STATE BOARD OF EDUCATION

STATE OF GEORGIA

FRANCES ROBERSON,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1995-46**
vs.	:	
	:	**DECISION**
COBB COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Dr. Frances Roberson (Appellant) from a decision by the Cobb County Board of Education (Local Board) to dismiss her under the provisions of O.C.G.A. § 20-2-940 because her position as executive director of K-12 curriculum was eliminated on May *25,* 1995, as part of a reduction-in-force program initiated after the State reduced funding for central office positions. Appellant claims that the Local Board: (1) failed to comply with the provisions of O.C.G.A. § 20-2-940; (2) violated its own reduction-in-force policy; (3) arbitrarily and capriciously eliminated her position, and (4) improperly allowed a tribunal of three members of the Local Board to conduct a hearing and make a recommendation to the full Local Board. The Local Board's decision is sustained.

In March, 1995, the Local Superintendent told her staff to start planning for a reduction-in-force because of a reduction in state funding for central office personnel. Appellant was one of four executive directors in the curriculum and instruction division. The other three executive directors were K-3, grades 4-8, and high school. The Assistant Superintendent for Curriculum and Instruction, Dr. Kathryn Claybar, identified Appellant's position as surplus because she thought the functions under Appellant's supervision could provide better service by being allocated to the other three executive directors. The functions under Appellant's supervision extended across all grade levels, while the other three executive directors supervised by grade levels as identified by their job titles. Appellant supervised music, media, arts, band, and vocational education.

Two of the other executive directors were scheduled to either retire or be reassigned. Dr. Claybar, concerned that the two positions would be eliminated when the individuals left, did not identify Appellant's position for elimination because she did not want to lose three executive director positions. As a result, Appellant's position was included in an initial budget approved by the Local Board on April 12, 1995.

As the budgeting process moved forward, the Local Board funded the two executive director positions that Dr. Claybar thought she would lose. The record is unclear when this action took place. Nevertheless, on May 23, 1995, the Local Board adopted a budget that also included Appellant's position. Dr. Claybar and the Local Superintendent then recommended the elimination of Appellant's position to the Local Board and the Local Board approved the elimination on May 25, 1995. Appellant was notified of the termination and she requested a hearing.

The Local Board appointed three of its members to conduct the hearing and make a recommendation to the full board. Appellant objected to having the three members conduct the hearing because she did not think they were impartial since they would be sitting in judgment of their own actions. The hearing, nevertheless, proceeded on June 28, 1995. At the conclusion of the hearing, the tribunal found that Appellant's contract was terminated correctly and recommended upholding the termination. On July 27, 1995, the Local Board voted to uphold the decision to terminate Appellant's contract. Appellant then appealed to the State Board of Education.

On appeal, Appellant claims that the Local Board did not follow the provisions of O.C.G.A. § 20-2-940(a)(6) because there was no reduction in the number of students and none of the programs under her supervision were eliminated. Appellant also claims that the Local Board did not follow its own reduction-in-force policy because the policy requires the Local Board to take length of service into consideration and she had been employed longer than the other three executive directors. According to Appellant, since she had the greater length of service, she should have been transferred to one of the remaining executive director positions.

O.C.G.A. § 20-2-940(a)(6) provides that the contract of an employee can be terminated "[t]o reduce staff due to loss of students or cancellation of programs[.]" The Local Board's policy GDT, "Reduction in Force," requires the Personnel Division to "maintain length of service lists of personnel by position classifications, continuous service dates, and certification/licensure . Each personnel employment position classification shall be assigned a job title.... Each employee will be classified and a local board, frequently with different goals and objectives, seek to implement a plan. In the instant case, the administration learned that two executive director positions would not be eliminated, which enabled them to recommend elimination of Appellant's position, at an annual savings of $92,612, without jeopardizing the delivery of services. We conclude that the Local Board's acceptance of the recommendation was not an arbitrary or capricious action.

Appellant's final claim is that the Local Board improperly permitted three of its members to constitute a tribunal to hear the evidence. O.C.G.A. § 20-2-940(e)(1) provides:

> The hearing shall be conducted before the local board, or the local board may designate a tribunal to consist of not less than three nor more than five impartial persons possessing academic expertise to conduct the hearing and submit its findings and recommendations to the local board or its decision thereon.

O.C.G.A. § 20-2-940(e)(1). Appellant claims that the three Board members could not be impartial because they were sitting in judgment of an action they had previously taken as members of the full Board. Additionally, she claims that there was no showing that the three members had any educational expertise. A decision-maker is not "disqualified simply because he has taken a position, even in public, on a policy issue related to the dispute, in the absence of a showing that he is not capable of judging a particular controversy fairly on the basis of its own circumstances." *Hortonville Joint School District v. Hortonville Education Assn.,* 426 U.S. 482, 493 (1976). In the instant case, Appellant conducted voir dire before the hearing and stated, through counsel, "I have no objections to any of these people on an individual basis." There was, therefore, no showing that the tribunal members were not impartial, even though they may have previously voted to eliminate Appellant's position. We also deem board of education members as having the requisite educational expertise to satisfy,' the statutory requirements. As members of the local board of education, they regularly attend to educational matters and acquire knowledge that is generally unknown to the ordinary citizen. Given the broad authority granted local boards of education to establish how they will operate the school systems under their care, we conclude that the Local Board did not err in appointing three of its members to conduct the hearing.

Based upon the foregoing, it is the opinion of the State Board of Education that Appellant's position was properly terminated under the provisions of O.C.G.A. § 20-2-940, the Local Board's action was not arbitrary or capricious, the Local Board followed its own policies, and the tribunal of three Local Board members properly conducted the hearing to make a recommendation to the full Local Board. Accordingly, the Local Board's decision is SUSTAINED.

This 9th day of November, 1995.

Mr. Brinson, Ms. Keeton, Mr. Sessoms and Mr. Williams were not present. The seat for the Tenth District is vacant.

Richard C. Owens, Chairman
State Board of Education