

STATE BOARD OF EDUCATION

STATE OF GEORGIA

GILDA ELLIS-ADAMS,

Appellant,

v.

WHITFIELD COUNTY BOARD OF EDUCATION,

Appellee.

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CASE NO. 1985-15

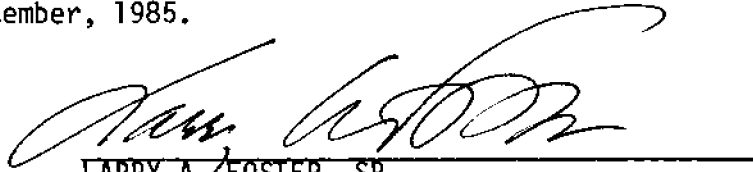
O R D E R

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Whitfield County Board of Education herein appealed from is hereby SUSTAINED.

This 12th day of September, 1985.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

GILDA ELLIS-ADAMS,)	
)	
Appellant,)	
)	CASE NO. 1985-15
v.)	
)	
WHITFIELD COUNTY BOARD)	
OF EDUCATION,)	
)	REPORT OF STATE
Appellee.)	HEARING OFFICER

PART I

SUMMARY

This is an appeal by Gilda Ellis-Adams (hereinafter "Appellant") from a decision of the Whitfield County Board of Education (hereinafter "Local Board") that offering Appellant a contract for the 1985-86 school year as a teacher was not a demotion from her previous year's contract as a Language Arts Coordinator because she was to be paid the same salary she received the previous year. Appellant contends that the offer constitutes a demotion and does reduce her salary because she will not receive as much as she would have received had she remained in the same position. The Local Board contends it has the authority to transfer Appellant to other positions without providing the statutory rights required when a board demotes an employee because, if the salary remains the same,

the individual is not demoted within the meaning of the statute. The State Hearing Officer recommends that the decision of the Local Board be sustained.

PART II

FACTUAL BACKGROUND

Appellant is an employee of the Local Board. She served at least four years as Language Arts Coordinator and was notified April 15, 1985, that she would be relieved of the duties of Language Arts Coordinator for the 1985-86 school year. The letter informing her of her change in status stated that her compensation would not be reduced by that change. She requested a clarification and was informed by the Local Superintendent that her salary for the 1985-86 school year would be the same as the salary she received for the 1984-85 school year and that the position to which she had been transferred had not yet been determined. Thereafter, she requested that she be granted the rights guaranteed her by The Fair Dismissal Act (O.C.G.A. §20-2-942) if she is demoted.

The Local Board agreed to hold a hearing to determine whether the action taken by the Superintendent was a demotion or a transfer. If the Local Board determined that the action was a demotion, then the Appellant would have been entitled to a further hearing as to whether there was cause for the demotion, while she would not be entitled to a show cause hearing if the action was a transfer.

The parties stipulated at the hearing that there would be less prestige and responsibility in Appellant's new position and the evidence showed that the salary Appellant would have received for the 1985-86 school year as Language Arts Coordinator would have been higher than the salary which the Superintendent actually intends to pay her for teaching for the 1985-86 school year. The Superintendent testified that he would pay her exactly the same salary for teaching for the 1985-86 school year that she received for being Language Arts Coordinator in the 1984-85 school year.

The hearing was held on May 28, 1985 and, at the conclusion of the hearing, the Local Board voted in favor of a motion that no demotion occurred because there was no reduction in salary.

PART III

DISCUSSION

O.C.G.A. §20-2-942 provides that a teacher who has achieved "tenure"¹ status may not be demoted without a hearing and a showing of good cause as is required under O.C.G.A. §20-2-940. The term "demotion" as used in that code section has been defined in Rockdale County School District v. Weil, 245 Ga. 730 (1980) as requiring that, for a transfer to be considered a

¹ After a specified period of employment, O.C.G.A. §20-2-942 grants teachers certain rights which are commonly called "tenure" rights, even though the statute does not use the term "tenure."

demotion, three factors must be affected: salary, prestige, and responsibility. In Weil, a principal was transferred to a new position and given a \$500 increase in salary. The Georgia Supreme Court determined that he had not received a demotion because his salary had not been reduced. Justice Hill dissented in Weil contending that the principal should have been given an opportunity for a hearing to determine whether a demotion occurred. He noted that the \$500 a year raise which had been given might not have been the raise the principal would have been entitled to receive if he had been allowed to retain his position. It thus appears that facts were not before the Court showing that the principal would not be receiving as high a salary in the new position as he would have received had he remained principal.

Appellant contends on appeal that, because the facts show she is going to receive \$3,232.80 less for the 1985-86 school year than she would have received had she remained in the same position, she, unlike the situation in Weil, has had her salary reduced in addition to her prestige and responsibility and, therefore, has been demoted. The testimony of the Superintendent clearly shows that had she remained in the same position, she would have received a salary of \$32,829.60 for the 1985-86 school year and, in fact, will only receive a salary of \$29,596.80.

In Weil, there was no factual showing that the principal would have received a higher salary had he not been transferred and had remained in the same position. Indeed, as Appellant argues in her brief, such facts may not have existed in Weil because the principal was transferred from one administrative position to another, thus enabling him to retain any state or local salary he would be entitled to as an administrator. In the instant case, however, it is clear that, because Appellant is no longer an administrator, she would not be entitled to any supplement or salary which is based upon an administrative position. Thus, Appellant argues that Weil is distinguishable because the facts show that her salary has been adversely affected.

The Superintendent's testimony concerning what Appellant would have received is based upon the Superintendent's understanding of the actions of the Local Board on the salary schedules and how the Appellant's qualifications and years of experience would place her on those schedules. That testimony does not demonstrate that Appellant was entitled to the increased salary. The increased salary would have been hers had she been placed in the same position the next year. However, the Local Board of Education has to contract for Appellant to serve in that position before she is entitled to receive the increased salary. Contracts must be approved by the Local Board and not just the Superintendent.

Appellant argues that she was entitled to the increased salary because the state had increased the state salary schedule. However, there is no requirement that a local board increase an individual's salary from year to year even if the state does provide for an increase in the state salary. The Local Board is required to pay the teacher at least the amount that the state pays. However, because a local board provides for a supplement, it is possible that teachers may receive a State increase without actually receiving a higher salary for the next year if the local board decides to reduce the local supplement it pays. Thus, Appellant is not actually entitled to the increase in salary which she would have received until the Local Board contracts to pay her that salary.

Appellant could have been transferred during the middle of the year under the same circumstances. If this had been done, she would have received the same salary and, if her new position did not receive as high a raise for the next year, she would have had her salary reduced in the same fashion as has occurred in this case for the upcoming year. Under this hypothetical, she clearly would not have been demoted at the time the transfer occurred because there would be no facts to show that the old position she occupied would necessarily receive a higher salary than the new position to which she was transferred. That would have to be determined at a later date when the Local Board established its salary schedules.

Appellant's argument would mean that a teacher who was transferred during the middle of the year, as described above, would have to accept the transfer because no proof would be available to demonstrate a higher expected salary, while one who was transferred after the Local Board determined its salary schedules for the next year would be entitled to a hearing and a showing of cause. This interpretation creates an incongruous result because both teachers could have had the same number of years' teaching, both would lose the same amount of salary, but, because of the timing of the action, one would be considered a transfer and the other a demotion. The State Hearing Officer does not think that such an interpretation is warranted.

A further consideration is the fact that O.C.G.A. §20-2-942 has been amended since the Weil decision and the legislature did not choose to further define the term "demotion." It must be presumed the legislature was aware of the interpretation of that term by the Georgia Supreme Court. If the legislature had felt that a clarification was needed, then it could have clarified the term. Yet, the legislature did not clarify that a failure to pay an increase in salary would constitute a demotion when combined with a transfer that reduced the prestige and responsibility of a teacher. Thus, the State Hearing Officer concludes that, under the current law, a teacher's salary

must be actually reduced and a failure of a local board to pay a teacher an increase that the teacher expects does not constitute a demotion under O.C.G.A. §20-2-942.

Appellant's final argument is that she has acquired a constitutionally protected property interest in a salary increase and that this property right cannot be withheld in the absence of good cause. Because of the Hearing Officer's previous discussion concerning the fact that the state increase in salary is not required to be passed on to the teacher, this argument, likewise, fails to require a reversal of the decision of the Local Board.

PART IV

CONCLUSION

Based upon the foregoing, the record presented, and the briefs and arguments of counsel, the State Hearing Officer is of the opinion that the decision of the Georgia Supreme Court in Weil is controlling under the facts of this case, and Appellant's transfer to a teaching position without a reduction in salary did not constitute a demotion which required a hearing by the Local Board. The State Hearing Officer, therefore, recommends that the decision of the Local Board that Appellant was not demoted be

SUSTAINED.



L. O. BUCKLAND
State Hearing Officer