

STATE BOARD OF EDUCATION

STATE OF GEORGIA

VIRGINIA SAMPSON, )  
Appellant, )  
v. ) CASE NO. 1985-23  
BROOKS COUNTY BOARD OF EDUCATION, )  
Appellee. )

O R D E R

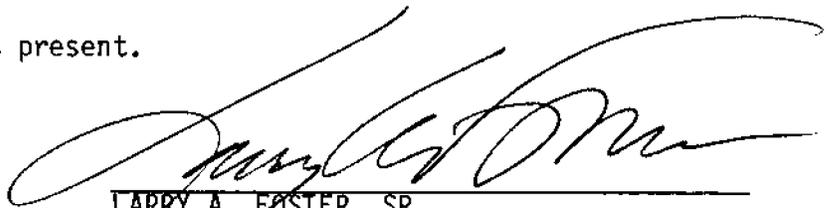
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 Brooks County Board of Education herein appealed from is hereby SUSTAINED.

This 10th day of October, 1985.

Mr. Temple was not present.

  
LARRY A. FOSTER, SR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

VIRGINIA SAMPSON,	)	
	)	
Appellant,	)	
	)	CASE NO. 1985-23
v.	)	
	)	
BROOKS COUNTY BOARD	)	
OF EDUCATION,	)	
	)	REPORT OF STATE
Appellee.	)	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Virginia Sampson (hereinafter "Appellant") from a decision of the Brooks County Board of Education (hereinafter "Local Board") denying Appellant's motion to dismiss her dismissal and appealing the Local Board's decision that it could not renew Appellant's contract without her being recommended by the Superintendent. Appellant was employed as Food Service Director for the 1984-85 school year and contends that she is entitled to employment with the Local Board for the 1985-86 school year either as a "tenured"<sup>1</sup> teacher or as an employee who has been given a contract. The Local Board contends that Appellant did not qualify as a tenured teacher

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<sup>1</sup> 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."

and that the Local Board did not provide her a valid contract because the Local Board reversed its vote to employ her before a contract was ever offered, and because the Local Board is without authority to employ Appellant absent a recommendation of the Local Superintendent. The State Hearing Officer recommends the decision of the Local Board be sustained.

## PART II

### FACTUAL BACKGROUND

Appellant was employed as the Lunchroom Manager of Brooks County High School beginning in August of 1980. She continued in that capacity until July of 1984 when she was given a written contract with the Local Board as School Lunch Director. Prior to the written contract as School Lunch Director, Appellant was employed on the basis of an oral contract. Appellant became certified by the State Board of Education as a School Lunch Director in August of 1984 and she served the Local Board as School Food Services Director for the 1984-85 school year. Appellant had no other type of teaching certificate from the State of Georgia although it is her opinion that she qualifies for one.

On April 12, 1984, the Local Board, in the process of employing personnel to fill positions for the 1985-86 school year, voted to reemploy Appellant as Lunchroom Supervisor. At that meeting, the Local Superintendent made it clear that

the Local Board's action in that respect was without his recommendation. The Superintendent notified Appellant by letter of April 14, 1985 that he did not intend to recommend her for employment for the 1985-86 school year. Appellant notified the Local Board that she would accept the position of School Food Service Director by letter dated April 15, 1985. There is no indication in the record that Appellant was offered a contract as a result of the Local Board's April 12 vote. She was, however, orally notified of the Local Board's action. On April 16, 1985, the Local Board rescinded its motion recommending Appellant as Lunchroom Supervisor. Appellant requested a hearing on her dismissal as Food Service Supervisor and the Local Board, after some question of whether a hearing would be provided, gave Appellant a hearing on May 29, 1985. Appellant's counsel agreed that the only issue to be addressed at the hearing was whether she was tenured. If she was tenured, then she would have been entitled to the procedural rights set forth in the Fair Dismissal Act, O.C.G.A. §20-2-942 (hereinafter "Act").

The Local Board concluded the hearing on May 29, 1985 by denying the motion to dismiss and stating that they could not renew Appellant's contract without the recommendation of the Superintendent and Appellant filed this appeal June 11, 1985.

### PART III

#### DISCUSSION

Appellant contends on appeal that a contract was created when the Local Board voted to renew Appellant's contract and

she accepted that offer in writing, that the Board's action subsequent to that acceptance violates the Act, that Appellant is a tenured employee and, thus, the Local Board's action violated the Act, and that the Local Board failed to notify Appellant she would not be rehired prior to April 15, 1985, and, therefore, her contract was automatically renewed.

Appellant's argument concerning tenure is that the facts demonstrate she had tenure and, thus, she should have been given reasons for her nonrenewal and provided a hearing showing cause for nonrenewal. She contends that, because she was employed by the same Local Board longer than four years, was under a written contract for the 1984-85 school year, and was certified for the 1984-85 school year, she is entitled to tenure rights.

The Local Board takes the position that Appellant started earning tenure only from the date of the first written contract after she was certified, that is, July, 1984. It argues that the years of service when she was employed under an oral contract and not certified by the State Board of Education do not count towards tenure and, therefore, Appellant was not entitled to the rights associated with tenure, i.e., reasons, statement of charges, or a hearing.

The State Hearing Officer is of the opinion that Appellant was not a tenured teacher under the meaning of the Act. Under O.C.G.A. §20-2-942 a teacher is defined as any professional school employee certified by the State Board of Education.

Under the facts presented, Appellant would meet that definition for the past year. However, the benefits of tenure are provided only to those teachers who accept a school year contract for the fourth consecutive school year, or those who, while serving under the third consecutive school year contract, do not receive notice that the local board intends not to renew the teacher's contract.<sup>2</sup> A school year contract is defined in the statute as a contract of full-time employment between a teacher and a local board. Appellant was not a teacher within the meaning of the statute prior to the time she received a certificate from the State Board of Education and, thus, the contracts to which she orally agreed prior to the 1984 school year were not contracts between a teacher and the Local Board, but rather contracts between a non-certified employee and the Local Board. Thus, Appellant was not under her third consecutive school year contract under the statutory definition of a school year contract because she was not a teacher prior to the 1984 school year. The Hearing Officer, therefore, concludes that Appellant was not entitled to the benefits of tenure.

The above interpretation is also consistent with the Act as a whole. Under O.C.G.A. § 20-2-940, protection from termination or suspension without proof of cause is provided teachers,

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<sup>2</sup> A teacher may also achieve what is commonly called "transfer tenure" by meeting the conditions required above and then accepting a second contract in another system, or not being notified of nonrenewal in another system.

principals, and employees having a contract for a definite term. However, under O.C.G.A. §20-2-942, the code section granting tenure rights, such rights are provided only to teachers defined as professional school employees certificated by the State Board of Education. The purpose of granting these tenure rights is to protect teachers from nonrenewals without proof of cause after the teachers have proven their teaching ability to the Local Board over a period of three years. No such provision has been made by the legislature regarding non-certificated employees. In the present case, although Appellant has, for the 1984-85 school year, fallen within the definition of the term "teacher", she has not proven her ability over a three year period in a certificated position. Thus, prior to gaining tenure rights, she should be employed in a certificated position for the necessary length of time.

The remainder of Appellant's arguments were not raised before the Local Board or were waived by Appellant before the Local Board and, thus, may not be raised on appeal. Appellant contends on appeal that a contract was created when she accepted the Local Board's vote to renew her contract and, thus, the Local Board's subsequent act rescinding that decision violate the Act. Appellant also contends on appeal that the Local Board failed to notify her that she would not be rehired prior to April 15 and, therefore, her contract was automatically renewed. However, Appellant, through her attorney, agreed at

the hearing that the sole issue to be decided at the hearing before the Local Board was whether Appellant was tenured or not. Thus, the issues concerning the alleged contract and the issue concerning statutory renewal for failure to notify Appellant of nonrenewal prior to the April 15 deadline were waived by Appellant. The State Board of Education is not authorized to decide issues on appeal which were not raised before the Local Board and decided by the Local Board. Sharpley v. Hall Cnty. Bd. of Ed., 251 Ga. 54 (1983); Owen v. Long Cnty. Bd. of Ed., 245 Ga. 647 (1980); Boney v. County Bd. of Ed., 203 Ga. 152 (1947).

The record, however, also shows that Appellant was notified in writing on April 14, 1985 that the Local Superintendent was not recommending her employment for the 1985-86 school year. The hearing held by the Local Board was for the purpose of determining if Appellant was tenured and thus entitled to notice of the reasons for her nonrenewal plus the other protections provided by the Act. The notice by the Local Superintendent appears to have been sufficient as the first step in the process. The right to receive the reasons for a nonrenewal and to have a hearing accrue only if Appellant was a tenured teacher. Since the Local Board decided that Appellant was not a tenured teacher, the remaining issues have been prematurely raised.

PART IV  
CONCLUSION

Based upon the foregoing, the record presented, and the briefs submitted, the State Hearing Officer is of the opinion that Appellant was not a tenured employee and, therefore, was not entitled to the statutory benefits provided by the Fair Dismissal Act. The State Hearing Officer, therefore, recommends the decision of the Local Board that Appellant was not entitled to a hearing on the cause or reasons for her nonrenewal be SUSTAINED.

*L. O. Buckland*  
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L. O. BUCKLAND  
STATE HEARING OFFICER