

STATE BOARD OF EDUCATION

STATE OF GEORGIA

LENA BEARD,	:	CASE NO. 1977-14
	:	
Appellant,	:	
	:	
vs.	:	
	:	
LAURENS COUNTY 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, and after a vote in open meeting,

DETERMINES that:

1. The Professional Practices Commission is a duly constituted tribunal authorized to conduct hearings for local boards of education and make findings of fact and recommendations to the local board of education;

2. The basic findings of the Professional Practices Commission are binding on a local board of education, but the determination of whether the findings support the charges is a decision which must be made by the local board of education;

3. There is no requirement for a local board of education to enter its reasons for accepting or rejecting the recommendations of the Professional Practices Commission or other hearing tribunal, nor is there any requirement for the local board of education to hold another hearing if it rejects the recommendations of the Professional Practices Commission or other hearing tribunal;

4. In reviewing the decision of a local board of education, the State Board of Education follows the rule that if there is any evidence to support the local board of education, then the decision of the local board of education will not be disturbed;

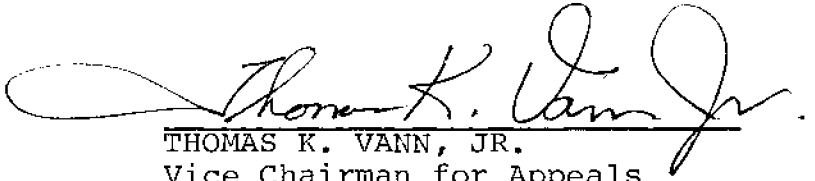
5. In the instant case, the findings of the Professional Practices Commission that Appellant had discipline problems in her classroom and that the testing of the children in Appellant's classroom showed that they did not make any improvement in their achievement ability were sufficient to authorize the Laurens County Board of Education not to renew Appellant's contract.

ACCORDINGLY, IT IS ORDERED, that the August 11, 1977, decision of the Laurens County Board of Education be, and is hereby, affirmed.

Mr. Hendricks, Mr. Vann, Mr. Smith, and Mr. Stembridge voting to affirm. Mr. Whaley, Mrs. Oberdorfer, and

Mrs. Huseman voting to reverse, Mr. McClung and Mr. Kilpatrick were not present.

This 22nd day of March, 1978.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION
STATE OF GEORGIA

LENA BEARD,	:	CASE NO. 1977-14
	:	
Appellant,	:	
	:	
vs.	:	
	:	
LAURENS COUNTY BOARD OF	:	REPORT OF
EDUCATION,	:	HEARING OFFICER
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is the second appearance of this appeal before the State Board of Education. When the appeal was initially submitted, the Laurens County Board of Education (hereinafter "Local Board") did not submit the findings of fact, conclusions, and recommendations of the Professional Practices Commission. In an order dated December 8, 1977, the State Board of Education directed the Local Board to submit the findings of fact, conclusions, and recommendations of the Professional Practices Commission within thirty days or stand reversed. The Local Board has established that the Professional Practices Commission report was timely mailed and received by the State Board of Education.

The Superintendent recommended nonrenewal of the contract of Lena Beard (hereinafter "Appellant") on the grounds of incompetency. The Professional Practices Commission conducted the hearing and determined that the school system had not sustained the burden of proof. The Local Board, nevertheless, decided not to renew Appellant's contract. The appeal alleges that the Local Board exceeded its authority by not renewing the contract when no statutory grounds existed for the nonrenewal; that the Local Board violated Appellant's right of due process, and that the findings of the Professional Practices Commission were binding on the Local Board.

PART II

FINDINGS OF FACT

On August 11, 1977, the Local Board passed a resolution not to renew the contract of Appellant. The minutes of the meeting show that the matter had been referred to the Professional Practices Commission for a hearing and that the hearing was held on June 27, 1977. The Professional Practices Commission had found that the school system had not sustained the burden of proof and recommended renewal of Appellant's contract. The Local Board voted not to renew the contract. This action was taken without holding another hearing or making independent findings.

Appellant had taught for twenty years. She was notified prior to April 15, 1977, that her contract for the 1977-78 school year would not be renewed. After Appellant submitted a request for a hearing, she was notified that her nonrenewal was based on charges that she was incompetent, with three specific charges of poor discipline in the classroom, failure to use teaching materials requested by her, and consistent failure on the part of her students to achieve minimum progress as a class.

The Professional Practices Commission found that Appellant "perhaps has had greater problems in discipline than should be expected", but that "the severity of the problem that exists. . .is not clear. . . ." Additionally, the Professional Practices Commission noted that it had not been established "that closer supervision and qualified guidance. . .would have corrected the problems." The Professional Practices Commission, therefore, concluded that incompetency had not been established by any of the evidence that related to discipline.

With regard to the charge that Appellant did not use teaching aids which she had ordered, the Professional Practices Commission found that the teaching aids did not arrive until after Appellant had concluded the unit of instruction to which the teaching aids pertained. The Commission also found that Appellant did use other teaching

aids during her instruction. It was therefore concluded by the Professional Practices Commission that the failure to use the teaching aids requested did not establish incompetency.

The final specific charge was that Appellant's failure to discipline the students in her classes had resulted in the students' failure to achieve minimum progress in the class. In support of this charge, the school system introduced a chart prepared by the Superintendent which purported to show low achievement by the students in Appellant's classes. The Professional Practices Commission, however, found that the validity of the tests and the comparisons made had not been established. It was therefore found that incompetency had not been established by the results of the test scores.

The Professional Practices Commission observed that Appellant had been counselled during each of the five previous years but she had not made any efforts to obtain assistance or to change her classroom techniques so that she could improve her evaluations and her competency. Because she had not shown initiative in improving her techniques, the Professional Practices Commission expressed concern, but this was not a basis for finding that Appellant was incompetent.

Based upon the findings, the Professional Practices Commission concluded that the school system had

not sustained the burden of proof required to show that Appellant was incompetent. The Commission, however, recommended that the Local Board should continue its observation of Appellant and attempt to aid Appellant by close supervision and independent evaluations and suggestions.

When the Local Board received the report of the Professional Practices Commission, it did not hold another hearing or enter separate findings of fact. The Local Board discussed the report and then voted not to renew Appellant's contract without giving any statement of reasons for its action.

PART III

CONCLUSIONS OF LAW

The standards for determining incompetency are nebulous. At the very least, it requires a showing that the students are not learning as they should. It has been said that whether or not incompetency exists is a question of fact to be determined by the jury, or by the judge sitting without a jury. Compton v. School Directors, 8 Ill. App.2d 243, 131 N.E.2d 544 (1955); see, Anno., 4 A.L.R.3d 1090, 1102. It is not, therefore, a determination that can be made by a reviewing body. If there is any evidence to support a finding of incompetency, then the reviewing body will accept that finding. Conversely, if

the trier of fact determines that incompetency does not exist, then the reviewer must accept that determination, regardless of the evidence that has been presented which the reviewer might believe establishes incompetency, unless it is wholly unsupported by the evidence.

Under the statutory scheme followed in Georgia, a local board of education can request the Professional Practices Commission to sit as the trier of fact whenever a teacher is being dismissed, or a contract not renewed. The Professional Practices Commission is charged with providing the local board of education with its findings and recommendations whenever it conducts a hearing. Ga. Code Ann. §32-2101c. The Professional Practices Commission, therefore, sits as the trier of fact. Based upon the findings of fact, the Professional Practices Commission can make recommendations to a local board of education, but the local board of education does not have to follow the recommendations. See, Poland v. Cook County Bd. of Educ., Case No. 1977-4. Final authority for the disposition of a matter is vested in the local board of education and if the action taken by the local board of education is as permitted by law, and the findings of fact support the local board of education, then the decision of the local board of education will not be disturbed upon review by the State Board of Education.

The Professional Practices Commission could, for example, find that the charges were supported by the evidence and recommend that a teacher be given a letter of reprimand. The local board, however, could reject the recommendation and dismiss the teacher based upon the findings of the Professional Practices Commission. This was the situation in the Poland case.

A sharp line does not exist between a finding of fact and the conclusions to be drawn from the findings of fact. Davis, in his treatise on administrative law, distinguishes basic facts from ultimate facts. 2 Davis, ADMINISTRATIVE LAW TREATISE, §16.06. He goes on to point out that ultimate facts, e.g., the incompetency of a teacher, is usually expressed in terms of the statutory standard and is " 'a conclusion of law or at least a determination of a mixed question of law and fact.' "

A question exists with regard to the weight that must be given to the findings of the Professional Practices Commission. The question revolves around the further question of whether a local board of education is bound by both the basic and ultimate facts as determined by the Professional Practices Commission. If the Professional Practices Commission finds for a teacher, is the local board of education under any obligation to accept the findings of the Professional Practices Commission? If it is determined that the local board of education does not have to follow

the findings of fact of the Professional Practices Commission, then does the Professional Practices Commission simply sit as an information gathering agency with no requirement to make any findings of fact?

In the instant case, the Local Board did not accept the findings of the Professional Practices Commission and did not state any reasons for not accepting the findings. The only findings that exist in the case are those of the Professional Practices Commission that the basic charges were not supported by the evidence.

The burden of proof in a nonrenewal case is placed on the school system. Ga. Code Ann. §32-2101c(e). This same section also provides that "Except as otherwise provided herein, the same rules governing nonjury trials in the superior court shall prevail." Ga. Code Ann. §81A-152 requires that in any action tried without a jury, except for domestic cases, the court must specifically find facts. If the local board does not adopt the findings of the Professional Practices Commission, then it must enter its own findings based upon the record elicited at the hearing.

If a local board does not make any findings, the State Board of Education is placed in the position of determining the lawfulness of the local board's decision when the basic facts found in the case will not support the ultimate fact required for dismissal or nonrenewal. As an alternative, the State Board of Education must pick

through each charge and determine if there is evidence in the record to support basic facts which will permit a finding of the ultimate fact. The judgment of the State Board of Education is therefore substituted for that of the local board of education. See, e.g., Laney v. Holbrook, 150 Fla. 622, 8 So.2d 465 (1942); Morey v. School Bd. of Ind. School Dist., 268 Minn. 110, 128 N.W.2d 302 (1964). Cf. Georgia Real Estate Commission v. Horne, 141 Ga. App. 226 (1977) (requirement for findings under Administrative Procedure Act when harsher sentence imposed). Ga. Code Ann. §§32-910 and 32-2104c, however, place the responsibility for making these decisions with the local board of education. It is, therefore, incumbent upon the local board of education to make separate specific findings when it does not adopt the findings of the Professional Practices Commission.

PART IV

RECOMMENDATION

Based upon the above findings and conclusions, the record and the briefs and oral arguments of counsel, the Hearing Officer is of the opinion that the decision of the Laurens County Board of Education was improper in that the findings of fact made by the Professional Practices Commission establish that the burden of proof was not carried by the

school system. The Hearing Officer, therefore, recommends that the decision of the Laurens County Board of Education be reversed.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer