

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>DON LEE,</b>	:	
	:	
<b>Appellant,</b>	:	<b>CASE NO. 2011-08</b>
	:	
<b>vs.</b>	:	
	:	
<b>FULTON COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	<b>DECISION</b>
	:	
<b>Appellee.</b>	:	

This is an appeal by Don Lee (Appellant) from a decision by the Fulton County Board of Education (Local Board) not to renew his teaching contract because of reduction-in-force under the provisions of O.C.G.A. § 20-2-940(a)(6). Appellant claims that the Local Board's decision was arbitrary and capricious and he was denied procedural due process because his subpoena was quashed. The Local Board's decision is SUSTAINED.

In March 2010, the Local Board adopted a reduction-in-force program because of projected budget shortfalls. For many teachers, the program involved a multi-step process that considered performance. The multi-step process, however, was not to be applied in those situations where a program was to be eliminated or deemed non-essential. The Local Board decided to eliminate the elementary instrumental music program because it was entirely locally funded and was not required by state curriculum standards. As a result, the Local Board did not renew the contracts of 54 elementary instrumental music teachers. Appellant was one of those whose contract was not renewed.

Appellant requested a hearing, as permitted under the provisions of O.C.G.A. § 20-2-940. During the hearing, Appellant contended that he was being treated differently than other teachers in the school system because the elementary instrumental music teachers were not compared on a performance basis with the other music teachers in the system. Appellant attempted to subpoena all of the evaluations ever made of all the music teachers, band directors, and orchestra directors employed by the school system, whether in the elementary schools, the middle schools, or the high schools, but the hearing officer quashed the subpoenas as irrelevant and because they sought confidential information. After the hearing, the tribunal recommended that the Local Board not renew Appellant's contract. The Local Board adopted the tribunal's recommendation and Appellant appealed to the State Board of Education.

On appeal, Appellant claims that the Local Board violated his due process and equal protection rights by instituting a reduction-in-force program that did not take

performance or tenure into consideration. Appellant also claims that the Local Board violated his due process rights by quashing his subpoenas requesting teacher performance evaluations.

Under the provisions of O.C.G.A. § 20-2-940(a), the contract of a teacher may be terminated to “reduce staff due to loss of students or cancellation of programs”. O.C.G.A. § 20-2-940(a)(6). A local board of education can adopt any reduction-in-force program it desires provided the program does not violate the law or result from a gross abuse of discretion. *See, Hinton v. Warren Cnty. Bd. of Educ.*, Case No. 2004-19 (Ga. SBE, Dec. 11, 2003).

Appellant claims that the procedure of non-renewing elementary instrumental music teachers was arbitrary and capricious because there was no rational reason not to apply the same performance and seniority criteria that were applied to other teachers. Under the program adopted by the Local Board, however, the performance and seniority criteria were only applied in those instances where a program was not being eliminated. Thus, if two English teachers had to be eliminated from a staff of eight English teachers, then the performance and seniority criteria would be applied to determine which two teachers would be non-renewed. It was unnecessary to apply the performance and seniority criteria when an entire program was eliminated, as was the case with the elementary instrumental music program, since all of the teachers in the program were to be non-renewed. Was it rational to eliminate the elementary instrumental music program? The program was unique in that few school systems offered such a program; it was not a part of the State-required curriculum, and it was entirely funded with local funds, which meant that the elimination of the program would not result in the loss of any federal or state funds. We conclude that it was a rational decision to eliminate a non-essential program.

Appellant claims he was denied equal protection because another group, grade 1-3 paraprofessionals, was eliminated but the performance and seniority criteria were applied to them so they competed against all paraprofessionals for continued employment. The record does not establish the reasons for the paraprofessional treatment, but there is nothing to indicate that the difference in how the paraprofessionals were treated was harmful to Appellant, or that the elimination of the elementary instrumental music program was unreasonable or otherwise suspect. The law does not require each disparate group to be treated the same; the only questions are whether the program has been eliminated and whether the teacher is within that program. Accordingly, the State Board of Education concludes that the Local Board did not deny Appellant any equal protection rights.

Appellant also claims that he was denied due process because the hearing officer quashed his subpoena for all of the evaluations ever performed for all of the music teachers within the school system. Appellant claimed that the evaluations were necessary to establish that he would have been retained if the performance and seniority criteria had been applied to him. Assuming, *arguendo*, that Appellant would have been retained if the performance and seniority criteria had been applied to the elementary instrument music

teachers vis-à-vis all music teachers, the fact remains that the reduction-in-force program adopted by the Local Board did not call for the application of performance and seniority standards if programs were eliminated and Appellant was a teacher in a program that was eliminated. The subpoenas, therefore, were irrelevant in these proceedings and the hearing officer did not commit error in quashing them.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the decision of the Local Board was not arbitrary or capricious and Appellant was not denied due process because his subpoenas were quashed. Accordingly, the Local Board's decision is  
SUSTAINED.

This \_\_\_\_\_ day of October 2010.

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MARY SUE MURRAY  
VICE CHAIR FOR APPEALS