

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ADRIAN HOUSTON,	:	
	:	
Appellant,	:	
	:	CASE NO. 1998-57
vs.	:	
	:	DECISION
ATLANTA CITY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Adrian Houston (Appellant) from a decision by the Atlanta City Board of Education (Local Board) to terminate his teaching contract because of insubordination and willful neglect of duty. Appellant claims that there was no evidence to support the charges, the hearing was improperly conducted, and the Local Board violated the timelines of O.C.G.A. § 20-2-940(f). The decision of the Local Board is sustained.

Appellant was employed by the Local Board for nine years as a fourth grade teacher. Several incidents occurred during the 1997-1998 school year that caused the Local Superintendent to notify Appellant that his teaching contract was terminated based upon charges of insubordination, incompetence, immorality, and willful neglect of duty.

After three days of hearings, a tribunal, appointed by the Local Board, found that Appellant was insubordinate and willfully neglected his duties. In summary, the tribunal found that Appellant was insubordinate because he failed to follow his principal's directive to send report cards home with the students and he failed to follow the principal's directions about how to report his absence from school. In addition, the tribunal found Appellant insubordinate when he took a group of students on an unauthorized after-school outing after his principal told him that such an outing was against Local Board policy. The tribunal found that Appellant willfully neglected his duties because he failed to record grades in his grade book.

At the end of the hearing on August 17, 1998, the parties stipulated that the tribunal could take longer than the statutory time to render its report. The Local Board and the hearing officer submitted affidavits that there was also an agreement that the Local Board would have until October 12, 1998, at its regularly scheduled board meeting, to render its decision. On October 12, 1998, the Local Board issued its decision to adopt the recommendation to terminate Appellant's teaching contract.

Appellant claims that the Local Board's decision was untimely under the provisions of O.C.G.A. § 20-2-940(f) and the decision in *Whisenant v. Douglas Cnty. Bd. of Educ.*, Case No.

1997-52 (Ga. SBE, Mar. 12, 1998). O.C.G.A. § 20-2-940(1) requires a tribunal to file its finding and recommendations with a local **board** within five days after the hearing and a local board is required to make a decision within ten days after it receives a transcript of the hearing. In *Whisenant*, the State Board of Education held that it was a denial of due process when the tribunal issued its findings 37 days after the deadline and the local board issued its decision 27 days after its deadline. In *Whisenant*, the parties had not agreed to any extensions in issuing the recommendation or the local board's decision.

In the instant case, the record reflects that the parties agreed to an extension of time for the tribunal to issue its recommendation. *Whisenant*, therefore, is inapplicable. The record also reflects that there was an off-the-record discussion about when the tribunal would issue its report and when the Local Board would make its decision. Appellant claims that they did not agree on when the Local Board would issue its decision. The hearing officer, whom the parties stipulated was a disinterested member of the state bar, provided an affidavit that states that the parties agreed the Local Board would have until October 12, 1998 to issue its decision. Because of the conflicting claims by Appellant and the Local Board, the State Board of Education will accept the affidavit of the disinterested member of the state bar to establish that the Local Board had until October 12, 1998 to issue its decision. Since the parties agreed and the Local Board issued its decision on October 12, 1998, the Local Board did not deny Appellant any of his due process rights.¹

Appellant next argues that the Local Board's decision to terminate his contract was arbitrary, capricious and retaliatory because he insisted upon a hearing rather than accept a suspension without pay that was offered to him before the hearing process started. Appellant also argues that the hearing officer erred in ruling that the pre-hearing offer of suspension was inadmissible. Appellant argues that the tribunal's recommendation might have been less severe if it had learned about the suspension offer. The Local Board argues that the hearing officer properly excluded the suspension offer because settlement negotiations are never admissible under O.C.G.A. § 34-3-37, which provides that "...admissions or propositions made with a view to a compromise are not proper evidence." The courts, however, have established a distinction between offers of compromise and offers of settlement. An offer of settlement is admissible, while an offer of compromise is inadmissible. *See, e.g., Charter Mortgage Co. v. Ahouse*, 165 Ga. App. 497, 300 S.E.2d 328 (1983). The difference between a compromise and a settlement is that a compromise involves a disputed claim, while a settlement involves an undisputed claim. *Id* Appellant argues that the suspension offer was an admissible settlement offer because no dispute existed since charges had not been filed against him when the offer was made to him.

¹ The Local Board also made an extensive argument that, even in the absence of an agreement, appellant was not denied any due process rights. Arguing that *Whisenant* should not be followed, the Local Board argues that the statutory timelines are directive only and not mandatory, and where government officials act in good faith, without harm to anyone, there is no denial of due process. Since Appellant continued to receive a salary until after the Local Board made its decision, the Local Board argues he was not denied due process.

Even though charges had not been made before Appellant received the offer, the offer itself contained charges that Appellant obviously disputed by requesting a hearing. The Local Board's offer of a suspension if Appellant waived his right to a hearing was, therefore, an offer in compromise of a disputed claim. The State Board of Education, therefore, concludes that the hearing officer did not err in excluding the offer from consideration by the tribunal.

Appellant has not cited any law for the proposition that it is arbitrary and capricious to seek termination after offering a lesser form of discipline when an employee waives a hearing. The very nature of a compromise is for each party to give up something to gain or avoid something. The Local Board was willing to give up termination to avoid the expense of a hearing; Appellant was asked to give up a hearing to gain continued employment. Compromises are encouraged. *See, Benn v. McBride*, 140 Ga. App. 698, 701, 231 S.E.2d 438 (1976)("[O.C.G.A. § 24-3-37] was created to encourage settlements...."). The State Board of Education, therefore, concludes that the Local Board was not arbitrary or capricious in seeking termination after offering a suspension.

During the second day of the hearing, Appellant appeared to have drowsed off and the hearing officer asked him to remain alert. Appellant argues that the hearing officer's comment unduly prejudiced the tribunal against him. Appellant did not raise any objection when the hearing officer made the comment. It is as easy to conclude that the hearing officer was doing Appellant a favor by asking him to remain alert. The State Board of Education, therefore, concludes that the hearing officer's comment did not constitute reversible error.

Appellant next claims that the hearing officer improperly excluded the testimony of a witness who would have testified about problems the witness had with Appellant's principal. The hearing officer ruled that the testimony was irrelevant to Appellant's conduct. Appellant has not cited any law that requires the admission of irrelevant testimony. Since the proffered testimony was unrelated to Appellant's conduct, the State Board of Education concludes that the hearing officer properly excluded the testimony.

Appellant's next claim is that the evidence does not support a finding of insubordination or willful neglect of duty. "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, Ransom v. Chattanooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antoine 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). The tribunal in the instant case listed several incidents that established that Appellant was insubordinate and willfully neglected his duties. Appellant's claim is largely based on his explanations of his conduct and the failure of the tribunal to explicitly find that his testimony was not credible. Since it is the tribunal's duty to weigh the credibility of the witnesses, the tribunal's finding of insubordination and willful neglect of duty implicitly establishes that the tribunal did not find Appellant's testimony entirely credible, or that the tribunal did not think the testimony sufficiently explained the conduct. There is no requirement for a tribunal to make an explicit finding that the testimony of a witness is not credible. The State

Board of Education concludes that there was evidence before the tribunal that supports its findings of insubordination and willful neglect of duty.

Appellant's final claim is that the tribunal used an improper standard or review in deciding the case. Appellant's claim is without any merit. Appellant has extracted a general statement or observation made by the tribunal and attempted to turn it into a standard of review that was used by the tribunal. The Local Board terminated Appellant because of insubordination and willful neglect of duties, for which there was supporting evidence. The State Board of Education concludes that the tribunal did not use an improper standard of review.

Based upon the foregoing, the State Board of Education is of the opinion that there was evidence to support the Local Board's decision to terminate Appellant's teaching contract, and that Appellant was not denied due process during or after the proceedings. Accordingly, the Local Board's decision is
SUSTAINED.

Mr. Larry Thompson and Ms. Willou Smith were not present. The 2nd congressional district is vacant.

This 11th day of February 1999.

Johnny Isakson
Chairman for Appeals