

STATE BOARD OF EDUCATION

STATE OF GEORGIA

LEE RABON, :
Appellant, :
v. : CASE NO. 1982-7
BRYAN 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 of the Hearing Officer are made the Findings of Fact of the State Board of Education and by reference are incorporated herein; and

DETERMINES AND ORDERS, that there was evidence in the record which supports the charge of "any other good and sufficient cause" due to harrassment of teachers and employees, as found by the Professional Practices Commission tribunal; and

DETERMINES AND ORDERS, that the decision of the Bryan County Board of Education is hereby sustained.

Messrs. Lathem and Foster dissent.

This 12th day of August, 1982.


LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION
STATE OF GEORGIA

Case No. 1982-7

LEE RABON,	:	
	:	
Appellant,	:	CASE NO. 1982-7
	:	
BRYAN COUNTY BOARD OF	:	REPORT OF
EDUCATION,	:	HEARING OFFICER
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is an appeal by Lee Rabon (hereinafter "Appellant") from a decision by the Bryan County Board of Education (hereinafter "Local Board") to terminate his contract as a high school principal. The decision was made on the grounds of incompetency. The appeal is based upon Appellant's contentions that the Local Board was without authority to terminate his contract, that there was no evidence to support the Local Board's decision, and that the Local Board was biased. The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II

FINDINGS OF FACT

Appellant received written notice on February 10, 1982, from the Local Superintendent that the Superintendent would seek to have the Local Board terminate Appellant's

contract as a high school principal. The Superintendent also suspended Appellant from any further duties. The letter outlined that Appellant was charged with incompetency, willful neglect of duties, and other good and sufficient causes because he had made remarks to some teachers that were lewd, crude, sexual in nature and intimidating to the affected teachers. Appellant was subsequently charged with having violated Local Board procedures and with using Local Board property for his own purposes. The Local Board requested the Professional Practices Commission to conduct the hearing on the charges and make recommendations. Appellant was given notice on February 23, 1982 that the hearing would be conducted on March 4, 1982.

The hearing began on March 4, 1982. Appellant charged that the Local Board was biased. The Professional Practices Commission tribunal ruled that it did not have the authority to decide the question of whether a local board was biased and refused to receive any evidence concerning bias.

After the hearing, the Professional Practices Commission tribunal found that Appellant had:

1. Discussed the subject of oral sex with one of the teachers and she had found the discussion to be offensive;
2. Discussed the sexual conduct of some students with another teacher;

3. Asked another teacher if she would like accompany him on a trip to Atlanta;
4. Discussed sex and sex related topics with another teacher so that she felt intimidated by his presence;
5. Asked another teacher what her opinion was of oral sex and thereby offended her;
6. Told another teacher that married men and women will go out on one another.

In addition, the tribunal found that during the four year period in which Appellant had been employed, he had rid the high school of a severe drug problem, had restored discipline in the school, and had worked to acquire accreditation for the school. He instituted planning periods for the teachers and established standards for both the teachers and the students.

The Professional Practices Commission tribunal concluded that Appellant's discussions of sexual and personal matters with some of the teachers was done in an unprofessional manner, and that some of his comments about students and teachers were made unprofessionally. Additionally, the tribunal concluded that Appellant had lost some of his effectiveness as a principal because some of the teachers felt intimidated by his discussions.

There was not any evidence that Appellant had used any Local Board property for his own purposes, and the Superintendent had acquiesced with Appellant's methods and

actions that might have been in conflict with the Local Board's procedures. Appellant had not been given any notice that his conduct was contrary to Local Board policy and his contract had been renewed from year to year even though there was knowledge of how Appellant was following the policies. The Professional Practices Commission tribunal, therefore, concluded that Appellant had not neglected his duties and had not converted any school property to his own uses.

The Professional Practices Commission tribunal recommended that Appellant be given a sixty day suspension without pay. The Local Board, after receiving the recommendation of the Professional Practices Commission tribunal, voted on April 13, 1982, to dismiss Appellant.

PART III

CONCLUSIONS OF LAW

Appellant's appeal to the State Board of Education set forth nine grounds for error in the Local Board's decision. For discussion purposes, the grounds are grouped into three broad areas: (1) there was no competent evidence to support the decision and it was contrary to law and equity; (2) the Local Board was biased and Appellant was not permitted to present any evidence of bias, and (3) the decision was unconstitutional because it violated Appellant's

equal protection rights under the 14th amendment to the United States Constitution and the Georgia Constitution, and it was based upon speech which was protected under the 1st and 4th amendments to the United States Constitution and the Georgia Constitution. Appellant also claims that the discussions he had with the teachers did not reflect on his competency as a principal, and that he did not have a duty to develop "good interpersonal relationships with certain of his teachers" so that such a finding could not be used as the basis for his termination.

Appellant was charged with incompetency because he had used lewd, crude, and vulgar language in front of some of his teachers and some of them felt harassed because he discussed sexual and personal matters with them. The Professional Practices Commission tribunal found that Appellant had discussed the topic of sex with some of the female teachers and had used sexually explicit words in these discussions, e.g., "whore", "lay", "ass", "screw". The Local Board maintained that because the teachers felt intimidated and harassed by Appellant's speech, he had lost his ability to be an effective principal. The Professional Practices Commission tribunal, however, did not find that Appellant had lost his effectiveness as a principal, but had, instead, reduced his competency because his ability

to communicate effectively with certain of the teachers had been impeded.

A teacher or a principal can be terminated for incompetency. Ga. Code Ann. §32-2101c(1), 1982 Code §20-2-940. In reviewing the decision of a local board of education, the State Board of Education sits as an appellate body, and, as such, applies the "any evidence" rule so that if there is any evidence to support the decision of the local board, the State Board of Education is bound to follow it. Ransum v. Chattooga County Bd. of Ed., 144 Ga. App. 783 (1978). In the instant case, the Local Board did not make any findings of fact, and the Professional Practices Commission tribunal did not find that Appellant was incompetent. The question on appeal, therefore, is whether the record contains any evidence that Appellant was incompetent and whether a finding that Appellant's competency had been decreased constitutes sufficient evidence to deem Appellant incompetent.

A review of the record shows that Appellant moved into a school situation where there was a lack of discipline, the students possessed and used drugs in the school, the school was not accredited, the teachers were not teaching in service, and the teachers did not have any planning periods. Appellant instituted discipline within the school,

effectively eliminated the drug problem, determined the requirements for accreditation, worked with the Local Superintendent and the teachers and obtained accreditation, established planning periods for the teachers, and created a situation where education was possible. He was a strong disciplinarian, but he consulted with his teachers about their needs and desires, and fully supported them in their relations with the students. The vast majority of the teachers in the school testified that he was "the best", or "one of the best" principals they had worked with; they felt he was fair in his treatment; he had improved the educational atmosphere of the school, and he appeared to have a good rapport with the students.

In most of the instances where Appellant discussed sex with the teachers, the subject arose in the context of discussing the mores and habits of the students as a group, contrasting them with previous generations, and inquiring what could be done about the changes. The language he used contained slangy, "street", "backroom", or "barroom" words which did not fit in with the cant of the teaching profession. The use of such language, even though some of the teachers found it to be offensive, does not establish that Appellant was incompetent. The fact that some of the teachers felt uneasy, or intimidated, or unable to effectively communicate in Appellant's presence

or with Appellant also does not establish that he was incompetent. If these were the criteria by which principals established competency and retained their positions, then the competency of every principal would be questionable. The relationship of superior/subordinate alone is sufficient to instill feelings of uneasiness, intimidation, and an inability to communicate in the subordinate.

The Hearing Officer, therefore, concludes that there was not any evidence establishing that Appellant was incompetent. As pointed out by the Professional Practices Commission tribunal, Appellant could improve his ability to interact with some of his teachers if he did not use slang language, and if he did not discuss sexual matters with the teachers when their positions did not require such discussions. The need for improvement, however, does not constitute incompetency.

One of the basic tenants of due process is that a hearing be conducted by an impartial body. As was pointed out in the case of Wright, et al. v. Monroe County Bd. of Ed., Case No. 1977-17, local boards of education have the final decision making authority, but the appointment of a disinterested tribunal to hold a hearing and make findings of fact and recommendations removes the problem of bias on the part of the local board because the hearing is conducted by an impartial body. The decision of the local board is

limited to the findings of the tribunal and the options available to the local board are statutorily established. The Hearing Officer, therefore, concludes that Appellant was not denied due process by being unable to present evidence concerning the bias of the Local Board when the hearing was conducted by a disinterested tribunal.

With respect to Appellant's claim that his speech was constitutionally protected, the Hearing Officer notes that the charges brought against Appellant were not made because of the speech he used but were brought because he was charged with losing his effectiveness as a principal. If the charges of incompetency were proven, the Local Board would have had the authority to terminate Appellant's contract even though his speech was constitutionally protected. The Hearing Officer, therefore, concludes that Appellant's contention that the Local Board's decision was unconstitutional would not be sufficient to sustain his appeal.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and the arguments of counsel, the Hearing Officer is of the opinion that there was not any evidence to support the Local Board's decision

to terminate Appellant's contract because of incompetency. The Hearing Officer, therefore, recommends that the decision of the Local Board be reversed.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer