STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROBERTA WALTON,	)	
Appellant,	)	
v.	)	CASE NO. 1985-13
UPSON 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 Upson County Board of Education herein appealed from is hereby SUSTAINED.

This 10th day of October, 1985.

Mr. Temples was not present.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

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	)	
Appellant,	)	
	)	CASE NO. 1985-13
v.	)	
	)	
UPSON COUNTY BOARD OF EDUCATION,	)	
	)	REPORT OF STATE
Appellee.	)	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Roberta Walton (hereinafter "Appellant") from a decision of the Upson County Board of Education (hereinafter "Local Board") not to renew Appellant's contract for the 1985-86 school year. Appellant was charged with incompetence, willful neglect of duties, failure to follow instructions, inability or unwillingness to discuss problems, and failing to speak clearly in the classroom. Appellant contends on appeal that she was denied due process because she was not furnished a copy of the charges within fourteen (14) days, the evidence presented did not support the charges, and the Local Board erred in failing to make findings of fact and conclusions of law. The Local Board contends there is no evidence in the record to support the contention that Appellant was not served a copy of the charges within fourteen (14) days, Appellant failed to raise this issue before the Local Board and, therefore, cannot raise it on appeal and thus the due process argument should be dismissed. The Local Board also

contends the evidence was sufficient to support the decision and the Local Board is not required to make findings of fact and conclusions of law. The Hearing Officer recommends the decision of the Local Board be sustained.

PART II

FACTUAL BACKGROUND

Appellant has been a teacher for the Local Board continuously for the past thirty years. She was notified by letter dated April 15, 1983 that she was reelected for the 1983-84 school year with reservations by her principal and that she should discuss these reservations with her principal. She was notified by letter of April 12, 1984 that she, again, was reelected with reservations and that she would not be reelected again unless the deficiencies outlined to her were corrected, again referencing Appellant to her principal for details. By letter of March 29, 1985, Appellant was informed she was not to be retained for the 1985-86 school year. By letter dated April 4, 1985, Appellant requested that she be provided the rights guaranteed under O.C.G.A. §20-2-942. The Local Board responded by letter dated April 25, 1985 listing the reasons for non-renewal as incompetence, willful neglect of duties, failure to follow instructions, inability or unwillingness to discuss problems, and failing, after numerous requests, to speak clearly in the classroom.

The hearing requested by Appellant was held May 7, 1985. At that hearing, testimony was presented by the principal that

the teacher was deficient in 1983 in that she lacked initiative and enthusiasm, she needed improvement in meeting individual student's needs, she did not use the library as much as she should, she had trouble in organization and preparation, and she was not receptive to his comments. He further testified that he discussed these deficiencies with Appellant and that she was not receptive to his comments. He recommended her with reservations for the 1983-84 school year and she did not improve during that year. He again discussed her deficiencies with her and she again was not receptive to his comments. He again recommended her with reservations for the 1984-85 school year. At the end of that year, he found very little improvement, if any, in her performance. A letter with numerous errors which was written by Appellant to attach to her evaluation was also introduced into evidence.

The Superintendent's Administrative Assistant also observed Appellant teaching and testified at the hearing that she had only involved one-half of her class in the activity she observed and that she noticed some poor pronunciation.

The Assistant Principal and Media Specialist (the same individual carries both titles) testified at the hearing that Appellant failed to use the library facilities regularly, did not complete the lesson plans the way they were supposed to be completed, did not have individual conferences with her students as she was supposed to have, submitted some of her lesson plans late, and was not a competent teacher.

At the close of the meeting, the Local Board issued its decision not to renew Appellant's contract. Appellant subsequently moved for the Local Board to reconsider its decision and at the same time appealed the decision. The Local Board attorney notified Appellant's counsel that a motion for reconsideration was not applicable or procedurally proper and the Local Superintendent forwarded this appeal to the State Board of Education.

PART III

DISCUSSION

Appellant first contends on appeal that she was denied due process because she was not served with a charging letter within fourteen (14) days of her service of request to implement the procedures set forth in O.C.G.A. §20-2-940. The record reflects that her letter requesting the charges was dated April 4, 1985 and the letter of the school board providing the charges was dated April 25, 1985. Appellant relies on the dates on the letters and argues that the Local Board failed to meet the requirements set forth in O.C.G.A. §20-2-942 that the charging letter be furnished within fourteen days of service of Appellant's request. Her argument is that because the Board did not prove service of the charging letter within fourteen days the decision of the State Board of Education in Byrd v. Taylor Cnty. Bd. of Ed., 1983-24, is controlling and requires the automatic renewal of Appellant's contract.

The Local Board contends that Appellant failed to raise the issue of whether the notice was served within 14 days before the Local Board and, thus, should be estopped from raising that issue on appeal. This argument is based upon the jurisdictional requirement that, if an issue has not been heard and decided by the county board, then it cannot be raised on appeal (see, Boney v. County Bd. of Ed., 203 Ga. 152 (1947); Owen v. Long Cnty. Bd. of Ed., 245 Ga. 647 (1980); Sharpley v. Hall Cnty. Bd. of Ed., 251 Ga. 54 (1983) and the principle that "a party cannot during trial ignore what he thinks to be error, or injustice, take his chances on a favorable verdict, and complain later." Keno v. Alside, Inc., 148 Ga. App. 549.

The record does not reflect that Appellant raised the issue of failure to comply with the 14 day timelines at the hearing before the Local Board and, accordingly, Appellant's argument in this respect does not warrant reversal. At the hearing, Appellant's attorney stated that he did reserve objection to the information contained in the statutory notice. In her brief on appeal, Appellant contends she did not waive any objections to proof of the date of the receipt of notice. However, it is not sufficient to state that objections were not waived or that objections were reserved. In order for the Local Board to be aware that an issue exists to be heard, that issue must be specifically raised before the Local Board and, thus, any objections must be stated. The Local Board must be given an opportunity to

make a decision on the issue and the Local Superintendent must be given an opportunity to present evidence and defend the issue. The need for an opportunity to defend is evident especially in the instant case because Appellant's claim that a timely response was not provided is one which was not defended against by the school administration. While the letter requesting the charges is dated more than fourteen days prior to the date on the letter providing notice of the charges, as the Local Board argues, there is no evidence as to whether the Local Board received the letter requesting notice of the charges prior to 14 days of the date Appellant received notice of the charges. No showing has been made as to actual receipt or any use of certified mail to provide constructive receipt. In Byrd, it was clear that Byrd specifically raised, both before and during the hearing, the issue of whether his contract was renewed because of the failure of the Local Board to comply with the 14 day requirement. That is not the situation in this case.

Appellant's second contention is that the evidence presented did not support the charges. Appellant contends that there was no evidence of incompetency that showed she was unable to teach the children or work with teachers. She contends the evidence of willful neglect of duty was de minimus because she was never more than two minutes late, her tardiness totaled only 13 minutes for the entire year, she had good attendance and missed only one-half day the entire year, and she did not turn in her lesson

plans excessively late. She contends that more than a scintilla of evidence is required and that such did not exist in the record.

The Local Board contends there was sufficient evidence before them from which a conclusion could be reached that Appellant was guilty of the charges. Much of the testimony presented with regard to incompetence was opinion testimony by the Principal and Assistant Principal/Media Specialist. These witnesses stated their own opinions without objection and, thus, their opinions were admissible as evidence. Additionally, it is unlikely that any objections to these witnesses stating their opinions would have prevailed as the witnesses were well qualified and could testify as experts in the field of education. Appellant admits that there was evidence of tardiness, even though she characterized it as de minimus. The Local Board contends that, under the any evidence standard of review, that admission itself is sufficient. Finally, the Local Board contends that Appellant proved her own incompetence by writing a letter full of grammatical errors and in her testimony regarding that letter.

The State Board of Education is required to affirm the decision of the Local Board if there is any evidence to support that decision and there is no clear abuse of the Local Board's discretion. See, Ransum v. Chattooga Cnty Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty Bd. of Ed., Case No. 1976-11.

In this case, there is evidence from which the Local Board could conclude Appellant was incompetent and willfully neglected her duties. The witnesses for the Local Board testified that Appellant was deficient in initiative and enthusiasm, she needed improvement in meeting individual needs and did not improve from 1983 to 1985, that she did not use the library sufficiently, had trouble in organization and preparation, and was not receptive to comments from her principal regarding her performance. While these statements constitute opinions, they were admitted and are evidence from which the Local Board could find Appellant was incompetent. Similarly, there was testimony regarding Appellant's failure to turn in her lesson plans on time. While the evidence presented in this respect was minimal, it still constitutes some evidence from which the Local Board could contend Appellant willfully neglected her duties. Because there was evidence to support the charges of incompetence and willful neglect of duties, it is unnecessary to consider whether there was evidence to support the charges which would come under the statutory charge of any other good and sufficient cause.

Appellant's third contention on appeal is that the decision of the Local Board should be reversed because the Local Board failed to make findings of fact and conclusions of law. Appellant contends that this requirement is mandatory under O.C.G.A. §20-2-940(e)(4) which states that, in hearings under that section, the same rules governing nonjury trials in the superior court

shall prevail. In all nonjury trials before the Superior Court, the Court is required to make findings of fact and conclusions of law under O.C.G.A. §9-11-52. Thus, Appellant argues the Local Board should be reversed for failure to comply with those code sections.

While findings of fact and conclusions of law would assist the reviewer of a case, the State Board of Education has addressed this issue numerous times and decided the issue against Appellant's interest. See, Kelson v. The Board of Public Education For The City Of Savannah And The County of Chatham, Case No. 1982-15. The issue has also been raised with the Courts. See, Ransum, supra. Thus, the failure of the Local Board to make findings of fact and conclusions of law does not warrant reversal in the instant case.

PART IV

RECOMMENDATION

Based upon the foregoing, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that the Appellant is estopped from raising the issue of notice of the charges within 14 days, that there was evidence before the Local Board from which the Local Board was authorized to make a decision to nonrenew Appellant, and the Local Board was not required to make findings of fact and conclusions of law. The Hearing Officer, therefore, recommends the decision of the Local Board be

SUSTAINED.

L. O. Buckland

L. O. BUCKLAND
STATE HEARING OFFICER