

STATE BOARD OF EDUCATION

STATE OF GEORGIA

BLONDIA M. ANFIELD, CLARENCE :
BROWN, MILDRED GOLDWIRE, :
WALTER GRAHAM, EDWARD GREENE, :
CLAUDINE POWERS, JOSEPHINE :
BAKER, BARBARA SIMMONS, :

Appellants, :

vs. :

CASE NO. 1978-31

BOARD OF PUBLIC EDUCATION :
FOR THE CITY OF SAVANNAH :
AND THE COUNTY OF CHATHAM, :

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

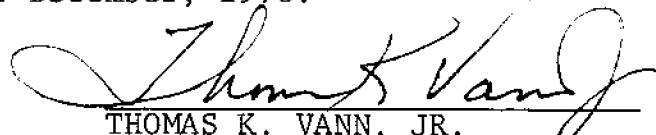
DETERMINES AND ORDERS, that the decision of the Board of Public Education for the City of Savannah and the County of Chatham herein appealed from, is hereby affirmed.

Mrs. Huseman abstained.

Mr. Hendricks and Mr. Foster were not present.

This ^{21st} day of December, 1978.

JK 12/21/78



THOMAS K. VANN, JR.
Vice Chairman for Appeals

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	:	
Appellants,	:	CASE NO. 1978-31
	:	
vs.	:	
	:	
BOARD OF PUBLIC EDUCATION	:	REPORT OF
FOR THE CITY OF SAVANNAH	:	HEARING OFFICER
AND THE COUNTY OF CHATHAM,	:	
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is an appeal by eight non-certificated employees (hereinafter collectively referred to as "Appellants") from a decision by the Board of Public Education for the City of Savannah and the County of Chatham (hereinafter referred to as "Local Board") that they should not be reinstated after their dismissal. Six of appellants were school bus drivers, one was a custodial worker, and the eighth was a food services manager. The appeal is based on alleged improper interpretation of the evidence by the Local Board and the deprivation of Appellant's constitutional rights. It is the recommendation of the Hearing Officer that the decision of the Local Board be sustained.

PART II

FINDINGS OF FACT

At the end of the 1976-77 school year, the Transportation Department of the school system determined that it was necessary to change from daytime bus driver safety meetings to evening meetings. The new policy was resisted by the bus drivers, but the Transportation Department decided to hold the night meetings with the first to be held on the evening of October 3, 1977. The Transportation Department informed the drivers of the change at the last daytime meeting. Additionally, a notice was posted on the bulletin board that served as the communication media with the bus drivers. The notice stated that it was mandatory for all of the bus drivers to attend the meeting. The change again met considerable resistance from the bus drivers and a number of them stated they would not attend the evening meeting. The Director of Transportation orally informed some of the drivers that their failure to attend the meeting would result in their termination, although there is no evidence that the bus driver appellants herein were specifically told they would be terminated if they failed to attend the meeting.

When the safety meeting was held on October 3, 1977, a number of bus drivers did not attend, including the bus driver appellants herein. Each of the bus drivers who

missed the meeting was told the next day of his or her termination because of insubordination for failure to attend the meeting. Of those notified, the ones that came forth the next day with excuses for their absence were reinstated.

Because of the terminations, the bus drivers called a general strike for the following Friday. The strike was supported by other employees who were not bus drivers. The Local Board gave notice that the employees who participated in the strike were terminated, but they would have the opportunity to be reinstated if they notified the Local Board by noon of the following day, Saturday, that they wanted to be reinstated. None of the Appellants gave excuses for their absence from the safety meeting or called in by noon on Saturday that they wanted to be reinstated.

Following their dismissal, Appellants filed a grievance under the procedures established by the Local Board. These procedures involved initial hearings before the supervisory personnel and then a hearing before the Local Board. During the hearing before the Local Board, Appellants were given the right to present their reasons why they should not be dismissed. The following night, the Local Board received testimony from the Director of Transportation. Neither the Appellants nor their attorney were permitted to be present during the presentation of

evidence by the Director of Transportation, nor were they given an opportunity to cross-examine him.

Each of the Appellants presented their reasons for being absent from either the safety meeting on October 3, 1977, or from their job on the following Friday. The food services manager participated in the strike on Friday morning, but left on Friday afternoon with a Little League football team and was unaware of the requirement that she call in by noon on Friday. Similarly, the custodial worker participated in the strike and departed for South Carolina and was therefore unaware of the requirement to call in and ask for reinstatement.

The Local Board reviewed the personnel files of the Appellants and decided that they should not be reinstated. They did, however, reinstate others who are not involved in this appeal. The Appellants then filed an appeal with the State Board of Education.

PART III

CONCLUSIONS OF LAW

Appellants claim that they did not commit the offense of insubordination because they were not given a direct order to attend the safety meeting. They also argue that they had valid excuses for not attending the meeting and their actions were, therefore, not willful. The Local Board, however, received evidence that would support their

decision. Where there is any evidence to support a finding by a local board of education, the finding will not be disturbed upon review by the State Board of Education. Antone v. Greene County Board of Education, Case No. 1976-11.

Appellants also argue that they were improperly discharged for "rules violations". Their basic argument is that it was not the policy of the Transportation Department to discharge employees for missing a safety meeting, and, since they did not have notice of a change in policy, their discharge was fundamentally unfair. Additionally, Appellants argue that since two employees who missed the safety meeting were not terminated, their termination amounts to a denial of equal protection of the laws. As pointed out by the Local Board, however, the change to an evening meeting was for the purpose of obtaining better attendance at the meetings, the change to the evening meeting was a subject of considerable dispute with the bus drivers, and there were threats that the drivers would deliberately miss the meeting. Of the two employees who were not terminated, one was on vacation and the other presented an excuse to his supervisor the morning after the meeting. None of the bus driver appellants presented any excuses or any evidence that they were unaware that the meeting was to be held. The Hearing Officer, therefore,

concludes that the new meeting schedule and its notoriety was sufficient notice to Appellants that the previous policies of the Transportation Department were no longer in existence. The Hearing Officer also concludes that the failure to terminate the employee who was on vacation and the employee who presented a reason the next day for his nonattendance does not amount to deprivation of equal protection of the law for Appellants.

Appellants also assert that the failure of the Local Board to reinstate them violates their rights to due process of law. Their basis for this claim is the manner in which they were permitted to appeal their dismissals. Appellants claim they were not apprised of the charges brought against them, they did not have an adequate opportunity to present evidence, they were denied the right to cross-examine their accusers, and the Local Board failed to state reasons for its decision not to reinstate. In Ferguson v. Thomas, 430 F.2d 852, 856 (5th Cir., 1970), the procedural due process elements are set forth for students and teachers. The Circuit Court stated that a teacher (1) should be advised of the causes for termination in sufficient detail to enable the showing of any error; (2) be given the names of the witnesses and the nature of the testimony; (3) be accorded the opportunity to be heard in his own defense, and (4) the hearing should be before an

impartial tribunal. In the instant case, the Appellants were advised that their terminations were because they either missed the safety meeting or participated in the strike. They were made aware of the witnesses against them and were given an opportunity to be heard in their own defense. The hearing was also before an impartial tribunal, even though the tribunal was the employer. The fact that the Local Board either considered the circumstances of some employees to be such that they could be reinstated, or did not accept the credibility of the Appellants and their excuses, does not establish that the Local Board denied the Appellants their due process rights. Under the Ferguson decision, there was no requirement that the Local Board permit the witnesses to be cross-examined in an administrative proceeding. Appellants were given the opportunity to explain their reasons and there was no denial that they missed the meeting or participated in the strike. The Hearing Officer concludes that the Local Board did not deny Appellants any of their due process rights.

Appellants Anfield and Powers argue that their termination and failure to be reinstated amounts to a denial of their right to the free exercise of their religion, their right to equal protection of the laws, and the rights to be free from the badges and indicia of slavery. Their claim is based on the fact that the reason they missed the safety

meeting was because they were attending a church function. As pointed out by the Local Board, however, neither appellant requested permission to be absent from the safety meeting, even though they apparently knew for some time that they were going to be involved in a church function. Also, neither appellant presented the administration with the excuse they were involved in a church activity until the hearing before the Local Board. The record does not in any way disclose that the Local Board has denied Appellants Anfield and Powers their right to practice their religion, or has attached any indicia of slavery to them.

The essential feature of Appellants arguments is the fact they were not reinstated for the reasons they gave while others were reinstated. There was no dispute that Appellants missed the safety meeting or participated in the strike, nor does there appear to be any valid argument concerning the power of the Local Board to terminate Appellants, and others, for their activities. The real issue, then, is whether the Local Board is required to rehire Appellants based on the excuses they gave for either missing the safety meeting, or participating in the strike, or not notifying the Local Board by noon on Saturday that they wanted to be reinstated. The Hearing Officer concludes that such a requirement is not placed on the Local Board.

Instead, the Local Board had the duty of weighing the evidence of the mitigating circumstances presented to it by each of the Appellants. Upon review, the State Board of Education will not disturb the findings of the Local Board if there is any evidence to support the findings. Antone v. Greene County Board of Education, Case No. 1976-11. The Hearing Officer, therefore, concludes that the Local Board was acting within its power in terminating Appellants and was not required to reinstate them based on the evidence that was presented.

PART IV

RECOMMENDATION

Based on the above findings and conclusions, the record submitted, the briefs and oral arguments of counsel, it is the opinion of the Hearing Officer that the Local Board was acting within the scope of its authority in terminating the services of Appellants and there was no requirement for the Local Board to reinstate any of the Appellants. The Hearing Officer, therefore, recommends that the decision of the Board of Public Education for the City of Savannah and the County of Chatham be upheld.



L. O. BUCKLAND
Hearing Officer