. Being mindful that 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), and in the absence of any findings by either the tribunal or the Local Board, we must review the record to see if there is any evidence to support the Local Board's decision.

The Local Board chose not to renew Appellants' contracts because of any other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. "Any other good and sufficient cause" is one of the permitted reasons not to renew an employee's contract, but it is not a catch-all phrase that permits a local board to arbitrarily designate any reason or circumstance as a basis not to renew an employee's contract. Instead, the phrase is limited to actions taken (or not taken) by an employee that adversely impact on the employee's ability to be effective. The phrase was not included to cover every circumstance that a local board (or administration) might grasp as a reason for its action.

In O.C.G.A. § 20-2-940(a), eight reasons are given for not renewing an employee's contract.[2] Only two of these reasons do not directly point to an employee's actions – to reduce staff and other good and sufficient cause. The purpose of the Fair Dismissal Act, O.C.G.A. § 20-2-940 *et seq.,* was to provide teachers with some measure of protection against arbitrary actions by boards of education so that they could only be dismissed for cause. We, therefore, conclude that "any other good and sufficient cause" can only relate to causes arising from actions or inactions by the employee.

In the instant case, the Local Board failed to present any evidence that Appellants had taken, or not taken, any action that warranted the loss of their contracts. Instead, the Local Board attempts to justify their decision based upon a reorganization – a reorganization that was in name only. The Local Board eliminated Appellants' positions and then assigned the same duties to positions designated by another name and carrying a

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[2] O.C.G.A. § 20-2-940 does not directly reference the right not to renew an employee's contract, but O.C.G.A. § 20-2-942, which covers nonrenewal, references O.C.G.A. § 20-2-940 for the reasons for nonrenewal.

reduced salary. Action taken by a local board, however, is insufficient to sustain the dismissal of an employee because of "any other good and sufficient cause."

Local boards of education can fail to renew an employee's contract "to reduce staff due to loss of students or cancellation of programs." O.C.G.A. § 20-2-940(a)(6). In the instant case, however, there was no evidence of a loss of students or the cancellation of any programs. Instead, these employees, who had never had any association with the Office of Technology/Career Education Department, who had always received their duty assignments from, were evaluated by, and received recommendations of renewal of their contracts from, the principal of their respective schools, were arbitrarily selected for a reduction in salary by the creation of the façade of a reorganization of a central office department that did not have any association with Appellants. Since there was no loss of students or the cancellation of any programs, the Local Board could not have used this reason as a justification for its action.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board's decision was arbitrary and capricious in that it was based upon reasons that are not supported by statute. Accordingly, the Local Board's decision is REVERSED.

This _____ day of November 2004.

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William Bradley Bryant
Vice Chairman for Appeals