

STATE BOARD OF EDUCATION

STATE OF GEORGIA

GILDA DAY,

Appellant,

v.

**FLOYD COUNTY BOARD
OF EDUCATION,**

Appellee.

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CASE NO. 2014-01

DECISION

This is an appeal by Gilda Day from a decision by the Floyd County Board of Education ("Local Board") non-renewing her employment contract for the 2013-2014 school year pursuant to O.C.G.A. § 20-2-940(a)(6) in order to reduce staff due to a loss of students or cancellation of programs ("RIF"). On appeal, Appellant contends that the Local Board erred by (1) relying solely on length of service in implementing the RIF, (2) the RIF was not necessary, (3) denying her due process by denying her key evidence, and (4) violating the terms of the charter system agreement in implementing the RIF. The decision of the Local Board is **REVERSED**.

I. PROCEDURAL BACKGROUND

Appellant was timely notified that her annual employment contract for the 2013-2014 school year was being recommended for non-renewal due to a RIF. Appellant appealed the non-renewal recommendation of her employment contract. The Local Board provided the Appellant a hearing with the opportunity to present evidence. After hearing the evidence, the Local Board non-renewed Appellant's employment contract. Appellant has appealed the decision of the Local Board to the State Board of Education ("State Board").

II. FACTUAL BACKGROUND

Appellant was employed as a tenured counselor at Coosa High School. In 2013, the Local Board implemented a RIF because of an expected reduction in funding of several million dollars for the next school year. At the hearing, Appellant offered testimony contradicting the deficit.

In implementing the RIF, the RIF procedure identifies the first factors to be considered are professional expertise, effectiveness and performance as reflected in annual evaluations and other evaluations. The RIF procedure provides that if the first factors, competence and expertise, are equal, then other factors such as length of service with the Local Board shall be considered. For evaluations the Superintendent first considered "unsatisfactory" evaluations for the 2012 annual evaluation. The Superintendent then relied on the other two annual evaluations over the last three years and any professional development plans ("PDP") over the last three years. This process was applied to all employees of the Local Board. The Local Board concluded that all twenty-four (24) counselors were equal on the performance criteria. The Local Board then relied on length of service to RIF approximately eleven (11) counselors, which included Appellant.

The Local Board is a charter system pursuant to O.C.G.A. § 20-2-2063.1. The charter system agreement between the Local Board and State Board requires the Local Board to utilize a Governing Council designated as the Local School Governance Team ("LSGT") for each school within the charter system. The charter system agreement provides that the LSGT shall have decision-making authority in personnel decisions and financial decisions.

At the hearing, the Superintendent testified that he did not include the LSGT in the decision to implement the RIF. Rather, the Superintendent, Human Resource Director, and a data analyst were the only three (3) individuals who comprised the RIF committee and who made the decision to implement the RIF.

As a result of the RIF, Appellant was proposed for non-renewal of her employment contract. After hearing the evidence, the Local Board voted to uphold the Superintendent's decision not to renew Appellant's employment contract based on the RIF.

III. ERRORS ASSERTED ON APPEAL

A. Charter Systems and the Georgia Fair Dismissal Act.

As an initial matter, the Local Board contends that it is not subject to the Fair Dismissal Act because it received a blanket waiver, pursuant to O.C.G.A. § 20-2-2065(a), from the provisions of Title 20. The Local Board contends that O.C.G.A. § 20-2-2065(a) provides that a charter system "shall not be subject to the provisions of [Title 20]." Thus, the Local Board contends that since the Fair Dismissal Act, O.C.G.A. § 20-2-940 et seq., is within Title 20, that it is not subject to the Fair Dismissal Act. For the reasons set forth below, the Local Board's assertion is without merit.

First, O.C.G.A. § 20-2-2065(b)(5) provides that charter systems are "[s]ubject to all federal, state, and local rules, regulations, court orders, and statutes relating to civil rights." The Fair Dismissal Act provides due process rights to certain school employees, which is a civil right. Thus, O.C.G.A. § 20-2-2065(a) cannot be read so broadly as to violate the due process rights of school employees who are entitled to due process.

Furthermore, the Local Board adopted the Fair Dismissal procedures within its policies and provided Appellant notice for a hearing “pursuant to Georgia’s Fair Dismissal Act”. The Local Board then provided Appellant with a hearing under the Fair Dismissal Act. Therefore, even assuming O.C.G.A. § 20-2-2065(a) could be construed for the proposition that the Local Board is not subject to the Fair Dismissal Act, the Local Board has waived this contention by providing Appellant with due process rights under the Fair Dismissal Act. Thus, this assertion is without merit.

B. O.C.G.A. § 20-2-948.

Appellant contends that the Local Board erred by relying solely on length of service in implementing the RIF. Appellant relies on O.C.G.A. § 20-2-948(a) which states:

A local board of education shall not adopt or implement a policy that allows length of service to be the primary or sole determining factor when implementing a reduction in force. The local board shall consider as the primary factor the performance of the educator, one measure of which may be student academic performance.

O.C.G.A. § 20-2-948(a).

In this case, the RIF procedure identifies the first factors to be considered are professional expertise, effectiveness and performance as reflected in annual evaluations and other evaluations. The RIF procedure provides that if the first factors, competence and expertise, are equal, then other factors such as length of service with the Local Board shall be considered. For evaluations the Superintendent first considered “unsatisfactory” evaluations for the 2012 annual evaluation. The Superintendent then relied on the other two annual evaluations over the last three years of evaluations and any professional development plans (“PDP”) over the last three years. This process was applied to all employees of the Local Board. The Local Board concluded that all twenty-four (24) counselors were equal on the performance criteria. The Local Board then relied on length of service to RIF approximately eleven (11) counselors, which included Appellant. Thus, this Board concludes that the Local Board did not implement a RIF based solely on length of service. Rather, the Local Board first considered performance and only considered length of service when the performance of the counselors was equal.

C. Necessity of the RIF.

It is well settled that O.C.G.A. § 20-2-940(6) allows a local board to reduce staff due to budgetary reasons. Curry v. Dawson County Bd. of Educ., 212 Ga. App. 827 (1994). “The essential question is whether the reduction in force program is required. Once the necessity of the reduction in force program has been shown, a local board can adopt, or approve, any number of methods for selecting which employees will be terminated.” Hinton v. Warren County Bd. of Educ., Case No. 2004-19 (Ga. SBE, Dec. 2003); see also Deru v. Cobb County Bd. of Educ., Case No. 2011-09 (Ga. SBE, Oct. 2010); McCluster v. Webster County Bd. of Educ., Case No.

2006-11 (Ga. SBE, Oct. 2005); Israel v. Miller County Bd. of Educ., Case No. 2010-21 (Ga. SBE, Jan. 2010). “The only [other] question for review is whether there was evidence to support the Local Board’s decision, or whether the Local Board’s decision was arbitrary and capricious.” Applewhite v. Turner County Bd. of Educ., Case No. 1997-29 (Ga. SBE, Nov. 1997).

In this case, the Local Board offered testimony from the Superintendent that in 2013, the Local Board expected reduction in funding of several million dollars, which necessitated the RIF. Appellant offered testimony contradicting the deficit, and offered testimony that the Local Board would not have a decrease in state funding the next school year. The Local Board offered evidence to support its decision, and this Board cannot conclude that the Local Board’s decision was arbitrary or capricious based on the reasons stated by the Local Board. See Parker v. Montgomery County Bd. of Educ., Case No. 2012-28 (Ga. SBE, April 2012).

D. The Charter System Agreement.

Appellant contends that the Local Board and hearing officer erred by excluding her argument and evidence to show that the Local Board violated its charter system agreement with the State Board. Specifically, the Appellant contends that the Local Board was required to have the LSGT involved in the RIF decision-making process. The Local Board contends that this issue is irrelevant, that whether it violated the charter system agreement is an issue between the State Board and Local Board, and that Appellant does not have standing to raise this issue because she was not a party to the agreement.

This Board is required to affirm the decision of the Local Board if there is any evidence to support the decision of the Local Board, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransom v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 8, 1976). For the reasons set forth below, the State Board finds that the Local Board’s decision is contrary to the charter system agreement, and therefore, the decision must be reversed.

In this case, the Local Board is a charter system. The charter system agreement between the Local Board and State Board requires the Local Board to utilize a Governing Council designated as LSGT. The agreement provides that the LSGT shall have decision-making authority in personnel decisions and financial decisions. The record shows that the Local Board did not include the LSGT in the decision to implement the RIF and the personnel decisions that were made in implementing the RIF. Rather, the Superintendent, Human Resource Director, and a data analyst were the only three (3) individuals who comprised the RIF committee and who made the decision to implement the RIF.

Therefore, this Board concludes that the Local Board erred by declining to rule on this issue and excluding Appellant’s evidence regarding the Local Board’s failure to follow the charter system agreement. Furthermore, this Board finds, that based upon the evidence in the record, the record shows that the Local Board did not follow the charter system agreement. This Board finds the Local Board’s failure to do so constitutes its actions as being arbitrary and

capricious because the decision on who to RIF may have ended in a different result if the proper procedures had been followed.

IV. CONCLUSION

Based upon the reasons set forth above, the decision of the Local Board is **REVERSED**.

This 7th day of November 2013.


ELIZABETH J. RAGDALE, Ed. D.
VICE CHAIR FOR APPEALS

