

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SUSAN HEINLEN,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2009-51
	:	
GRADY COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by Susan Heinlen (Appellant) from a decision by the Grady County Board of Education (Local Board) not to renew her contract as an assistant principal because of a reduction-in-force program under the provisions of O.C.G.A. § 20-2-940. Appellant claims that the Local Board violated the federal age discrimination laws and the Local Board failed to follow its own policies in selecting her to be terminated. The Local Board’s decision is sustained.

In March 2009, the Local Superintendent recommended against renewing Appellant’s contract as an assistant principal as part of a reduction-in-force program. O.C.G.A. § 20-2-940(a)(6) provides that the “employment of a teacher, principal, or other employee having a contract for a definite term” can be terminated because of a reduction in staff due to a loss of students or the cancellation of programs.¹ The School System steadily lost students from 2001, resulting in a decreased student population of 177 students in the school system. The record also shows that state standards provided for only one assistant principal in the middle school where Appellant served, but there were two assistant principals at the school. The plan involved the elimination of several administrative positions.

Before the Local Board adopted the reduction-in-force plan, it initiated a new reduction-in-force policy that introduced a performance standard as part of the criteria to determine who would be terminated if a decision had to be made between two or more individuals. The new policy was presented to the Local Board at its February 2009 meeting and adopted at the March 10, 2009, meeting.

On March 13, 2009, the Local Superintendent notified Appellant that her contract as an assistant principal would not be renewed for the 2009-2010 school year. Appellant requested a hearing, which the Local Board conducted on April 15, 2009. The Local

¹ Appellant did not make any claims that a reduction-in-force program was unwarranted under the loss of students or elimination of programs standards.

Superintendent was the only witness to provide testimony at the hearing. At the conclusion of the hearing, the Local Board voted to uphold the Local Superintendent's recommendation not to renew Appellant's contract. Appellant then appealed to the State Board of Education.

On appeal, Appellant claims that the Local Board's decision not to renew her contract violated the federal Age Discrimination in Employment Act, 29 U.S.C. §§ 621 *et seq.*, as amended (ADEA), because she is more than 40 years old. Appellant also claims that the Local Board's decision violated its own reduction-in-force policy because her personnel file did not contain any negative information about her performance. The Local Board counters that its decision did not violate the ADEA and that its reduction-in-force policy was followed.

The ADEA prohibits discrimination on the basis of age. Appellant claims that, because all of the individuals whose contracts were not renewed under the reduction-in-force program were over the age of 40, there exists a *prima facie* case of age discrimination, thus requiring the Local Board's decision to be reversed.²

The State Board of Education has jurisdiction to consider decisions made by local boards of education on contested matters involving "the construction or administration of the school law...." O.C.G.A. § 20-2-1160. The ADEA does not involve the construction or administration of the school law. The State Board of Education does not have any special expertise in age discrimination claims such as Appellant asserts in this case. The fact that a school system is involved does not cause Appellant's age discrimination claim to become a matter involving the construction or administration of school law. *See, Servicemaster Management Services Corp. v. Cherokee Cnty. School System*, 257 Ga. 60, 354 S.E.2d 424 (1987). Since Appellant's claim does not involve the construction or administration of the school law, the State Board of Education lacks jurisdiction to address the claim.³

Appellant next claims that the Local Board failed to follow its own reduction-in-force policy because her personnel file did not contain any negative comments. The Local Board's policy, however, does not require negative performance by a teacher. Instead, the Local Board provided that an individual's job performance and the Local Superintendent's observations and knowledge would provide the basis for deciding who would be terminated. Thus, if there were two very capable teachers, one could be selected for dismissal because the Local Superintendent deemed the other teacher more capable

² The reduction-in-force program adopted by the Local Board involved the elimination of administrative positions only. Appellant advanced the argument that since administrative positions are generally held only by persons older than 40, the Local Board's plan was discriminatory on its face.

³ The ADEA establishes procedures a claimant has to follow before making a claim. There is no evidence that Appellant followed any of these procedures to establish a viable claim even if the State Board of Education was a proper forum.

based upon the Local Superintendent's observations and knowledge. In the instant case, the Local Superintendent talked with Appellant, Appellant's principal, and others, and decided not to recommend the renewal of Appellant's contract. The State Board of Education concludes that the lack of any negative reports in Appellant's personnel file does not establish that the Local Board failed to follow its reduction-in-force policy.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the Local Board did not deprive Appellant of any of her due process rights, the Local Board followed its own policies, and Appellant was properly terminated due to a reduction-in-force as provided for in O.C.G.A. § 20-2-940(a)(6). Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of July 2009.

William Bradley Bryant
Vice Chairman for Appeals