STATE BOARD OF EDUCATION

STATE OF GEORGIA

CONNIE STARKS,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2006-59**
	:	
ATLANTA CITY	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

This is an appeal by Connie Starks (Appellant) from a decision by the Atlanta City Board of Education (Local Board) to terminate her contract based upon other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant claims that there was no evidence to support the Local Board's decision because the only evidence presented related to incidents that occurred in a previous year. The Local Board's decision is reversed.

In 1990, the Local Board employed Appellant as a fifth grade teacher. She has continuously maintained her certification as a teacher. In 1995, Appellant was transferred to the position of Instructional Liaison Specialist I in Instructional Technology and received a contract each year until 2003. The position of Instructional Liaison Specialist does not require a certificate.

In March 2003, the Local Superintendent wrote to Appellant and said that the school system would no longer issue contracts to employees in her classification, but there would not be any change in her status, classification, tenure rights or salary. On October 28, 2004, the Local Superintendent wrote to Appellant and told her that her employment with the Atlanta Public School had been terminated and her last day of employment would be October 28, 2004. The letter did not give any reasons for the termination, nor did it provide Appellant with any notice regarding her rights to a hearing.

On November 16, 2004, Appellant asked for a hearing regarding her termination, but the Local Superintendent took the position that Appellant did not have a contract, which made her an at-will employee who did not have any right to a hearing. Almost a year later, on October 3, 2005, the Local Board, without holding a hearing, ruled that Appellant was an at-will employee and not entitled to any substantive or procedural due process, but it ordered a hearing anyway "in the interest of fairness."

Appellant appealed the Local Board's decision to the State Board of Education but the appeal was not docketed because there was no transcript of a hearing. On October 27, 2005, the Local Superintendent notified Appellant that a recommendation would be made to the Local Board to terminate Appellant's contract. The reason for the recommendation was because of insubordination and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940 resulting from an incident on October 15, 2005, when she said that she would kill her department chairman. The Local Board then held a hearing on November 21, 2005.

During the hearing, Appellant's team leader testified that during an evaluation review, which took place on October 15, 2004, Appellant said she wanted to kill the director of their department because of the evaluation procedure. The team leader also testified that Appellant also made the comment, "That's why drive-bys happen." At the conclusion of the school system's case, Appellant moved to dismiss the charges because there was no evidence that Appellant had done anything improper during the 2005-2006 school year to warrant disciplinary action. The tribunal hearing officer denied the motion and Appellant then testified that she never made the comments.

At the conclusion of the hearing, the tribunal found that Appellant had not been insubordinate, but that there was other good and sufficient cause for disciplinary action and recommended termination of her contract. The Local Board adopted the tribunal's recommendation and terminated Appellant's contract. Appellant then filed an appeal to the State Board of Education.

On appeal, Appellant claims that she was a certificated employee who had taught for more than four years, thus making her eligible for the protections of the Fair Dismissal Act, O.C.G.A. § 20-2-940 *et seq.*, one of which is the right to a hearing before the Local Board can terminate her contract. Appellant claims that her contract was automatically renewed on April 15, 2005, by operation of law under the provisions of O.C.G.A. § 20-2-211(b). Appellant then claims that under the holdings in *Moulder v. Bartow Cnty. Bd. of Educ.*, 267 Ga. App. 339, 599 S.E.2d 495 (2004), and *Peterson v. Brooks Cnty. Bd. of Educ.*, Case No. 1990-29 (Ga. SBE, Dec. 13, 1990), *rvs'd. on other grounds, Brooks Cnty. Bd. of Educ. v. Peterson,* Civil Action No. 91-CV-43 (Brooks Cnty. Sup. Ct., Aug. 2, 1991), evidence relating to previous school years cannot be used to terminate an employee's contract in a subsequent year. Since the only evidence presented by the school system related to the events that occurred in the previous school year, there is no basis for terminating her contract.

The Local Board argues that Appellant was an at-will employee and not entitled to a hearing. Since Appellant was not entitled to a hearing, she was properly terminated on October 24, 2004, and none of the provisions of O.C.G.A. § 20-2-211(b) are applicable, i.e., she did not obtain an automatic contract renewal on April 15, 2005, because she was an at-will employee. Secondly, the Local Board argues that Appellant received due process because a hearing was held, which concluded with the same result, Appellant's termination.

Notwithstanding the Local Board's argument regarding the inapplicability of O.C.G.A. § 20-2-211(b), the statute itself establishes its applicability. O.C.G.A. § 20-2-211(b) provides, in part that:

> Any other provisions of this article or any other laws to the contrary notwithstanding, each local governing board shall, by not later than April 15 of the current school year, tender a new contract for the ensuing school year to each teacher and other professional employee certificated by the Professional Standards Commission on the payroll of the local unit of administration at the beginning of the current school year....[When a notice of non-renewal] has not been given by April 15, the employment of such teacher or other certificated professional employee shall be continued for the ensuing school year unless the teacher or certificated employee elects not to accept such employment by notifying the local governing board or executive office in writing not later than May 1. (Emphasis added).

Although Appellant had been transferred into a position that did not require a certificate, she nevertheless was a certificated employee on the Local Board's payroll and the Local Board was, therefore, required to issue her a contract by no later than April 15 of each year, or her contract was automatically renewed.[1] The Local Superintendent's unilateral decision to no longer issue Appellant a written contract cannot, and does not, override the effect of O.C.G.A. § 20-2-211(b). Thus, even without a written contract, Appellant had a contract of employment for a definite term by operation of law.

O.C.G.A. § 20-2-940 provides that the contract of employment of an employee having a contract for a definite term cannot be terminated without first providing the employee with notice and a hearing, if requested. The Local Superintendent's termination of Appellant on October 24, 2004, without giving her advance notice or reasons for her discharge, and without providing her an opportunity for a hearing, was illegal and, therefore, a nullity. Similarly, the Local Board's decision on October 3, 2005, that Appellant was an at-will employee, was erroneous.

The Local Board also claims that *Moulder, supra,* is inapplicable because action was initiated against Appellant during the 2004-2005 school year and the normal course of litigation caused the delay in hearing the matter until the 2005-2006 school year. As pointed out above, however, the only action taken during the 2004-2005 school year was the Local Superintendent's improper termination of Appellant, which was a nullity and cannot be considered as the initiation of proceedings against Appellant during the 2004-

[1] The Local Board even advanced the idea that it could transfer teachers into non-certificated positions and then dismiss them without a reason or a hearing, thus entirely sidestepping the Fair Dismissal Act provisions, which is what the Local Board attempted to do in the instant .

2005 school year. There was no "normal course of litigation" during the remainder of the 2004-2005 school year since the school system simply took the position that Appellant was an at-will employee and had been properly discharged on October 24, 2004. It was not until October 27, 2005, that the Local Superintendent finally issued a notice of charges, which was what should have taken place one year earlier on October 24, 2004. The delay in taking any action against Appellant rests solely with the Local Superintendent and the Local Board and their attempt to deny Appellant due process. *Moulder,* therefore, is not so distinguishable that its principle does not apply. Thus, as argued by Appellant, since the only evidence presented for termination of Appellant's 2005-2006 contract was actions that took place in the prior school year, and such evidence cannot be used as the basis for termination of a subsequent school year contract, the tribunal hearing officer erred in not granting Appellant's motion to dismiss the charges and the Local Board's decision was erroneous.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Superintendent denied Appellant due process and improperly discharged Appellant on October 24, 2004, that by operation of law, Appellant had a contract for the 2005-2006 school year, and there was no evidence presented to support the termination of Appellant's 2005-2006 contract. Accordingly, the Local Board's decision is REVERSED.

This _____ day of June 2006.

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William Bradley Bryant
Vice Chairman for Appeals