

STATE BOARD OF EDUCATION

STATE OF GEORGIA

MARCUS HOLLEY, :  
Appellant, :  
v. : CASE NO. 1982-16  
SEMINOLE 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,

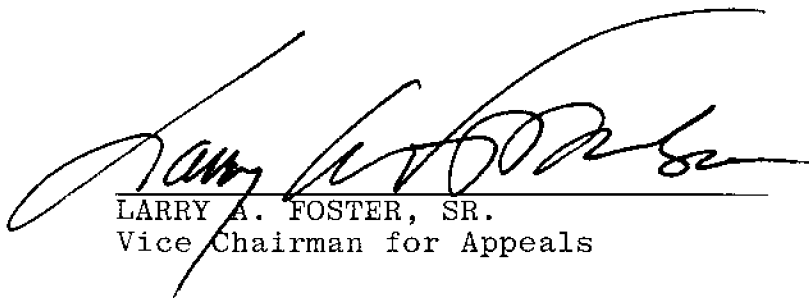
DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

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

Mr. Foster voted no.

Mr. McClung was not present.

This 9th day of December, 1982.

  
LARRY A. FOSTER, SR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

MARCUS HOLLEY,	:	
	:	
Appellant,	:	CASE NO. 1982-16
	:	
vs.	:	
	:	REPORT OF HEARING OFFICER
SEMINOLE COUNTY BOARD	:	
OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is an appeal by Marcus Holley (hereinafter "Appellant") from a decision by the Seminole County Board of Education (hereinafter "Local Board") not to renew his contract as a coach for the 1982-1983 school year. The appeal is based on Appellant's allegations that his due process rights were violated and that he was not given a fair hearing before an impartial tribunal, that the decision was arbitrary and capricious, and that errors were made during the hearing on rulings on the evidence. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II

FINDINGS OF FACT

On April 6, 1982, the Local Superintendent gave Appellant written notice that the Local Superintendent would not recommend renewal of Appellant's contract as a coach for the 1982-1983 school year. On April 21, 1982, Appellant requested the reasons why his contract would not be renewed. The Local Superintendent sent a written notice on May 13, 1982, which set forth the charges and specifications, a list of witnesses, and notice that the hearing would be held on June 3, 1982, before the Local Board.

On June 1, 1982, Appellant moved the Local Board to disqualify itself on the grounds that it had prejudged the case, that some of the members of the Local Board had made statements indicating prejudgment of the case, and the Local Board was not a neutral and impartial tribunal. He also moved to have a disinterested member of the State Bar serve as a hearing examiner rather than the Local Board attorney serving as the hearing examiner. Before the hearing began, both of these motions were denied.

The charges against Appellant were that he (1) was incompetent; (2) was insubordinate; (3) willfully neglected his duties; (4) was immoral, and (5) other good and sufficient causes. The hearing before the Local Board was held on June 3, 1982. The

Local Board found that all of the charges, except immorality, were supported by the evidence. Specifically, the Local Board found that Appellant had left the school campus without authority or permission after he had been warned not to leave, that he had attended coaching clinics without permission, that he had arranged to have other coaches teach his classes and he frequently failed to attend and teach two physical education classes and the general business classes which he had been assigned. In addition, the Local Board found that on several occasions, Appellant failed to appear for lunchroom duty. The Local Board also found that Appellant used abusive, obscene and profane language in the presence of and directed towards the players who were on his teams. The Local Board also found that Appellant threatened some students by telling them that if they did not play football, they would fail his and other classes. Based upon its findings, the Local Board voted not to renew Appellant's contract. Appellant filed a notice of appeal with the Local Superintendent on July 2, 1982.

### PART III

#### CONCLUSIONS OF LAW

Appellant appealed the decision of the Local Board on the grounds (1) the evidence did not support the decision of the Local Board; (2) he was denied due process because he was denied

an opportunity to question the Local Board members concerning any bias; (3) he was denied due process because he was not given any notice that his actions were unacceptable to the administration, and (4) he was denied due process because he was not given a meaningful opportunity to be heard in that the Local Board hired a replacement for him before the hearing. The Local Board maintains that Appellant did not have any right to question the Local Board members concerning their bias, that the hiring of a replacement did not deny Appellant an opportunity to a meaningful hearing, and Appellant was given notice concerning his actions. Additionally, the Local Board argues that the evidence supported the decision.

Appellant argues he was denied due process because he was not permitted to question the Local Board members concerning their bias in the case. This argument is based upon the requirement that in civil cases, a party has a right to examine the individual jurors, and failure to permit such examination is presumed to be harmful and reversible error. Appellant then argues that the same rule of law and policy is applicable in hearings on the nonrenewal of a teacher's contract because of the provisions of Ga. Code Ann. §32-2101c(e).

Ga. Code Ann. §32-2101c(e) provided, in part, that:

"Except as otherwise provided in this subsection, the same rules governing nonjury trials in the superior court shall prevail."

This section does not provide for the questioning of local board members. Instead, it specifically limits itself to non-jury trials in the superior courts so that there could not be an questioning of jurors. A local board sits in the same capacity as a judge sitting without a jury, and there are not any provisions which permit the examination of a judge in order to determine if the judge is biased. The Hearing Officer, therefore, concludes that Appellant was not denied due process because he was unable to question the individual members of the Local Board.

Appellant also argues that he was denied due process because he did not obtain a "meaningful hearing" since the Local Board hired a replacement before the hearing was conducted. Appellant's argument is based upon the decision in the case of Bhargave v. Cloer, 355 F. Supp. 1143 (1972), where the court held that the teacher had been denied due process when a local board hired another teacher to replace the fired teacher and the harm sought to be prevented by the hearing had already taken place. The Georgia Supreme Court, however, has considered this issue in the case of Owen v. Long County Bd. of Ed., 245 Ga. 647 (1980). Appellant argues that the Owen case overlooks the constitutional requirements pointed out by the Bhargave case and cannot, therefore be considered precedent for the instant case. A review of the Owen case, however, indicates that the

same issues were before the Supreme Court and it decided that the hiring of another teacher did not constitute a denial of due process. As pointed out by the Local Board, the hiring of another teacher would only mean that the Local Board would have to make some reassignments in the event Appellant was successful on appeal. The Hearing Officer, therefore, concludes that Appellant was not denied due process because the Local Board hired another teacher before the hearing.

Appellant argues that the evidence presented at the hearing did not support the charges and that the charges do not show insubordination, incompetency, or willful neglect of duties. In support of this argument, Appellant points out that (1) he has been swearing for seventeen years and nothing was said before; (2) the rearrangement of class schedules was in place for four years without anything being said; (3) the trips made from the campus were for school business and the conduct of his duties as athletic director, and (4) his absences from his general business class were justified and did not result in any problems or discipline measures. He also points out that several witnesses testified that they had not heard him swearing maliciously or in abuse of any of the players. The State Board of Education, however, follows the rule that if there is any evidence to support the decision of the local board, then the local board's decision will not be overturned on review. Antone v. Greene


Cnty. Bd. of Ed., Case No. 1976-11. In the instant case, there was evidence that Appellant threatened students with failure if they did not continue to play football. In addition, the charges against Appellant were that he left the campus without permission. The fact that he was conducting school business, therefore, goes only to mitigation and does not negate the evidence that Appellant left the campus without notifying the administrative office. The Hearing Officer, therefore, concludes that there was evidence before the Local Board which supported its decision.

#### PART IV

#### RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that Appellant was not denied due process, and that there was evidence before the Local Board which supports the decision of the Local Board. The Hearing Officer, therefore, recommends that the decision of the Local Board be sustained.

Appearances: For Appellant - Black & Black, Eugene C. Black, Jr.; James David Dunham; For Local Board - Harben & Hartley, Sam Harben; Phillip L. Hartley.

  
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L. O. BUCKLAND  
Hearing Officer