STATE BOARD OF EDUCATION

STATE OF GEORGIA

BRIAN BOWN,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1994-68**
vs.	:	
	:	**DECISION**
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

PART I
SUMMARY

In this appeal, Brian Brown (Appellant) appeals from the decision of the Gwinnett County Board of Education (Local Board) to terminate his teaching contract after finding that he was insubordinate, willfully neglected his duties, encouraged his students to violate the law, and engaged in unprofessional conduct. Appellant claims that he was not given proper notice of the charges, the evidence did not support the charges, and the Local Board was without authority to terminate his contract. The Local Board's decision is sustained.

PART II
BACKGROUND INFORMATION

During the 1994 legislative session, O.C.G.A. § 20-2-1050 was amended to provide for a mandatory "brief period of quiet reflection for not more than 60 seconds" to permit students to have an opportunity to reflect on the coming events of the day. After the law was passed, Appellant wrote to the Local Board and the Local Superintendent and asked several questions concerning how the law would be implemented because of his concern about legal liability in enforcing or not enforcing the law. An assistant superintendent wrote to Appellant and gave him a copy of the administrative guidelines on the law, and told him that his principal would discuss implementation of the law during pre-planning week at the start of the 1994-1995 school year.

At the first faculty meeting where the principal had scheduled a discussion about the moment of silence law, Appellant twice interrupted the principal and asked about the moment of silence. On both occasions, the principal told Appellant that they would discuss the law at the time set out in the meeting agenda. At the conclusion of the principal's second response,

Appellant walked out of the meeting and failed to hear the principal's explanation of the implementation of the moment of silence law.

After walking out of the faculty meeting, Appellant went to the administrative office area and began complaining to some of the staff present. Appellant said he was going to sue the school system for $10 million dollars and would then not have to worry about working.

The next day, Appellant's principal met with him to discuss his concerns. Appellant's only concern was what would happen to him if he decided not to observe the moment of silence law. Appellant's principal explained that the teacher would not have to do anything but remain quiet during the moment of silence because the moment would be conducted by the principal over the intercom.

At another faculty meeting on the last day of pre-planning, Appellant again interrupted the principal and asked to discuss the moment of silence law, and again walked out of the faculty meeting when the principal said she would discuss the law later in the meeting.

On the first day of school, the principal conducted the moment of silence over the intercom at the beginning of the school day. The principal learned that Appellant did not observe the moment of silence, but instead began teaching when the principal announced that the moment of silence would begin. The principal informed the Local Superintendent of Appellant's actions. The Local Superintendent directed Appellant and the principal to come to his office for a meeting that afternoon.

During the meeting with the Local Superintendent and Appellant's principal, Appellant admitted that he did not observe the moment of silence. The Local Superintendent told Appellant that the school system expected him to follow the rules and that he did not have to do anything but let his students observe the moment of silence. He then asked Appellant if Appellant would observe the moment the next day. Appellant asked for some time to consider his response. The Local Superintendent then directed Appellant to meet with the principal at 7:30 a.m. the next morning to discuss whether he would comply.

The next morning, Appellant failed to appear for the meeting at 7:30 a.m. Instead, he arrived at approximately 7:45 a.m., walked to the principal's office, and said, "The answer is no." With that, Appellant walked out of the principal's office and left the school building without making any arrangements for his class to be covered, and without having a syllabus available.

Upon learning that Appellant had abandoned his class, the Local Superintendent suspended Appellant and recommended termination of Appellant's contract. The Local Superintendent gave Appellant written notice of the suspension and recommendation on August 23, 1994. The Local Superintendent charged that Appellant was insubordinate, willfully neglected his duties, incited his students to disobey the law, and engaged in unprofessional conduct. The Local Superintendent also provided Appellant with a list of charges and witnesses available. Appellant requested a hearing under the provisions of O.C.G.A. § 20-2-940 and asked for additional specifications in the charges. The Local Superintendent provided additional information concerning the charges on September 2, 1994, and on September 14, 1994.

On September 21 and 22, 1994, the Local Board conducted a hearing on the charges. At the beginning of the hearing, Appellant asked to voir dire the Local Board members and the hearing officer denied the request. At the conclusion of the hearing, the Local Board found that Appellant had been insubordinate, willfully neglected his duties, and had engaged in unprofessional conduct. The Local Board accepted the Local Superintendent's recommendation and voted to dismiss Appellant.

Appellant then appealed to the State Board of Education in a timely fashion. Additionally, Appellant filed suit in the United States District Court to challenge the constitutionality of O.C.G.A. § 20-2-1050. Upon motion of the parties, the State Board of Education granted a stay pending a decision by the United States District Court on the constitutionality of the statute. On July 31, 1995, United States District Court Judge Hull ruled that O.C.G.A. § 20-2-1050 was constitutional.

PART III
DISCUSSION

On appeal, Appellant claims that (1) the notice of charges was inadequate, (2) the School System denied him due process because it did not provide him with all exculpatory information, (3) the Local Board exceeded its authority by holding the hearing before the United States District Court ruled on the constitutionality of O.C.G.A. § 20-2-1050, (4) the Local Board improperly considered charges contained in the subsequent letters issued by the Local Superintendent to ampli1~~ the original charge letter, (5) the hearing officer improperly denied voir dire of the Local Board members, (6) he was denied due process because he did not receive notice of the charges **at** least 10 days before the hearing, and *(7)* the evidence did not support the Local Board's decision.

Appellant's first ground for error is that the notice of charges issued by the Local Superintendent was inadequate. Appellant claims that the notice of charges did not provide him with a concise statement of the expected testimony of each witness, and the factual allegations were not matched to specific charges. O.C.G.A. § 20-2-940(b) requires a notice that states the cause for discharge in sufficient detail to enable the employee to show any error, and a list of the witnesses and a concise summary of the evidence to be used.

Appellant claims, for example, that the notice did not identify how he interfered with the faculty meeting, or give the substance of the principal's remarks **at** the faculty meeting, or list all the people who were at the faculty meeting, or state what was said at the meeting of the Local Superintendent, Appellant, and Appellant's principal. O.C.G.A. § 20-2-940(b) does not require such detail. Instead, the notice has to contain a concise summary of the evidence sufficient to permit an employee to present a defense. As argued by the Local Board, the notice has to provide an employee with the essential elements of who, what, when, and where. *See, Dowling v. Atlanta Bd. of Educ.,* Case No. 1993-14 (Ga. SBE, July 8, 1993). The charge letter and supplements issued in the instant case covered 15 single-spaced typewritten pages, which went far beyond the concise summary contemplated by the law. Appellant has failed to show where any information was withheld that affected his ability to defend against the charges. The State Board of Education

concludes that the notice of charges was adequate.

Appellant next claims that the Local Board erred because he was not provided all the exculpatory information he requested. Specifically, Appellant claims that he was not given information that the Local Superintendent attempted to accommodate Appellant's desire not to participate in the moment of silence, or that Appellant was the subject of some joking by other teachers. The information requested by Appellant was not exculpatory and was not required to be disclosed by the Local Superintendent. The issue of whether the Local Superintendent attempted to accommodate Appellant was raised by Appellant in his cross-examination of the witnesses and was not part of the charges made by the Local Superintendent. The State Board of Education, therefore, concludes that the Local Superintendent did not fail to provide Appellant with all the information required.

Appellant next claims that the Local Board erred by holding the hearing before the United States District Court reached a decision on the constitutionality of O.C.G.A. § 20-2-1050 because the Local Board did not have the authority to decide

on the constitutionality of the statute. The Local Board, however, had the authority to proceed under the assumption that the statute was constitutional. While Appellant has attempted to frame this case as one involving his objection to the constitutionality of the moment of silence statute, the case does not involve the constitutionality of O.C.GA. § 20-2-1050. Instead, the main issue is whether Appellant was insubordinate when he failed to attend a meeting he was directed to attend by the Local Superintendent, and whether he willfully neglected his duties by leaving school without making arrangements for his students. Appellant's actions did not involve the constitutionality of the statute. Instead, they involved the ordinary administration of an orderly school system. Thus, even if the statute had been found unconstitutional, Appellant's actions would serve as the basis for finding that he was insubordinate and willfully neglected his duties. The State Board of Education, therefore, concludes that the Local Board did not commit any error by conducting the hearing before the courts made a decision about the constitutionality of O.C.G.A. § 20-2-1050.

Appellant also claims that the Local Board improperly considered charges that were not contained in the original charge letter but were contained in the subsequent letters. The record, however, does not support Appellant's claim. For example, Appellant claims that he was not informed about any disruption at any faculty or preplanning meetings. In the original charge letter, the Local Superintendent wrote, 'During faculty meetings prior to students' [sic] reporting to school, you walked out when the principal began discussing how the moment of silence state law would be implemented." Appellant claims evidence was presented that he was insubordinate to an assistant principal during the pre-planning week, but the original charge letter did not contain such a charge. The evidence was admitted without any objection, and the Local Board did not use such evidence as the basis for its decision. If, therefore, there was any error in presenting such evidence, it was a harmless error.

Appellant also claims that the original letter did not charge him with failure to have a course syllabus available for his students. The record, however, shows that the Local Superintendent wrote, "You did not seek approval for a personal day; you did not tell the principal you were leaving; you did not report to your class for instruction; you made no arrangements for your students' instructional day; you abandoned your job." Appellant, therefore, was notified that he had not made arrangements for the instruction of his students. This was sufficient notice to permit Appellant to show that he had made some arrangement for his students, such as having a syllabus or lesson plan available. The State Board of Education concludes that the Local Superintendent did not rely upon any charges made in the subsequent letters that were not set forth in the original charge letter.

Appellant next claims that the hearing officer improperly denied him an opportunity to voir dire the Local Board members about their views concerning school prayer, whether they had been influenced by any of the media coverage, and whether they were prejudiced because their attorney was presenting the case for the Local Superintendent. At the beginning of the hearing, the hearing officer asked the Local Board members whether they had heard, read, or seen anything, or had any prejudgment about the case, that would prevent them from giving a fair and impartial decision based upon the evidence presented during the hearing. All of the Local Board members answered in the negative. In *Holley v. Seminole County School Dist.,* 755 F.2d 1492, 1498 (11th Cir., 1985), the Court stated that due process does not require voir dire of individual board members. Similarly, in *Garrett v. Atkinson Cnty. Bd. of Educ.,* Case No. 1980-21 (Ga. SBE, Nov. 13, 1980), the State Board of Education stated that a board of education is not subject to voir dire examination. Appellant did not make any offer of proof that any of the Local Board members was biased. The State Board of Education, therefore, concludes that the hearing officer did not commit error by denying Appellant an opportunity to voir dire the Local Board members.

Appellant claims he was denied due process because he did not receive all of the charges at least 10 days before the hearing. This claim is based on Appellant's argument that additional charges were made in the Superintendent's September 14, 1994, letter. Since we have concluded that additional charges were not made in the subsequent letters, the State Board of Education concludes that Appellant was not denied due process because of any failure to receive notice at least 10 days before the hearing.

Appellant's final claim is that the evidence presented did not support the charges. Specifically, Appellant claims there was no evidence that he incited his students to disobey the law, and the remaining charges are insufficient to warrant termination of his contract, i.e., his failure to attend a meeting with his principal and his failure to make provisions for his students does not warrant dismissal. Appellant's arguments go to the sufficiency of the evidence and whether the Local Board has the authority to dismiss him.

"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, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.,* Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)."

Roderick J. v. Hart Cnty. Bd. of Educ., Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). There was evidence, and Appellant admits, that he did not attend the meeting with his principal at 7:30 a.m., as directed by the Superintendent. The record shows that Appellant left the campus without any reason and without making any provision for a substitute teacher to cover his class. These actions are sufficient to establish insubordination and willful neglect of duty. Under the provisions of O.C.G.A. § 20-2-940 *et seq.,* the Local Board has the authority to dismiss a teacher for insubordination or willful neglect of duty. The State Board of Education, therefore, concludes that there was sufficient evidence to sustain the Local Board's decision.

PART IV
DECISION

Based upon the foregoing, it is the opinion of the State Board of Education that Appellant received proper notice, the evidence supported the charges, and the Local Board acted within its authority. The Local Board's decision, therefore, is
SUSTAINED.

This 12th day of March, 1995.

Ms. Braswell, Mrs. King, Mr. Sessoms and Dr. Thomas were not present. The seat for the Tenth District is vacant.

Robert M. Brinson
Vice Chairman for Appeals