STATE BOARD OF EDUCATION

STATE OF GEORGIA

THEODORE WOLF,		
Appellant,	:	
	:	
vs.	:	**CASE NO. 2005-10**
	:	
FULTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	
	:	

This is an appeal by Theodore Wolf (Appellant) from a decision by the Fulton County Board of Education (Local Board) to demote him based on other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant claims that the Local Board failed to provide him with a charge letter within 14 days after he requested a hearing, thus causing his previous contract to be statutorily renewed. Appellant also claims that the charge letter showed on its face that there was no basis for demoting him. The Local Board's decision is reversed.

Appellant became a principal in 1987. In 1994, he was given a special assignment. The following year he was put on special assignment as a classroom teacher, where he has remained ever since. For the 2003-2004 school year, Appellant received a 240-day contract as a high school principal with a salary of $110,333 although he served as a teacher. For the 2004-2005 school year, the Local Board initially offered Appellant a 180-day contract as a teacher with a salary of $78,168. When Appellant advised the school system that he did not want a contract as a teacher, the school system decided not to renew his contract.

On April 9, 2004, Appellant mailed a letter to the Local Superintendent and asked for a hearing and a list of the charges against him. The request was received by the Local Superintendent on April 12, 2004, who then mailed the letter containing the charges to Appellant on April 26, 2004, which was 17 days after Appellant made his request but 14 days after the request was received by the Local Superintendent.

Appellant claims that since the Local Board failed to provide him with a "charge letter" within 14 days after he mailed his request, then, as a matter of law, his contract as a principal was renewed and that any further proceedings were a nullity. The Local Board argues that it mailed the "charge letter" to Appellant within 14 days after the request for charges was received by the Local Superintendent.

With respect to the service of a "charge letter" has to be furnished to a teacher, O.C.G.A. § 20-2-942(b) (2) provides, in part:

> A teacher who is so notified that he or she is to be demoted or 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 serve written notice on the superintendent of the local board ... within 20 days of the day the notice of the intended action is served that he or she requests a hearing. ... 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. *(Emphasis added).*

O.C.G.A. § 20-2-940(c) provides, in part:

> ... All notices required by this part relating to demotion, termination, nonrenewal of contract, or reprimand shall be served by certified mail or statutory overnight delivery. 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.

The issues raised in this appeal have been raised or touched on previously before the State Board of Education: *Byrd v. Taylor Cnty. Bd. of Educ.*, Case No. 1983-24 (Ga. SBE, Nov. 10, 1983); *Peddle v. Cobb Cnty. Bd. of Education,* Case No. 1985-31 (Ga. SBE, Nov. 14, 1985), *aff'd., Cobb Cnty. Bd. of Educ. v. Peddle, Civil Action No. 86-10093-05 (Cobb Superior Ct., Apr. 29, 1986)*; *Browning v. Atlanta Bd. of Educ.*, Case No. 1999-13 (Ga. SBE, May 13, 1999); *Boone v. Atlanta Bd. of Educ.,* Case No. 2003-29 (Sep. 11, 2003).

In *Byrd*, the State Board of Education held that if a local board failed to provide a teacher with written notice of charges within 14 days after the teacher or employee requests such notice, then the teacher's contract is deemed to be renewed. This decision was affirmed in *Peddle*, where the State Board of Education held that "if a local board fails to provide the required notice within fourteen (14) days, then the nonrenewal (or failure to recommend renewal) is ineffective and a teacher's contract is considered to be renewed as if a notice of nonrenewal had not been issued prior to April 15." There was dictum in the *Peddle* case that said, "While a failure to comply with the fourteen day requirement may be excusable in some situations, such as when a local board never actually receives the request, no such excuse has been provided in the instant case."

In *Browning*, the local board failed to respond within 14 days because it did not receive the request for charges from the teacher, who had sent the request by certified mail. The State Board of Education, following the dictum in *Peddle*, held that the

teacher's contract was not automatically renewed when the local board did not respond within 14 days because it did not receive the request for charges. The State Board reasoned that the local board should not "suffer any consequences when ... [its] failure to act results from the action or inaction of a third party." *Browning* at p. 3. In the instant case, there was no intervening action or inaction by a third party.

In *Boone*, the State Board of Education again held that the teacher's contract was automatically renewed when the local board failed to provide a list of charges within 14 days after the teacher requested the list because the charge letter was sent to the wrong address.

The Local Board argues that the dictum contained in *Peddle,* that the 14-day requirement may not apply when a local board does not receive the request for charges, establishes that the time for calculating the 14-day period begins to run from the date the local board receives the request. The dictum in *Peddle*, however, was addressing possible extenuating circumstances, which do not exist in the instant case but did exist in the *Browning case*. The plain language of O.C.G.A. § 20-2-940(c), however, provides that service is deemed completed when mailed, while O.C.G.A. § 20-2-942(b) (2) provides that the notice must be provided within 14 days of service, i.e., within 14 days after the teacher mails the request for the charges. The State Board of Education, therefore, concludes that Appellant's contract was renewed as a matter of law because the Local Board failed to provide him with a list of charges within 14 days after he mailed his request, the Local Board received the request in a timely fashion, and there were no other extenuating circumstances that prevented the Local Board from complying with the statute.

The second ground for appeal cited by Appellant is that the evidence did not support the nonrenewal of his contract. The charge made against Appellant was that his nonrenewal was based on other good and sufficient cause because he was serving on a special assignment as a classroom teacher and should not receive the salary of a principal. The Local Board argues that its desire to demote Appellant is adequate to establish other good and sufficient cause not to renew Appellant's contract as a principal. The Local Board's position is baseless.

The Local Board is responsible for assigning its employees. The Local Board could have assigned Appellant to a principal position at any time when such a position became open. Appellant did not have any control over his assignments, but the evidence showed that he performed his duties satisfactorily. There was no showing that Appellant did anything to warrant a demotion from principal to classroom teacher. The entire situation was under the control of the Local Board. The Local Board's argument would permit the discipline of employees because of a local board's carelessness or mismanagement. "Any other good and sufficient cause" is not a catch-all phrase to provide cover for mismanagement by a local board. Instead, the Fair Dismissal Act, O.C.G.A. § 20-2-940, *et seq.,* contemplates some improper action on the part of the employee before any disciplinary action is taken. In the instant case, there was no

showing of any improper action by Appellant. The State Board of Education, therefore, concludes that there was no evidence to support the Local Board's decision.

Based upon the foregoing, it is the opinion of the State Board of Education that Appellant's contract as a principal was automatically renewed because the Local Board failed to provide him with a list of charges within 14 days after he mailed his request for charges and there was no evidence to support the Local Board's decision. Accordingly, the Local Board's decision is
REVERSED.

This _____ day of November 2004.

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William Bradley Bryant
Vice Chairman for Appeals