

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ALLEAN GARRETT,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 1980-21
	:	
ATKINSON 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, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that, a board of education is not subject to voir dire examination but, upon motion made by Appellant, the member of the Atkinson County Board of Education whose wife was a material witness against Appellant, should have excused himself, and his failure to do so denied Appellant due process, and

DETERMINES AND ORDERS, that the decision of the Atkinson County Board of Education is hereby reversed.

Mrs. Oberdorfer and Mr. Stembridge were absent.

This 13th day of November, 1980.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

NOV 12 1980

ALLEAN GARRETT,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 1980-21
	:	
ATKINSON COUNTY BOARD	:	REPORT OF
OF EDUCATION,	:	HEARING OFFICER
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is an appeal by Allean Garrett (hereinafter "Appellant") from a decision of the Atkinson County Board of Education (hereinafter "Local Board") not to renew her contract as a principal for the 1980-1981 school year based upon charges of insubordination, incompetency, wilful neglect of duties, and ineffectiveness. The primary basis for the appeal is Appellant's contention she was denied due process because she was unable to conduct a voir dire examination of the Local Board members in an effort to establish bias after the Local Board had previously voted not to renew her contract and one of the witnesses for the school system was the wife of one of the members of the Local Board.

The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II

FINDINGS OF FACT

Appellant, who had been an educator for thirty-four years and was serving in her eighth year as a principal, was orally notified by the Local Superintendent on February 11, 1980 that a recommendation would be made to the Local Board not to renew her contract for the next year. That night, the Local Board voted not to renew Appellant's contract. Appellant requested a list of charges and hearing before the Local Board. She was given a list of thirty-five charges, together with a list of witnesses who would testify against her and notice that she had the right to be represented by counsel. The hearing before the Local Board was set for June 17, 1980.

The hearing lasted two days. When it began, counsel for Appellant challenged the array of the Local Board and requested a voir dire examination of the Local Board members in an effort to establish whether bias existed because the Local Board had previously

voted not to renew her contract and had heard evidence in the matter. Additionally, Appellant's counsel pointed out that one of the principal witnesses against Appellant was the wife of one of the Local Board members. It later developed that this witness was also the primary assistant to the attorney presenting the case against Appellant. Appellant's challenge and motion for voir dire examination were denied by the Local Board.

Shortly before he gave her the oral notice, the Local Superintendent had received a petition, apparently signed by a majority of the parents of the students attending Appellant's school, which requested that Appellant's contract not be renewed. When Appellant requested a list of the charges against her, she was given a list of thirty-five specific charges under the broad categories of insubordination, incompetency, wilful neglect of duties, and ineffectiveness. Witnesses for the school system characterized Appellant as being uncooperative with anyone who did not agree with her, and she was not supportive of any programs which did not directly assist her school. The Superintendent, who had entered office the previous year, also found Appellant to be uncooperative.

On June 18, 1980, the Local Board issued its decision not to renew Appellant's contract for the 1980-1981 school year. Appellant filed an appeal to the State Board of Education on July 14, 1980.

PART III

CONCLUSIONS OF LAW

Appellant did not appeal from the decision of the Local Board on any grounds relating to the evidence or the charges made against her. She has, instead, relied on the ground that she was denied due process by not being able to challenge the array of the Local Board and conduct a voir dire examination of the Local Board members in an effort to establish bias. She is, therefore, challenging the entire proceeding.

Appellant additionally urges that the proceeding was defective because the rule of sequestration was violated when a witness who was not the first to testify was allowed to remain in the hearing room after testifying. Also, the decision of the Local Board was defective because the Local Board did not make specific findings of fact and conclusions of law.

The Fair Dismissal Act (Ga. Code Ann. Ch. 32-21c) provides a teacher whose contract will not be renewed with certain procedural rights, one of which is the right to have a hearing. It is fundamental that if a hearing is to be held, the teacher has the right to have a hearing before an unbiased tribunal. The Fair Dismissal Act recognizes this need by providing for alternative methods of holding hearings. Ga. Code Ann. §32-2101c(e) provides that a hearing can be conducted by the Professional Practices Commission or by a tribunal of up to five people having academic experience.

Notwithstanding the ability of a local board to ask for another tribunal to conduct a hearing, the essential question in this case is whether a teacher has the right to have a local board member disqualified because of bias if the local board conducts the hearing. The Local Board argues that such a right does not exist and cites the case of Chamberlain v. Wichita Falls Independent School District, 539 F.2d 566 (5th Cir., 1976) for the proposition that a teacher does not have the right to conduct a voir dire examination of a local board member. The Hearing Officer, however, concludes that the Chamberlain case does not stand for such a broad proposition. Instead, the Chamberlain case

merely held that if there were no provisions for alternative hearing procedures and the legislature had not provided for the disqualification of local board members based upon kinship, then constitutional due process rights were not violated in denying the teacher the opportunity to conduct a voir dire examination of the local board members. The Georgia legislature, however, has provided for alternative hearing procedures.

In Wright v. Monroe County Bd. of Ed., 148 Ga. App. 845 (1979), the Court indicated that the Code of Judicial Conduct, 231 Ga. 41 (1973) was applicable to local boards of education when they were sitting in a judicial capacity concerning the termination of a teacher. The basis for such a determination derives from the Fair Dismissal Act provision that the rules applicable to non-jury cases in the superior courts are to govern in hearings under the Fair Dismissal Act. Ga. Code Ann. §32-2101c(e).

Canon 3(1)(C) of the Code of Judicial Conduct provides:

"A judge should disqualify himself in a proceeding in which his impartiality might be questioned, including but not limited to:

* * * *

"(c) he knows that he, . . . or his spouse . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

"(d) he or his spouse . . . :

* * * *

"(ii) is acting as a lawyer in the proceeding;

* * * *

"(iii) is to the judge's knowledge likely to be a material witness in the proceeding."

Since the local board is acting in a judicial capacity, and since the non-jury rules of the superior court are applicable to hearings conducted under the Fair Dismissal Act, the Hearing Officer concludes that the above rules of the Code of Judicial Conduct should be applicable to local board members when they are sitting in a judicial capacity concerning the termination of a teacher. The Hearing Officer, therefore, concludes that a teacher does have the right to have a local board member disqualified for kinship or bias.

In the instant case, one of the local board members was related to one of the principal witnesses in the case against Appellant. Additionally, the witness,

while not acting as a lawyer in the case, actively assisted the lawyer presenting the case against Appellant. The board member should, therefore, have been disqualified from sitting in judgment of Appellant.

Georgia law provides for alternative methods of conducting hearings under the Fair Dismissal Act. The attorney representing Appellant made a timely motion at the beginning of the proceeding challenging the array of the Local Board because of the relationship with one of the witnesses. Since the Local Board member should have been disqualified, all further proceedings were nugatory when the challenge to the array for proper reasons was denied. Gray v. Barlow, 241 Ga. 347 (1978). The Hearing Officer, therefore, concludes that decision of the Local Board was improperly made because Appellant was denied procedural due process.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that the decision of the Local Board was improperly reached because one of the Local Board members should have

disqualified himself when there was knowledge that his wife would be one of the principal witnesses against Appellant. The Hearing Officer, therefore, recommends that the decision of the Atkinson County Board of Education be reversed.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer