

STATE BOARD OF EDUCATION

STATE OF GEORGIA

FANNIE BYRDSOON,

Appellant,

vs.

DOUGHERTY COUNTY BOARD OF
EDUCATION,

Appellee.

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CASE NO. 1979-9

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 recommendation of the Hearing Officer is not accepted on the grounds that there was evidence to support the decision of the Dougherty County Board of Education, and

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

Mrs. Huseman, Mrs. Oberdorfer, and Messrs. McClung and Hendricks dissented.

This 11th day of October, 1979.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

OCT 5 1979

STATE BOARD OF EDUCATION
STATE OF GEORGIA

FANNIE BYRDSONG,	:	CASE NO. 1979-9
	:	
Appellant,	:	
	:	
vs.	:	
	:	
DOUGHERTY COUNTY BOARD OF	:	REPORT OF
EDUCATION,	:	HEARING OFFICER
	:	
Appellee.	:	

PART I
SUMMARY OF APPEAL

This is an appeal by Fannie Byrdsong (hereinafter "Appellant") from a decision by the Dougherty County Board of Education (hereinafter "Local Board") to dismiss her for conduct unbecoming a teacher. The appeal is based on the insufficiency of the evidence and an attack on the constitutionality of the dismissal. The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II
FINDINGS OF FACT

On January 3, 1979, Appellant was sent a letter which notified her that she was suspended from her

teaching duties pending a hearing by the Local Board to be held on January 12, 1979. The reason for the suspension and the hearing was because she had been charged with aggravated assault in a shooting incident that occurred on the night of December 30, 1978. The hearing was held on April 13, 1979 at which time the Local Board voted to dismiss Appellant. The Local Board did not make any findings of fact.

The transcript and evidence establish that Appellant had been employed by the Local Board for ten (10) years. Following the death of her husband in 1974, she obtained a license to carry a pistol. On the night of December 30, 1979, during a period when school was not in session, she stopped at a lounge, described as a reputable establishment with pleasing decorum and a quiet atmosphere, to visit with the owners who were friends of hers. She had one cocktail and began to leave by the side door approximately forty minutes after her arrival. As she walked out the door, another woman struck her from behind with sufficient force to knock her from the top of a set of three or four steps to the ground at the base of the steps. Appellant landed on her back and struck her head so that she did not have any clear recollection of what subsequently happened except to recall that she was frightened and became hysterical after the incident. Other witnesses testified that Appellant fired her pistol at

the woman who struck her as the woman advanced toward her. The bullet missed the assailant and struck the cheek and ear of another patron who was exiting through the side door.

Appellant was criminally charged with aggravated assault and carrying a deadly weapon into an establishment at which alcoholic beverages are sold for consumption on the premises. A jury trial found Appellant to be innocent of the aggravated assault charge, but guilty of carrying a deadly weapon into an establishment where alcohol was sold for consumption on the premises.

The superintendent testified that he suspended Appellant because she had been charged with aggravated assault. The Local Board did not have any rules or regulations which prohibited teachers from going into establishments where alcohol was served, nor did it have any regulations which denied teachers the right to carry duly licensed pistols. There was no evidence presented that Appellant's actions adversely affected her ability to teach. There was no evidence presented which attempted to establish any relationship between Appellant's actions and her ability to carry on her teaching duties. Appellant presented witnesses who testified that she was a competent, capable teacher and enjoyed a good reputation in the school system and in her neighborhood.

PART III
CONCLUSIONS OF LAW

Ga. Code Ann. §32-2101c permits a local board to dismiss a teacher for "any other good and sufficient cause." In the instant case, however, the Hearing Officer concludes that there was no basis for the Local Board's decision to dismiss Appellant.

The issue in this case is whether, with the evidence presented, the Local Board could determine that Appellant engaged in conduct unbecoming a teacher. The evidence shows that she entered an establishment which served alcoholic beverages. The evidence also shows that she dazedly fired a pistol in defense after having suffered a blow from behind, delivered by an unknown person, which threw her into the air so that she was thrown to the ground where she struck her head and back upon landing.

Since the Local Board did not make any findings of fact or any conclusions, it is necessary to speculate what was the basis for discharging Appellant. The Local Board may have dismissed Appellant because she carried a pistol into an establishment where alcohol was sold for consumption on the premises, or it may have dismissed her for firing a pistol. However, the relationship between either of these two actions, and Appellant's ability to

be an effective teacher was never shown and there was no attempt made to establish such a relationship.

The courts in Georgia have had little opportunity to examine the circumstances under which a teacher can be dismissed for conduct unbecoming a teacher. There are, however, decisions from other jurisdictions and federal decisions which provide some fundamental guidelines. For example, in Lodwick v. Hendricks, CA# C74-1529A (N.D. Ga., Sept. 16, 1975), the court held that the State Board of Education had to establish a rational basis for denying a teaching certificate to an applicant who had refused induction into the armed forces. The trial judge stated in his order:

"Due process of law would be a hollow principle if a hearing were given where all of the evidence favored a finding that the plaintiff was not just a competent, but an outstanding, teacher, that he was well respected by the students, teachers, administration, and community, and that there was no indication that his . . . [criminal activity] had had any adverse effect on anyone, and yet the Board could summarily deny the certificate because of the conviction with absolutely no factual basis for its determination that this renders him unfit to teach." Id. at p. 7.

This statement summarizes the court's determination that there must be some rational relationship between the teacher's actions and the denial of a certificate to teach.

The principle that there has to be some rational relationship established between the conviction and the

denial of a certificate is, in the Hearing Officer's opinion, equally applicable to dismissing a teacher on the basis of a misdemeanor conviction. In a previous case considered by the State Board of Education, Dominy v. Atlanta Public Schools, Case No. 1977-5, the Hearing Officer cited Morrison v. State Board of Educ., 82 Cal. Rptr. 175, 461 P.2d 375 (1969); Pettit v. State Board of Educ., 109 Cal. Rptr. 665, 513 P.2d 889 (1973), and Weissman v. Bd. of Educ., 547 P.2d 1267 (Colo. 1976), and discussed the need for the local board of education to apply some objective criteria in determining if a teacher should be dismissed based upon a criminal conviction. Additionally, it was pointed out that some relationship must be shown between the teacher's conduct and the teacher's ability to function as a teacher, i.e., the conduct must have an adverse effect on the teacher's ability to function. For example, if a teacher received a ticket for a simple traffic violation which resulted from a technical violation of the law, the Hearing Officer is of the opinion there would be no basis for discharging the teacher. If, however, the traffic violation was of such magnitude that the students, the community, and other teachers would lose respect for the teacher to such an extent the teacher could no longer be an effective teacher, and such a relationship was shown, then the

teacher could be discharged. No such relationship or adverse effect has been shown in the instant case.

The Local Board argues that a reasonable man would be justified in concluding that Appellant lost the respect of others by violating the law and using "such poor judgment as to endanger the life of another human being without justification for such action." The uncontroverted evidence, however, established just the opposite. Appellant did not lose the respect of her fellow teachers, immediate supervisors, and neighbors. Additionally, a jury established that there was some apparent justification for her action. If there had been evidence that Appellant had lost the respect of other teachers, her students, and the community, and that her actions were without justification, then the Local Board could have determined that Appellant was no longer an effective teacher. Such evidence would have established the necessary relationship between her actions and her ability to teach.

If the evidence had shown that Appellant provoked the attack, or had engaged in unbecoming conduct in the establishment, or otherwise engaged in conduct which brought discredit to the teaching profession or adversely reflected on the Local School System, and caused her to be unable to effectively carry out her duties as a teacher, then there may have been some basis for dismissal. There

was no evidence, however, to indicate that any of these circumstances existed. On the contrary, it appears Appellant acted in self-defense and did so when she was not in complete control of her actions because of her dazed condition and the fear she was experiencing. The Hearing Officer, therefore, concludes that the Local Board did not establish a legal basis for discharging Appellant.

PART IV

RECOMMENDATION

Based upon the findings and conclusions herein, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion the Local Board did not establish that Appellant's actions have caused her to be ineffective teacher or have any relationship to her teaching duties. The Hearing Officer, therefore, recommends that the decision of the Dougherty County Board of Education to dismiss Appellant be reversed.



L. O. Buckland
Hearing Officer