

STATE BOARD OF EDUCATION  
STATE OF GEORGIA

DAVID BARKER,  
Appellant,

vs.

TWIGGS COUNTY BOARD  
OF EDUCATION,  
Appellee.

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CASE NO. 1978-34

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,

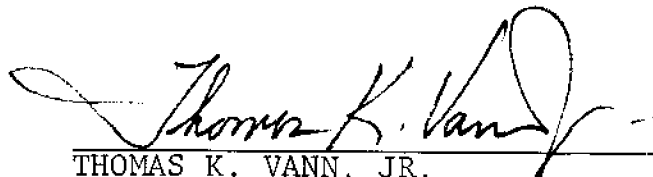
DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are not accepted by the State Board of Education on the grounds that the Twiggs County Board of Education could make its decision based on the finding by the Professional Practices Commission that the accounting records were improperly maintained, and

DETERMINES AND ORDERS, that the decision of the Twiggs County Board of Education herein appealed from, is hereby affirmed.

Mr. Foster, Mrs. Oberdorfer and Mr. Lathem dissented.

Mr. McClung and Mrs. Huseman were not present.

This 8th day of February, 1979.



THOMAS K. VANN, JR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DAVID BARKER,	:	
	:	
Appellant,	:	CASE NO. 1978-34
	:	
vs.	:	
	:	
TWIGGS COUNTY BOARD OF	:	
EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is an appeal by David Barker, a principal (hereinafter "Appellant"), from a decision by the Twiggs County Board of Education (hereinafter "Local Board") not to renew his contract for the 1978-79 school term in spite of the findings by the Professional Practices Commission that the evidence did not support the charges made against him. Appellant was charged with nonperformance of duty, inefficiency, and failure to maintain discipline. The appeal to the State Board of Education was made on the grounds that the decision was improper because the school system had not carried the burden of proof in supporting the charges in view of the findings made by the Professional Practices Commission. The Local Board argues that its decision should be affirmed because the Professional

Practices Commission grossly abused its discretion in not finding that the burden of proof was carried by the school system, and that the Local Board is vested with the sole authority for hearing and determining local controversies. The Hearing Officer recommends that the decision of the Local Board should be reversed.

## PART II

### FINDINGS OF FACT

Appellant was given written notice on April 13, 1978 that the Local Board had voted at its regular April 11, 1978 meeting not to renew Appellant's contract. The notice did not contain any information regarding any rights of appeal that existed for Appellant. On May 20, 1978, Appellant requested the Local Board to reconsider its April 13, 1978 decision and also asked for a hearing and a statement of the charges against him if the Local Board did not reverse its April 13, 1978 decision. The Local Board, at its regular meeting on June 13, 1978, voted to sustain its previous decision. Appellant was notified on June 27, 1978 of the Local Board's decision and was given a list of the charges against him together with a list of the witnesses who would testify in support of the charges. A hearing was scheduled for July 13, 1978, but Appellant then requested a hearing before the Professional Practices Commission. The Local Board gave its approval on July 11, 1978 for a tribunal

from the professional Practices Commission to be convened. On July 31, 1978, a hearing was convened before the Professional Practices Commission tribunal. The Professional Practices Commission issued its report on August 30, 1978. The Local Board met on September 20, 1978 and voted not to renew Appellant's contract. The Local Board did not give any reasons for its action of not accepting the recommendation of the Professional Practices Commission.

The Professional Practices Commission found that Appellant had been employed for less than three years, but the Local Board had adopted policies which granted all of the due process rights of a tenured teacher under the Fair Dismissal Law (Ga. Code Ann. §32-2101c et seq.) to all personnel hired by the Local Board. The Professional Practices Commission, therefore, found that Appellant had a right to a hearing, notice of the charges, and a list of the witnesses to be called by the School System.

Appellant was given five reasons for the nonrenewal of his contract. The five reasons were:

1. Poor management in layout and construction of a playground.
2. Unsatisfactory building and campus maintenance.
3. Failure to maintain proper supervision of the playground.
4. Failure to maintain the school food program and the purchases journal on the proper forms.
5. Failure to maintain classroom discipline.

The Professional Practices Commission found that Appellant had not misused any funds in the construction of the playground equipment and that the equipment had been constructed at reasonable costs and in a manner which permitted it to serve its purpose. The evidence also showed that the buildings and campus were satisfactorily maintained. The Professional Practices Commission found specifically that Appellant provided supervision of the playground during the times that children were playing during the school day and there was no evidence that Appellant did not handle parental complaints promptly and effectively. The Commission also found that the evidence did not support the contention that Appellant failed to support a classroom teacher by administering punishment and discipline when appropriate.

The Professional Practices Commission found that Appellant was responsible for the proper accounting of school nutrition program records and that he allowed the secretaries to maintain the records in the manner they had been trained in by previous administrations by former principals [who, the record shows, were the assistant superintendent and the superintendent making the charges] or school secretaries. The records at one of the schools were not maintained in accordance with the requirements of the Department of Education. The Professional Practices Commission also pointed out that the Superintendent was aware of the manner in which the records were kept and did

not call to Appellant's attention any discrepancies that existed in the accounting and bookkeeping practices.

The Professional Practices Commission concluded that the Local School System had not carried the burden of proof with respect to all of the charges except the charge concerning the accounting records. They concluded that Appellant had

"failed to supervise adequately and in accordance with board policy and Department of Education requirements certain [sic] forms for the accounting of lunchroom funds and. . . neglected to keep totally accurate financial records but that such failure does not constitute inefficiency or nonperformance of duties to the extent that respondent's contract should not be renewed."

### PART III

#### CONCLUSIONS OF LAW

The principal issue in this case is whether the Local Board could decide not to renew Appellant's contract when the Professional Practices Commission found that the evidence did not support the charges. Appellant argues that the Local Board is bound by the findings of the Professional Practices Commission. The Local Board argues that the Professional Practices Commission abused its discretion in finding that the burden of proof had not been carried by the school system. Also, the Local Board argues that the Professional Practices Commission is not the trier

of fact, but only affords the employee a due process hearing and a recommendation for the local board with the local board being the ultimate trier of fact.

In Poland v. Cook County Board of Education, Case No. 1977-4, the local board of education rejected the recommendation of the Professional Practices Commission that the teacher not be dismissed. The State Board of Education determined that the Professional Practices Commission had made findings of fact which would support the local board's decision to dismiss the teacher. If there is a difference in the recommendation made by the Professional Practices Commission and the decision of a local board, the decision of the local board controls if it is supported by the findings made by the Professional Practices Commission. Where, however, the findings of the Professional Practices Commission do not support the decision of the local board, the decision of the local board cannot stand. Beard v. Laurens County Board of Education, Case No. 1977-14.

The Professional Practices Commission sits as the trier of fact when it is asked by a local board of education to hear a case. As the trier of fact, the Professional Practices Commission is required to submit its findings of fact and recommendations based on the findings. Ga. Code Ann. §32-2101c(f). The local board of education is free to accept or reject the recommendation, but it is bound by

the findings made by the Professional Practices Commission if there is any evidence to support such findings.

There is nothing in the record which indicates why the Local Board made its decision not to renew Appellant's contract. The basis for the Local Board's decision is left entirely to speculation --- Appellant can only guess why his contract was not renewed and the State Board of Education must also guess what was the basis for the decision. Appellant is placed in the situation of having had the benefit of a hearing by the Professional Practices Commission, but the results of the hearing have been totally disregarded so that he has not, in effect, had a hearing. The decision reached by the Local Board could have been reached on the basis of information or reasons that were totally arbitrary and capricious.

The only findings that were of a derogatory nature in this case were that Appellant did not maintain the records for the school lunch program on forms provided by the State Department of Education. Instead, he used a method that had been instituted by the superintendent and the assistant superintendent when they were serving in the capacity of principal. The superintendent was aware of the method being used by Appellant but he did not ask Appellant to change or give Appellant any counselling or in any way indicate to Appellant that the method of keeping records was abhorrent.



The burden of proof in an employee dismissal case is placed on the local board of education. Ga. Code Ann. §32-2101c(e). In the instant case, the State Board of Education is faced with the situation of having findings of fact made by the Professional Practices Commission that the evidence does not support the charges made by the superintendent and of having a decision by the Local Board which is unsupported by any findings made by either the Local Board or the Professional Practices Commission. Since the findings of the Professional Practices Commission do not support the decision of the Local Board, the Hearing Officer concludes that the State Board of Education should reverse the decision of the Local Board.

#### PART IV

#### RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the arguments and briefs of counsel, the Hearing Officer is of the opinion that the decision of the Local Board is arbitrary and capricious and was made without any foundation of fact. The Hearing Officer, therefore, recommends that the State Board of Education reverse the decision of the Twiggs County Board of Education not to renew Appellant's contract for the 1978-79 school term.

*L. O. Buckland*  
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L. O. BUCKLAND  
Hearing Officer