

STATE BOARD OF EDUCATION

STATE OF GEORGIA

HAROLD POLAND,

Appellant,

vs.

COOK COUNTY BOARD OF  
EDUCATION,

Appellee.

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CASE NO. 1977-4

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, attached hereto, and, after a vote in open meeting,

DETERMINES AND ORDERS, that the decision herein of the Cook County Board of Education, be, and is hereby, affirmed.

This 9th day of June, 1977.

  
THOMAS K. VANN, JR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

HAROLD POLAND,	:	CASE NO. 1977-4
	:	
Appellant,	:	
	:	
vs.	:	
	:	
COOK COUNTY BOARD OF	:	REPORT OF
EDUCATION,	:	HEARING OFFICER
	:	
Appellee.	:	

PART I

INTRODUCTION

On January 10, 1977, the Cook County Board of Education (hereinafter Local Board) voted to terminate the contract of Harold Poland (hereinafter Appellant), who had been teaching in the Cook County School System for more than three years. The vote to terminate the contract was made despite findings by the Professional Practices Commission that there was insufficient evidence to terminate Appellant and their recommendation that Appellant be reprimanded for his activities. The Appellant has appealed the decision of the Local Board to the State Board of Education.

## PART II

### FINDINGS OF FACT

On October 4, 1976, the Local Board met and authorized the Cook County Superintendent to refer charges against Appellant to the Professional Practices Commission for hearing and recommendations. The next day Appellant was notified in writing that he was relieved from duty, with pay, pending a hearing before the Professional Practices Commission. A complaint was then filed on October 11, 1976 with the Professional Practices Commission and Appellant was charged with:

1. Threatening a student with physical harm and punishment;
2. Using vulgar and inappropriate teaching techniques;
3. Encouraging students to grow beards in violation of school policy;
4. Setting a bad example by smoking in the classroom;
5. Discussing the fact that he had smoked marijuana with his students;
6. Inappropriately supervising his welding class by regularly leaving the classroom and placing students in physical jeopardy when welding tanks exceeded safe pressure, and

7. Creating and allowing an atmosphere to develop which acted adversely on his effectiveness as a teacher.

Appellant waived a hearing within the required ten (10) days following his suspension and on November 18, 1976, a hearing was held before the Professional Practices Commission. In an order issued on January 3, 1977, the Professional Practices Commission found that there was insufficient evidence to establish cause for termination and recommended that Appellant be reinstated and given a severe reprimand for his conduct.

The Local Board met on January 10, 1977, and, upon motion and without discussion, voted unanimously to terminate Appellant's contract. Appellant was notified in writing on January 11, 1977, that his teaching contract was terminated. Appellant then filed a Motion for Reconsideration with the Local Board on January 25, 1977. On February 1, 1977, Appellant was notified by the Superintendent that the Local Board had met on January 31, 1977, and unanimously denied the Motion for Reconsideration. Appellant then filed this appeal with the State Board of Education through the Superintendent on February 22, 1977. The Local Board filed a motion to dismiss the appeal on the grounds that the appeal was filed late.

The committee of the Professional Practices Commission, presided over by a hearing examiner, conducted a full and complete hearing. Upon conclusion of the hearing, findings of fact and conclusions of law were filed with the Professional Practices Commission by the hearing examiner.

In summary, the hearing examiner found that:

1. Appellant used strong and inappropriate language in disciplining a student, but this did not warrant a finding that Appellant was incompetent or inefficient.
2. Appellant had some loss of efficiency by being insensitive to his students: (1) in making reference to sexual conduct in his welding class; (2) in permitting a discussion concerning premarital sex in his physical science class; (3) in correcting a female student by informing her that she should use the word "burst" and that "bust was what you had under your shirt", and (4) in causing a female student to believe he was making romantic overtures to her when he counselled her that he was concerned about her classroom performance. However, the evidence was insufficient to establish that Appellant was incompetent, inefficient, or immoral.
3. Appellant did not advise students to grow beards in violation of school policy.
4. Appellant did not violate any school policy or regulation by smoking in the welding class he taught.

5. Appellant exercised poor judgment in admitting to his students that he had smoked marijuana approximately 20 years ago, but this did not establish that Appellant was incompetent or immoral.
6. The superintendent failed to carry the burden of proof to establish that Appellant improperly supervised his welding classes.

Based upon his findings, the hearing examiner concluded, as a matter of law, that there was insufficient evidence to terminate Appellant. The Professional Practices Commission concurred with the substantive findings of the hearing examiner, but added that "the Commission. . . cannot condone action or conduct on the part of an educator as recorded in the transcript of the proceedings." The Professional Practices Commission then recommended that the Appellant be reinstated as a teacher on probationary status and given a severe reprimand.

The January 10, 1977 termination vote by the Local Board was made without any discussion by the Board members and without any statement regarding the reasons for rejecting the recommendations of the Professional Practices Commission or the basis for the termination. The Local Board did, however, have before it the transcript of the hearing proceedings and the recommendation of the Professional Practices Commission.

### PART III

#### CONCLUSIONS OF LAW

The central issue in this case is whether a local board of education must adopt the recommendations of a hearing tribunal it convenes when the hearing tribunal finds in favor of a teacher. Ga. Code Ann. §32-2101c(a) simply states that:

"The hearing shall be conducted before the local board of education or said board may designate a tribunal to consist of not less than three nor more than five impartial persons possessing academic expertise to conduct the hearing and submit its findings and recommendations to the board for its decision thereon, or said board may refer said matter for hearing to a tribunal constituted by the Professional Practices Commission."

There is no requirement imposed on a local board of education to adopt the recommendations of the hearing tribunal.

In this case, the hearing examiner found, as a matter of fact, that Appellant used strong and inappropriate language, that he was insensitive to his students, and that he exercised poor judgment. The hearing examiner then concluded that there was insufficient evidence to establish that Appellant was incompetent, ineffecient, or immoral.

Appellant argues that since the hearing examiner concluded that there was insufficient evidence, the Local Board's decision to terminate was an arbitrary, capricious and unreasonable determination. Appellant also argues that termination of the contract at the January 10 meeting without any discussion or the giving of any reasons deprived the proceedings of any element of fairness. Appellant's arguments, however, overlook the fact that the hearing examiner and the Professional Practices Commission found that Appellant committed the alleged acts. Although they concluded that the alleged acts had been committed, the Professional Practices Commission and the hearing examiner determined that the degree of disciplinary action to be taken should be something less than termination.

Appellant has cited the case of Kinsella v. Bd. of Educ., 378 F.Supp. 54 (W.D.N.Y. 1974), a federal district court case, for the proposition that the Local Board had to set out its reasons for reaching a decision adverse to Appellant. While much of the language in the Kinsella decision could be read to support Appellant's position, the case is distinguishable from the facts at hand. In Kinsella, the school board apparently did not have a transcript or findings which could support



disciplinary action. Here, the Local Board had the transcript and findings which could support disciplinary action. As pointed out by the court in a subsequent decision:

"The Kinsella decision mandated changes in the procedures to insure that the Board's decision was based on evidence produced before the hearing panel."  
Kinsella v. Bd. of Educ., 402 F. Supp. 1155, 1160 (W.D.N.Y. 1975).

The Local Board could, with the transcript and the report of the hearing examiner before it, decide the matter differently than the hearing examiner and the Professional Practices Commission. See, Adolph Cours Co. v. FTC, 497 F.2d 1178 (10th Cir. 1974); Greater Boston Television Corp. v. FCC, 444 F.2d 841, 853 (D.C. Cir. 1971).

While it may have been desirable for the Local Board to have set forth its reasons for the termination vote, there was no requirement that this be done. The failure to list the reasons or hold an open discussion at the January 10 meeting did not deprive Appellant of any due process rights. The findings of fact were obtained in a hearing before a fair and impartial tribunal and the Local Board had the power and authority to determine the disciplinary action to be taken under the facts established at the hearing.

PART IV

RECOMMENDATION

Based upon the record, the briefs and arguments of counsel, and the above findings and conclusions, the Hearing Officer hereby concludes that the Cook County Board of Education had sufficient evidence before it to terminate Appellant. The Hearing Officer, therefore, recommends that the decision of the Cook County Board of Education be affirmed.

  
L. O. BUCKLAND  
Hearing Officer