STATE BOARD OF EDUCATION

STATE OF GEORGIA

RONALD PETERSON,	:	
	:	
Appellant,	:	**CASE NO. 1990-29**
	:	
v.	:	
	:	**DECISION**
BROOKS COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

Ronald Peterson ("Appellant") appeals from a decision by the Brooks County Board of Education ("Local Board") not to renew his contract as a principal of the Brooks County High School because of insubordination, willful neglect of duties, and incompetence. Appellant claims that he was denied due process because he was unable to cross-examine witnesses. We reverse the Local Board's decision.

Appellant was employed by the Local Board in 1977 as a principal in the Brooks County High School. From 1977 through 1984, Appellant served without any problems. In 1984, Appellant voiced some interest in running for the position of superintendent, but decided against running. The present superintendent, John Horton, ran and was elected. In 1988, Appellant ran against Mr. Horton for the position of superintendent, but lost.

In March, 1990, Mr. Horton informed Appellant that he would not recommend renewal of Appellant's contract. Appellant requested a listing of charges and a hearing. The Local Superintendent responded by charging Appellant with insubordination, willful neglect of duties, incompetence, and other good and sufficient causes, followed by seventeen specific charges that went back to incidents that occurred in 1986. The Local Board requested a tribunal from the Professional Practices Commission ("PPC") to hear the charges.

The PPC Tribunal limited Appellant to ten hours to present his case and to cross-examine the witnesses called by the Local Superintendent. Before the hearing began, Appellant filed a motion objecting to the limitation on his time to present his defense and conduct cross-examination, but his motion was overruled by the PPC's hearing officer. During the course of the hearing, after the Local Superintendent had presented his case in chief, Appellant sought to recall the Local Superintendent for cross-examination because the Local Board's counsel introduced the issue of racial bias concerning discipline into the hearing during his cross-examination of Appellant's first witness. The PPC hearing officer denied Appellant the opportunity to call the Local Superintendent for cross-examination. Several witnesses later, the PPC hearing officer reversed his decision and told Appellant that he could call the Local Superintendent for cross-examination, but the cross-examination would have to be limited to the racial innuendos and the lunch room program, but it could not encompass any other areas that arose during the cross-examination. Appellant objected to the limitation and declined to conduct the cross-examination under the restrictions imposed.

O.C.G.A. § 20-2-940(e) (4) provides that:

> ... the burden of proof shall be on the school system, and it shall have the right to open and to conclude. Except as otherwise provided in this subsection, the same rules governing nonjury trials in the superior court shall prevail.

O.C.G.A. § 24-9-81 provides, in part:

> ... in the trial of all civil cases, either plaintiff or defendant shall be permitted to make the opposite party, or anyone for whose immediate benefit the action is prosecuted or defended, or any agent of said party ... a witness, with the privilege of subjecting such witness to a thorough and sifting examination and with the further privilege of impeachment, as if the witness had testified in his own behalf and were being cross-examined.

A party has the right to call an adverse party for the purpose of cross-examination. See, Atlanta Joint Terminals v. Knight, 98 Ga. App. 482, 106 S.E.2d 417 (1958). While no Georgia cases have been cited by the parties, and none have been found, that directly address the question of

whether an adverse party can be cross-examined if the adverse party has already been cross-examined, it appears that the rule is that a defendant has the right to call a plaintiff for cross-examination even if the plaintiff has previously testified and been cross-examined during the plaintiff's case in chief. See, Loftin v. Morgenstern, 60 So.2d 732 (Fla.).

The Local Board argues that no error was committed, but if it was committed, then Appellant waived his rights when he later refused to cross-examine the Local Superintendent. Although the hearing officer subsequently reversed his ruling regarding cross-examination of the Local Superintendent, he placed severe limitations upon the cross-examination that inhibited Appellant's right to a thorough and sifting examination. Based upon the manner in which the Local Superintendent answered questions, Appellant objected to the limitations, but elected to forego the cross-examination because of the possibility of the Local Superintendent injecting other issues into the case that Appellant would be unable to cross-examine upon. Appellant, therefore, did not waive his right to cross-examine the Local Superintendent.

The right to a thorough and sifting cross-examination is a fundamental right that goes to the heart of due process of law. In view of the paucity of the evidence against Appellant, it cannot be said that the hearing officer's ruling limiting the cross-examination was harmless error. We, therefore, conclude that the PPC hearing officer abused his discretion in initially denying Appellant the right to cross-examine the Local Superintendent, and then in limiting the scope of Appellant's cross-examination.

Of the 17 charges brought against Appellant, the PPC Tribunal dismissed eight because no credible evidence was presented to support them. Of the remaining nine charges, the PPC Tribunal found Appellant either insubordinate or willfully neglected his duties or was incompetent with respect to five of the charges. Of these five charges, three related to incidents that occurred in 1986 or before the 1989-1990 contract was renewed. Evidence of incidents that occurred before a contract renewal can be presented for the purpose of establishing a course of

conduct, but such incidents cannot be used to recommend against renewal in a subsequent year. Since Appellant's contract was renewed since these three incidents occurred, they cannot be used as a basis for non-renewal in 1990. There were, therefore, only two incidents that occurred during the 1989-1990 school year upon which Appellant's contract could be non-renewed.

The PPC Tribunal found that Appellant willfully neglected his duties or was incompetent because he failed to properly maintain long distance telephone logs at the school. In September, 1988, the Local Superintendent issued a directive that the principals were responsible for the proper maintenance of the long distance telephone logs at their respective schools. The local calling area is very restricted so that substantially all of the calls made from the high school are long distance telephone calls. Approximately 340 long distance called appeared on the bill submitted into evidence. The telephone system in place at the high school permitted long distance calls to be made from only three telephones that were located in the administrative offices of the high school. Appellant directed the high school receptionist to complete the telephone log for each long distance telephone call that was made. At the end of each month, the telephone logs were sent to the Local Superintendent's office, where the telephone bill was also received. In May, 1989, the Local Superintendent sent Appellant a copy of the April, 1989 telephone bill and the April, 1989 telephone log and ordered Appellant to complete the log because there were many telephone calls that were not on the log. Immediately after being notified about the problem, Appellant had a lock placed on the telephones that apparently eliminated the problem of unlogged telephone calls. Appellant, however, was unable to determine the purpose of many of the telephone calls and was unable to complete the telephone log.

In Terry v. Houston County Bd. of Education, 178 Ga. App. 296 (1986), the Court of Appeals held that a teacher was not guilty of willful neglect of duty unless there was a flagrant act or omission, or an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct rather than simple negligence. Appellant's situation falls into the category of

simple negligence at worst. If Appellant had been made aware of a problem and failed to take any action, then it could be said that he willfully neglected his duties. Here, however, there was evidence of unlogged telephone calls for one month and no evidence that Appellant was aware or should have been aware of the problem. Immediately upon learning about the unlogged calls, Appellant took corrective action and resolved the problem. Appellant, therefore, did not willfully neglect his duties, nor was he incompetent, because the telephone calls were not logged properly for one month. Additionally, Appellant did not willfully neglect his duties nor was he incompetent because he was unable to determine the purpose of the calls.

The PPC Tribunal also found that Appellant was insubordinate because he did not correctly institute the use of student identification cards in the school lunch program at the beginning of the 1989-1990 school year. The school system had instituted a policy of requiring all students to have identification cards to present to the lunchroom personnel to account for the free and reduced lunch program. The Brooks County High School did not use the identification cards. Instead, the lunchroom personnel checked the names of the students on a list as they came through the line.

"In order to constitute insubordination, some intent to disregard the orders of a superior must be shown on the part of the person who is alleged to be insubordinate. Mere negligence or error does not constitute insubordination. Likewise, violation of the orders of a superior based upon a legitimate misunderstanding of the nature of the orders does not constitute insubordination." West v. Habersham Cnty. Bd. of Ed., Case No. 1986-53 (St. Bd. of Ed., 1987). The PPC Tribunal did not make any findings that can be interpreted as showing that Appellant intended to disregard any orders of the Local Superintendent concerning the reduced and free lunch program. The testimony showed that the Brooks County School System used a roster system to identify the children on the reduced and free lunch program until the fall of 1989. In the fall of 1989, instructions were issued that an identification card system would be used. The identification card system was instituted at the Brooks County High School, but the roster system

was also used in order to prevent students from going through the lunch line more than once. When students failed to bring their identification card, their names were checked on the roster. Control of the program was the responsibility of one of the assistant principals. There was no evidence presented that Appellant was given instructions to discontinue use of the dual system. Appellant felt that the dual system satisfied the requirements. There was no evidence that even the assistant principal in charge of the program was informed that the dual system was unacceptable until an audit was completed in January, 1990. We, therefore, conclude that there was no evidence to show that Appellant was insubordinate with regard to the use of student identification cards and there was no evidence of incompetency.

Based upon the foregoing, the State Board of Education is of the opinion that Appellant was denied due process because his right to cross-examination was impaired and there was no evidence to show that Appellant was insubordinate with regard to the use of student identification cards and there was no evidence of incompetency.

The local board's decision, therefore, is

REVERSED.

This 13th day of December, 1990.

Larry A. Foster
Vice Chairman For Appeals

IN THE SUPERIOR COURT OF BROOKS COUNTY

STATE OF GEORGIA

BROOKS COUNTY BOARD	∫	
OF EDUCATION,	∫	
	∫	CIVIL ACTION
APPELLANT	∫	
	∫	FILE NO. 91-CV-43
VS.	∫	
	∫	
RONALD PETERSON,	∫	
	∫	
APPELLEE	∫	

ORDER AND JUDGMENT

The Appellee, Ronald Peterson (hereinafter referred to as Peterson), was hired as Principal of Brooks County High School in 1977, by then Superintendent James H. Wells and the Appellant, Brooks County Board of Education (hereinafter referred to as Brooks). In 1984, the current superintendent, John Horton (hereinafter referred to as Horton), was elected. Peterson was recommended by the Superintendent for rehiring every year front 1977 until the school year 1990-1991. On or about December 19, 1989, Horton verbally informed Peterson that he would recommend to Brooks that Peterson's contract not be renewed. Horton provided Peterson with a list of charges in a letter dated May 4, 1990. Peterson objected to the adequacy of the notice and requested further specificity in a letter dated June 19, 1990. Further specifics were set forth in a letter dated July 13, 1990. The matter was referred to the Professional Practices Commission as a dismissal action brought pursuant to the Georgia Fair Dismissal Act. O.C.G.A. § 20-2-940 at seq. A tribunal was properly constituted and a hearing was held on July 23-24, 1990. The tribunal found that notice and other preliminary matters were adequately complied with and proceeded to the merits of the case. The tribunal also found, perhaps as the core of this entire case, that " . . . neither extreme view [a…to the position taken by Horton and Paterson] is accurate…neither of the men have exhibited much of an ability or willingness to get along with the other . . ." (Professional Practices Commission Opinion, page 7) and " …[t]he faculty and administration of Brooks County High School, as well as the School System over-all, is divided into factions which neither side of the controversy has been able or willing to unite.' (Professional Practices Commission Opinion, page 14).

After discussion of the various issues at some length, the tribunal found that Peterson was, in at least three instances, insubordinate to Horton, as contemplated under the provisions of O.C.G.A. § 20-2-940(a)(2). The tribunal further found that Peterson was willfully neglectful of his duties as contemplated under the provisions of O.C.G.A. § 20-2-940(a)(3). And, finally, the tribunal found that to " ... the extent, that these failures established Peterson as incapable of. performing his work satisfactorily they also constitute incompetence . . ." as contemplated under the provisions of O.C.G.A. § 20-2-940(a)(1). The tribunal then made a unanimous recommendation that Peterson's contract not be renewed for the school year 1990-91.

From this decision, Peterson appealed to the State Board of Education. The State Board of Education reversed the decision of the tribunal, holding that certain of the incidents occurred before renewal of Peterson's contact for the school year 1989-1990 and could not, therefore, be considered, and further holding that, because of a. "paucity" of evidence against Peterson, cross examination of Horton was improperly limited.

Prom the decision of the State Board, Brooks appeals to the Superior Court of Brooks County. The matter was brought on for hearing, and argument was submitted by Brooks and Peterson, and the record has been considered by the Court.

The right of a thorough and sifting cross-examination belongs to every party to a case as to the witnesses called against him. O.C.G.A. § 24-9-64; § 24-9-81. But the right is not unlimited, and the scope of cross-examination is within the sound discretion of the trial court. Anderson v. State, 165 Ga. App. 222 885 (1985); Scott v. State, 178 Ga. App. 222 (1986). The discretion of the trial court or tribunal will not be disturbed unless it has been manifestly abused, Thomas v. Clark, 188 Ga. App. 606 (1988). And recross-examination is not, strictly speaking, allowed for the purpose of introducing new matter. Goodrum v. State, 158 Ga. App., 602 (1981). In the case before the court, the hearing officer and tribunal served the function of a trial court, and there was no abuse of discretion insofar as re-cross-examination of Horton was concerned, since Peterson. was afforded an appropriate opportunity to, and in fact did, extensively cross-examine Horton initially.

Evidence in a case is, of course, limited to relevant matters. As a general rule, conduct in other, or earlier, transactions is not admissible, unless the nature of the situation makes such conduct relevant. O.C.G.A. § 24-2-2. Questions of insubordination, neglect of duties, or incompetence will, in many instances, involve more than one transaction and in such a case, evidence of other transactions or conduct will be admissable, since evidence may be admitted to show scheme, course of conduct, or bent of mind. O.C.G.A. § 24-3-2; Deckner-Willingham Lumber Co. v. Turner, 171 Ga. 240 (1930); Tapley v. Youmans, 95 Ga. App. 161, 175 (1957); Barnes v. State, 157 Ga. App. 582, 583-584 (1981). The tribunal was, therefore, entitled to receive evidence pertaining to transactions between Horton and Peterson during the time framework prior to the school year 1989-1990, insofar as it might tend to show course of conduct, plan or bent of mind on. the part of Peterson; the weight to be given such evidence was a matter to be decided by the tribunal.

Local authorities have a compelling interest and a broad discretion in the management of school affairs, and the ability to discharge personnel when deemed necessary to the proper

functioning of the schools is essential to the exercise of authority over the system, provided the local authorities do not act arbitrarily. Terry v. Houston County Board of Education, 176 Ga. App. 296 (1986). A tenured employee of a school system who is faced with non-renewal of his contract may require that non-renewal be based upon reasons provided by law and he may invoke the rights to hearing and appeal. O.C.GA. §20-2-940 et seq.; O.C.G.A. § 20-2-1160; Ellis-Adams v. Whitfield County Board of Education 182 Ga. App. 463 (1987). In. the event of an appeal from the local board or tribunal of the Professional Practices Commission, neither the state board nor the superior court may consider the matter de novo, and the review by the state board and superior court is confined to the record. O.C.G.A. § 20-2-1160(a). The state board and the superior court are required to apply the "any evidence" rule to the decision of the local board or tribunal, since both the state board and the superior court sit as appellate bodies, Ransum v. Chattooga County Board of Education, 144 Ga. App. 783 (1978).

This court cannot, and it does not, make an independent judgment upon the strength of evidence produced at the tribunal hearing; likewise, the state board may not make an independent judgment upon the strength of the evidence produced at the tribunal hearing.

This, court does find, however, that upon proper application of substantive law and the rules of evidence, there exists evidence to support the findings and the decision of the hearing tribunal of the Professional Practice commission dated August 23, 1990. Having found that there existed evidence to support the decision, this court is bound to affirm it. Ransum v. Chattooga County Board of Education, 144 Ga. App. 783 (1978).

Accordingly, the decision of the State Board of Education, dated December 13, 1990, is reversed.

This 2nd day of August, 1991.

H. Arthur McLane, Judge
Superior Courts
Southern Judicial Circuit