

STATE BOARD OF EDUCATION

STATE OF GEORGIA

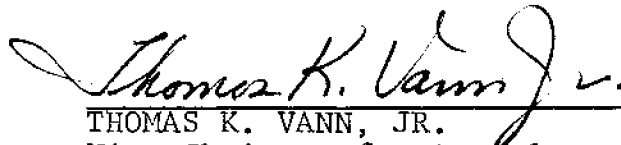
REVEREND EBENEZER WOODS,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 1977-11
	:	
THE ATLANTA BOARD OF	:	
EDUCATION,	:	
	:	
Appellee.	:	

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 Atlanta Board of Education to not renew the teaching contract of Appellant, Reverend Ebenezer Woods, be, and is hereby, affirmed.

This 18<sup>th</sup> day of October, 1977.

  
THOMAS K. VANN, JR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

REVEREND EBENEZER WOODS,	:	
	:	
Appellant,	:	CASE NO. 1977-11
	:	
vs.	:	
	:	
THE ATLANTA BOARD OF	:	REPORT OF
EDUCATION,	:	HEARING OFFICER
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

The teaching contract of Reverend Ebenezer Woods (hereinafter "Appellant") was not renewed for the 1977-78 school year by the Atlanta Board of Education (hereinafter "Local Board") after a hearing tribunal determined that there was evidence of incompetency, wilful neglect of duties and other good and sufficient causes. Appellant appealed to the State Board of Education on the grounds that the evidence was insufficient to support the charges and the hearing tribunal was improperly constituted.

PART II  
FINDINGS OF FACT

On April 13, 1977, the Superintendent notified Appellant in writing that a recommendation was going to be made that Appellant's contract not be renewed for the 1977-78 school year. This was followed by a letter, dated April 29, 1977, which outlined the charges and gave Appellant notice of a hearing to be held on May 17, 1977.

On May 17, 1977, three members of the Local Board heard testimony and received evidence on the charges. This tribunal found that (1) Appellant lacked responsibility in keeping student records and reports related to his classes and himself; (2) Appellant's lesson plans were inadequate and did not follow on a regular basis the form requested by the principal, and (3) Appellant lacked classroom management and had a large number of discipline problems that he brought to the principal's office on a regular basis as a result of his irregular attendance which led to a breakdown of sequential teaching in the classroom.

The hearing tribunal specifically found that:

1. Appellant had been employed by the Local Board for approximately twenty years and was serving as a teacher

of social studies in the Hoke Smith High School. During school years 1975-76 and 1976-77, Appellant missed twenty eight days and twenty seven days, respectively, from school. A number of absences occurred on a Monday or on the first school day following a holiday. Appellant was counselled a number of times about the number of absences.

2. Appellant failed to follow the school procedures of maintaining student folders and lesson plans. Additionally, he did not, as required by the policy set out in the faculty handbook, contact his Department Chairman that he was going to be out for the day. As a result of the absences and the lack of lesson plans, the Department Chairman had to spend a part of his time planning for the class to be offered by a substitute teacher and helping the substitute teacher carry out the teaching responsibilities.

3. Appellant was also frequently tardy for his first period class. It was necessary for the Department Chairman to handle the classes until Appellant arrived. The Department Chairman finally changed Appellant's schedule so that he did not have a first period class.

4. Appellant's deficiencies in classroom management resulted in his referring an excessive number of discipline problems to the office -- twenty-eight cases in the 1976-77 school year. In referring discipline cases to the office, Appellant did not use the proper forms. His students behaved too loosely in the classroom and appeared not to be under proper classroom supervision. Appellant was counselled regarding these teaching deficiencies, but there was no improvement or effort made to correct them.

The hearing tribunal's findings and recommendations were submitted to the Local Board. The Local Board ratified the hearing tribunal, accepted the recommendation, and decided not to renew the Appellant's contract.

Appellant has taken the position that the hearing tribunal made erroneous findings because the testimony at the hearing was not conclusive. For example, Appellant points to the answer of "Occasionally, I couldn't give a definite time on that", given to the question "Is Reverend Woods ever tardy at school?". Appellant maintains that such testimony does not show a consistent pattern of conduct and does not establish good and sufficient cause to non-renew the contract. The evidence regarding the tardiness is indeed scant, but the problem did exist to the

extent that the department chairman changed the class schedule so that Appellant would not have to teach the first period. The trier of fact could conclude that the circumstances indicated that Appellant was tardy more than an excusable number of times. There was substantial evidence that Appellant was consistently absent, that he failed to prepare lesson plans and materials that would enable another teacher to take over his classes. There was also testimony concerning Appellant's ineffectiveness as a classroom teacher.

Appellant testified that he suffered from hypertension and that this was the reason that he was absent so many times. The hearing tribunal did not make a specific finding that Appellant was suffering from hypertension, but Appellant's testimony was not disputed.

### PART III

#### CONCLUSIONS OF LAW

If there is any evidence to support the decision of the local board, the State Board of Education will not disturb that decision in the absence of a showing of an abuse of discretion by the local board. Antone v. Greene

County Bd. of Educ., Case No. 1977-11. In the instant case, as pointed out in the findings of fact, there was evidence that would support the findings of the Local Board. There has also not been any showing that the Local Board abused its discretion in non-renewing Appellant's contract. Appellant was repeatedly counselled about his absences, his classroom management, his lesson plans, and his discipline problems. He was given a notice of non-renewal, a hearing, and an opportunity, through counsel, to respond. The Local Board was authorized under Ga. Code Ann. §32-2104c(b) to non-renew Appellant's contract.

Appellant has argued that the initial proceedings were procedurally defective and the decision of the Local Board should therefore be overturned. This argument is advanced because the hearing tribunal consisted of three members of the Local Board when a hearing tribunal had not been authorized by the Local Board. When the hearing began, there was some apparent confusion whether the case would be heard by the Local Board or by a hearing tribunal. Only three members of the Local Board heard the entire case. They submitted their findings of fact and conclusions of law to the Local Board. The Local Board ratified their sitting as a tribunal, accepted their report, and

concurred in their recommendation that Appellant's contract not be renewed.

Appellant maintains that (1) the hearing tribunal could not sit because it had not been appointed by the Local Board prior to the hearing, and (2) the hearing tribunal was improperly constituted because there was no showing that the three members possessed "academic expertise" as required by Ga. Code Ann. §32-2101c. Neither of these issues, however, was raised at the hearing before the hearing tribunal.

If an objection is not made during a trial, it cannot be raised for the first time on appeal. See, e.g., Vowell v. Carmichael, 235 Ga. 387 (1975). The case of Lackey v. Lackey, 216 Ga. 177 (1960), cited by Appellant, is not applicable in this situation. The Lackey court held that if it was apparent from the record that a judgment had been entered by a court that did not have jurisdiction of the subject matter, the reviewing court could reverse the judgment on its own motion. In the instant case, however, the hearing tribunal had subject matter jurisdiction, Ga. Code Ann. §32-2101c(e), and objections to its composition should have been raised at the time it held the hearing.



Appellant has also taken the position that his contract should not be terminated because he was ill during the year. This however, overlooks the fact that Appellant did not comply with many of the other directives given him. It also does not establish a foundation for determining that the Local Board abused its discretion. The area superintendent, the principal, and the department head counselled Appellant on different occasions without any apparent improvement in the situation. It does not, therefore, appear that the Local Board abused its discretion.

#### 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 Atlanta Board of Education had sufficient evidence before it to non-renew Appellant's contract. The Hearing Officer, therefore, recommends that the decision of the Atlanta Board of Education be affirmed.

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L. O. BUCKLAND  
Hearing Officer