

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JOHN WELCH,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2008-14
	:	
THOMASTON-UPSON COUNTY BOARD OF EDUCATION,	:	
	:	
	:	DECISION
Appellee.	:	

This is an appeal by John Welch (Appellant) from a decision by the Thomaston-Upson County Board of Education (Local Board) not to grant him a hearing on the non-renewal of his contract for the 2007-2008 school year as an assistant principal. Appellant contends he is eligible for a hearing because he served as an administrator with the Local Board before 1995. The Local Board's decision is sustained.

The only issue raised in this appeal is whether an administrator, who served as an administrator with a local board before April 7, 1995, keep any rights to a hearing before the nonrenewal of his or her contract even though there has been a break in service with that local board. O.C.G.A. § 20-2-942 gives a teacher who has taught three years with the same school system the right to a hearing under the provisions of O.C.G.A. § 20-2-940. The same right, however, is not granted to school administrators, who are not included in the definition of "teacher". O.C.G.A. § 20-2-942(a)(4). Prior to 1995, administrators also had a right to a hearing, and O.C.G.A. § 20-2-942(c)(1) recognizes that right by providing:

(c)(1) A person who first becomes a school administrator on or after April 7, 1995, shall not acquire any rights under this Code section to continued employment with respect to any position of school administrator. A school administrator who had acquired any rights to continued employment under this Code Section prior to April 7, 1995, shall retain such rights: (A) In that administrative position which such administrator held immediately prior to such date; and (B) In any other administrative position to which such administrator has been involuntarily transferred or assigned. And only in such position shall such administrator be deemed to be a teacher for the purpose of retaining those rights to continued employment in such administrative positions.

(2) A teacher who had acquired any rights to continued employment under this Code section prior to April 7, 1995, and who is or becomes a school administrator without any break in employment with the local board for

which the person had been a teacher shall retain those rights under this Code section to continued employment in the position as teacher with such local board.

O.C.G.A. § 20-2-942(c).

In the instant case, Appellant was an assistant principal employed by the Local Board before 1995. Appellant resigned from his employment with the Local Board at the end of the 1994-1995 school year. He was employed again by the Local Board as an assistant principal in 2001. In April 2007, the Local Superintendent informed Appellant that his contract would not be renewed for the 2007-2008 school year. When Appellant asked for a hearing on the reasons why his contract would not be renewed, he was informed that he was not eligible to have a hearing. Appellant then requested a hearing before the Local Board under the provisions of O.C.G.A. § 20-2-1160 to determine whether he was entitled to a hearing under the provisions of O.C.G.A. §§ 20-2-940 and 20-2-942. On August 28, 2007, the Local Board voted against granting Appellant a hearing under the provisions of O.C.G.A. § 20-2-940¹. Appellant then appealed to the State Board of Education.

On appeal, Appellant claims that he obtained a right to a hearing under O.C.G.A. § 20-2-940 because he was employed as an administrator with the Local Board before April 7, 1995. Appellant claims that once he obtained the right to a hearing, there is no provision of law that takes that right away from him, even if he has a break in service with the Local Board. The Local Board argues that Appellant's break in service terminated any procedural rights he acquired under O.C.G.A. § 20-2-942 before April 7, 1995.

In *Armistead v. Cherokee Cnty. School Dist.*, 144 Ga. App. 178, 179, 241 S.E.2d 19, 21 (1977), the Court stated that the Fair Dismissal Act² did not provide or affect any vested rights or obligations, but only "provided a procedure to be used in the event the superintendent chose not to renew the contract." The Court's observation recognized that the Fair Dismissal Act did not create any vesting of rights to an individual that were portable.

To the extent there are any rights created in O.C.G.A. § 20-2-942, the overall language dictates an interpretation that continuous service is required; that a break in service results in the loss of any rights created. For example, in O.C.G.A. § 20-2-942(b)(4), if a teacher has acquired the right to a hearing and transfers to another school district, then the teacher has to go through another two-year probationary period, losing any rights to a hearing acquired at the first school system. If the rights were vested, as contended by Appellant, then the teacher would not have to go through a probationary period. Also, O.C.G.A. § 20-2-942(c)(1) states, in part, "A school administrator who had

¹ There are certain procedural rights granted under O.C.G.A. § 20-2-940 that are not otherwise available under O.C.G.A. § 20-2-1160.

² O.C.G.A. § 20-2-940 *et seq.*

acquired any rights to continued employment under this Code section", which dictates that the administrator maintain "continued employment" to retain such rights.

Appellant's argument was raised in *Pelletier v. Farrow, et al.*, CA 89-94-ATH, (U.S.D.C., Middle Dist. of Ga., 1990), where the Court stated, "The law does not provide, as plaintiff would have the court believe, that once tenured in a system, a teacher may come back and enjoy tenured status any time she or he returns to that system. Such arguments ignore the language of the Georgia statute. Plaintiff left Franklin County in 1986, thereby ending her years of consecutive employment with that system and terminating her tenured position." Although not binding, the Court's argument is persuasive.

Based upon the foregoing, it is the opinion of the State Board of Education that when an administrator or a teacher leaves a school system, that teacher or administrator loses any rights to a hearing obtained by employment for more than three years so they cannot later rejoin the school system and claim an immediate right to a hearing. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of December 2007.

William Bradley Bryant
Vice Chairman for Appeals