STATE BOARD OF EDUCATION

STATE OF GEORGIA

THOMAS KING,	)	
	)	
Appellant,	)	**CASE NO. 1991-3**
	)	
v.	)	**DECISION**
ATLANTA CITY	)	
BOARD OF EDUCATION	)	
Appellee.	)	

PART I

SUMMARY

This is an appeal by Thomas King ("Appellant") from a decision by the Atlanta City Board of Education ("Local Board") to terminate his contract as a teacher because of insubordination and other good and sufficient causes. O.C.G.A. § 20-2-940(a)(2) and (a)(8). Appellant claims that there was no evidence of insubordination and his conduct did not warrant dismissal for other good and sufficient causes. Additionally, Appellant claims that the Local Board improperly terminated his contract because he was given a new contract for the 1990-1991 school year. The decision of the Local Board is SUSTAINED.

PART II

FACTUAL BACKGROUND

Appellant has been employed by the Local Board as an electrical instructor at Atlanta Area Tech since July 31, 1986. On January 18, 1990, Appellant's car was broken into when he stopped at a store to purchase a baseball bat for another teacher while on his way to school. Appellant was delayed with the police and was late in getting to school. When he arrived at the school, he went to the central administrative office to report his tardiness to the director. He

carried the baseball bat with him. When he arrived, he walked into the director's office, but the director's office was empty. Two administrators and a secretary sat in an outer office area. Appellant walked over to the director's administrative assistant and asked about the director. The assistant said that the director was out of town. Appellant said, "Damn", or "God damn."

A secretary, who was standing at her desk three or four steps from where Appellant was standing, told Appellant not to swear in the office. Appellant stepped to the edge of the secretary's desk and said, "Woman, I say any God damn thing I want, you don't tell me what to say."

The secretary became frightened when Appellant approached her because of his physical size and because he was carrying the baseball bat. She went behind her desk and again told Appellant not to swear in the office. Appellant swore again and told the secretary that she could not tell him what to say. The secretary said that she was going to call the police. Appellant told her to do anything she wanted to do and that the police would find him at his office. He then left the administration office and returned to his office. The secretary contacted the police and signed a warrant against Appellant.

The assistant director investigated the incident. He then told Appellant to report to the Local Board's personnel office. Appellant said that he did not have any transportation. The assistant director told Appellant that he would take him to the personnel office, but Appellant would have to find his own way back. Appellant said that he was not going to go to the personnel office. The assistant director then wrote a memo to Appellant that directed Appellant to appear at the personnel office that day, but Appellant did not go that day. The next day, when he had transportation, Appellant drove to the personnel office and reported to the Assistant Superintendent for Personnel.

The director was told about the incident upon her return. She then wrote a letter to the Local Superintendent and recommended Appellant's dismissal. On January 22, 1990, the Local Superintendent wrote a letter to Appellant to inform him that the Local Superintendent was going to recommend Appellant's dismissal to the Local Board, and that if Appellant wanted to have a hearing concerning the matter, the hearing would be held on January 31, 1990.

On January 29, 1990, Appellant requested a continuance because the notice of the hearing was not granted at least ten days before the hearing. The continuance was granted and Appellant was placed into a non-pay status.

On April 9, 1990, the Local Superintendent issued a contract of employment for the 1990-1991 school year to Appellant with a letter that asked him to return it within ten days if he accepted the contract. On April 11, 1990, the Local Superintendent sent a letter to Appellant that informed him that the hearing originally scheduled for January 31, 1990 would be held on April 19, 1990. Appellant signed the new contract and returned it on April 16, 1990. On April 18, 1990, Appellant requested a continuance of the April 19, 1990 hearing because he had the flu. The continuance was granted on April 18, 1990.

A hearing was conducted on October 16, 1990 before four members of the Local Board sitting as a tribunal. In addition to the evidence recited above, there was testimony that other employees had used profane language in the administrative offices and they had not been disciplined. There was also evidence that Appellant received a letter from the Assistant Superintendent, Personnel Division, dated April 19, 1990, that said his 1990-1991 contract had been erroneously issued and if the Local Board decided to continue his employment he would be issued a new contract at that time.

The tribunal found that Appellant had been insubordinate and had conducted himself in an unprofessional manner. The tribunal also found that the 1990-1991 contract was issued in error and was a mistake that did not create any employment rights for Appellant and did not constitute any waiver of Appellant's conduct. The tribunal recommended that the Local Board should terminate Appellant's contract. The Local Board then voted to terminate Appellant's contract. Appellant made a timely appeal to the State Board of Education.

PART III

DISCUSSION

Appellant maintains on appeal that the evidence presented did not support the findings made by the hearing tribunal, that he was improperly dismissed for exercising his free speech rights under the first amendment to the Constitution of the United States, that the initial notice of a hearing was improper so that all subsequent proceedings are null and void, and that because the Local Board granted him a new contract for the 1990-1991 school year it cannot now dismiss him because of an incident that occurred during his 1989-1990 contract.

The Local Board argues that the 1990-1991 contract was issued in error. The Local Board also contends that there was evidence presented to show that Appellant was insubordinate and conducted himself in an unprofessional manner. The Local Board maintains that Appellant was given ten days' notice of the initial hearing, and if he was not, then there was no harm done because the hearing was continued. Finally, the Local Board maintains that Appellant was not dismissed because of the exercise of any free speech rights.

The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion, or the decision is so arbitrary and capricious as to be illegal. See, Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v.

Greene County Bd. of Educ., Case No. 1976-11. There was testimony provided to the tribunal that Appellant swore in a loud and angry voice and approached the secretary in a threatening manner even though he never raised the baseball bat or made any threatening move except to move to the secretary's desk. Although there was testimony to the contrary, the tribunal, as the trier of fact, could accept the testimony of the secretary and the Local Board could conclude that Appellant had threatened another employee.

Appellant also argues that he cannot be disciplined for swearing when other employees were not disciplined for swearing. If the Local Board had terminated Appellant solely because of his speech, then Appellant's argument would be valid. The tribunal, however, found that Appellant had menaced and threatened the secretary by his actions. The tribunal and the Local Board could conclude that the act of threatening another employee constituted unprofessional conduct that would warrant dismissal for other good and sufficient causes.

Appellant also argues that the initial notice of his termination was faulty because it was issued only nine days before a hearing was scheduled. The Local Board argues that the notice was given ten days before the hearing, and that no harm occurred because the hearing was postponed.

O.C.G.A. § 20-2-940(b) requires that written notice of charges has to be given to a teacher "at least ten days before the date set for hearing". O.C.G.A. § 1-3-1(d) (3) provides that when a statute prescribes that the discharge of any duty must be accomplished within a certain number of the days, the first day is not counted but the last day is counted. In this case, the notice was dated January 22, 1990 and the hearing was initially scheduled for January 31, 1990. Under the rule set out in O.C.G.A. § 1-3-1(d) (3), only nine days separate the notice date and the hearing date. The hearing date was postponed when Appellant requested his ten-day notice period. Thus, even though the initial notice was not issued ten days before the scheduled hearing

date, Appellant did not suffer any harm because the hearing was postponed. The State Board of Education concludes that the insufficient notice period was a harmless procedural error that did not nullify the subsequent proceedings.

Appellant argues that because the Local Superintendent issued a contract to him on April 9, 1990, which he accepted on April 16, 1990, he cannot be terminated for actions that occurred while he was under the 1989-1990 contract. He points out that the new contract states that it supersedes any prior written or oral contracts or agreements between the parties, that the Local Superintendent had the authority to issue the contract, and the contract is valid even if issued in error because there is no ambiguous language in the contract that permits an argument of mistake. The Local Board argues that the 1990-1991 contract was issued in error and that Appellant was so notified as soon as the mistake was discovered. The Local Board argues that the initial hearing was delayed at Appellant's request and it should not be responsible for the error of sending Appellant a new contract. Additionally, the local board argues that Appellant was notified that an error had been made before he returned the contract. The local board also argues that the original notice was applicable to any contract between it and Appellant, even if the contract was signed subsequent to the initial notice. The State Board of Education agrees with the local board of education. Although the Appellant was given 9 instead of 10 days, as required by law, the hearing was postponed to satisfy this requirement. Additionally, other delays were granted based on the request of the Appellant.

The notice given to the Appellant, once the hearing was initially reset, satisfied the 10-day notice provisions in accordance with O.C.G.A. § 20-2-940(b). The Appellant had no reason to believe the acts which gave rise to this notice had been forgiven. In fact, the hearing could have been reset before April 15, and thereby avoiding any contractual issues. Instead, the hearing date was reset later than April 15; and, in fact, was reset numerous times at the Appellants request.

Furthermore, the State Board of Education finds no error in the tribunal's conclusion that the 1990-1991 contract was issued in error. The Appellant was notified in a matter of days that the contract had been issued in error. Even assuming that the contract was valid, the notice and charges of the dismissal were carried over to the 1990-1991 contract, especially since the Appellant was still working under the 1989-1990 contract. Therefore, the action taken in accordance with O.C.G.A. §20-2-940 against the Appellant was valid.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the local board of education's decision to terminate Appellant from his teaching position is SUSTAINED.

This 14th day of March, 1991.

Larry A. Foster
Vice Chairman for Appeals