

STATE BOARD OF EDUCATION

STATE OF GEORGIA

VIVI ANNE JOHNSON,	:	
	:	
Appellant,	:	
	:	CASE NO. 1997-36
vs.	:	
	:	DECISION
MUSCOGEE COUNTY BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Vivi Anne Johnson (Appellant) from a decision by the Muscogee County Board of Education (Local Board) to deny her claim for back salary, which she based upon her allegation that she was underpaid as a night school teacher. Appellant claims that her pay as a night school teacher violated a requirement that part-time teachers have to be paid at the same rate as full-time teachers. The Local Board's decision is sustained.

For eight years, Appellant has taught as a part-time teacher at the Local Board's night school program. In addition to her night school teaching, Appellant has been a regular, certified teacher with the Local Board for twenty-two years. Before the start of the 1996-1997 school year, the teachers at the night school program were paid an hourly salary that was less than the equivalent hourly salary paid full-time teachers. In 1994, Appellant began questioning whether she was being paid enough. In 1995, Appellant contacted some other school systems and learned that night school teachers in the other systems were paid at the same hourly rate as the equivalent hourly rate paid full-time teachers. Appellant then filed a grievance that she was not being paid in accordance with the provisions of O.C.G.A. § 20-2-212. After her grievance was denied, the Local Board heard her complaint on July 12, 1997.

The evidence showed that the night school program was entirely locally funded. The teachers who taught at the night school did not have a written contract. The night school teachers were paid at an hourly rate that was below the equivalent hourly rate of a full-time regular teacher.

The students who attended the night school program earned Carnegie Units towards graduation for the courses they took. The night school program provided only three classes per student.

Consequently, the school system does not earn any full-time equivalent (FTE) credits for a student who only attends the night school program.¹

The Local Board held that O.C.G.A. § 20-2-212 was inapplicable to night school teachers, and that Appellant had waived any right to be paid in accordance with her regular salary schedule. Appellant then filed a timely appeal to the State Board of Education.

O.C.G.A. § 20-2-212(a) provides, in part:

A local unity of administration shall not pay to any full-time certificated professional employee a salary less than that prescribed by the schedule of minimum salaries, nor shall a local unit of administration pay to any part-time certificated professional employee less than a pro-rata portion of the respective salary prescribed by the schedule of minimum salaries.

O.C.G.A. § 20-2-212(a) (Michie, 1996).

Appellant claims that the above-quoted language of O.C.G.A. § 20-2-212 required the Local Board to pay her an hourly rate for her night program teaching equal to the rate she received for her regular teaching position. Appellant argues that O.C.G.A. § 20-2-212 is applicable because the students attending the night school program receive Carnegie Units for the classes they take. In addition, Appellant claims that the students attending the night school program earn FTE credits for the school system so that state funds could be used for the night school program.

The Local Board argues that O.C.G.A. § 20-2-212 is not applicable because state funds are not received for the night school program; the night school program is locally funded in its entirety. The Local Board argues that when state-mandated minimum salaries are required, the statutes specifically provide for such minimum salaries, e.g., O.C.G.A. §20-2-182(e), which requires that the pay for extended day sessions shall be no less than the minimum 190-day salary schedule established by the State Board of Education, and O.C.G.A. § 20-2-168(d), which allows local units to establish summer school education programs and requires that teachers be paid at least the minimum State-mandated salary. Conversely, O.C.G.A. § 20-2-150(a), which permits local boards to operate alternative programs for students, does not provide for State funding and does not contain a minimum salary requirement. The essence of the Local Board's argument is that minimum salary requirements attach only to those programs where the State provides funding, and if the State does not provide funding, then minimum salary requirements do not exist. We agree with the Local Board.

O.C.G.A. § 20-2-212 is specifically addressed to salary schedules for a ten-month schedule, i.e., a regular educational program. The first sentence of O.C.G.A. § 20-2-212(a) provides:

¹ The State uses full time equivalent units as part of a formula for determining how much a local unit of administration will receive from the State for its various instructional programs. *See*, O.C.G.A. § 20-2-160 *et seq.*

The State Board of Education shall establish a schedule of minimum salaries for services rendered which shall be on a ten-month basis and which shall be paid by local units of administration to the various classifications of professional personnel required to be certificated by the Professional Standards Commission.

O.C.G.A. § 20-2-212(a) (Michie, 1996). O.C.G.A. § 20-2-212 cannot be read as having universal application to all programs provided by a local system. Such a reading would negate the need for the Legislature to provide how teachers are to be paid in the summer school program, O.C.G.A. § 20-2-168(d), or in the extended day program, O.C.G.A. § 20-2-182(e). O.C.G.A. § 20-2-212 must, therefore, be restricted to how teachers in the regular education program are paid.

This interpretation gives full effect to each of the Legislature's pronouncements on how teachers are to be paid. It also follows the scheme of funding educational programs. Local boards of education are provided State funds for the regular education program, the summer school program, and the extended day program. The receipt of State funds carries conditions that govern how teachers are to be paid.

The night school program created by the Local Board in this instance, however, is not funded by the State and O.C.G.A. § 20-2-150(a), which indirectly authorizes night school programs, does not contain any conditions that govern how teachers are to be paid. Since the Legislature is deemed to enact laws with due regard to all other laws in existence, the absence of any requirement to pay teachers in a certain manner in the night school program must be deemed to be deliberate and leaves local systems free to pay any salaries necessary to attract the teachers they want for the night school program.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board was not required to pay Appellant for her night school duties at the same rate she received for her regular teaching duties. The Local Board's decision, therefore, is SUSTAINED.

This 8th day of January, 1998.

Larry Thompson
Vice Chairman for Appeals