

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SHARON BURNS, :  
Appellant, :  
v. : CASE NO. 1981-25  
CLAYTON 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,

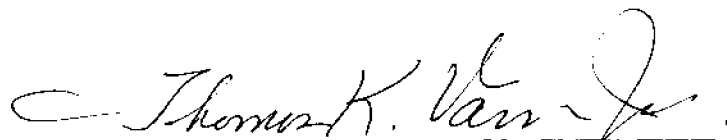
DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Clayton County Board of Education herein appealed from is hereby sustained.

Mrs. Oberdorfer was not present.

Mr. Foster abstained.

This 8th day of October, 1981.

  
\_\_\_\_\_  
THOMAS K. VANN, JR., CHAIRMAN

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SHARON BURNS,	:	
	:	
Appellant,	:	
	:	CASE NO. 1981-25
vs.	:	
	:	REPORT OF HEARING OFFICER
CLAYTON COUNTY BOARD	:	
OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

Sharon Burns (hereinafter "Appellant"), a teacher in the Clayton County School System, appeals from a decision of the Clayton County Board of Education (hereinafter "Local Board"), to dismiss her because of insubordination, willful neglect of duties, encouraging or counselling students to violate board policies and rules, and for other good and sufficient causes. The primary basis for the appeal is that the Local Board's decision was improper because Appellant's constitutional rights of free speech were restrained by her principal, and she did not have to obey his orders. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II  
FINDINGS OF FACT

Appellant was a high school social studies teacher who was teaching a unit on teenage pregnancies. As a part of her instruction, she had her students make posters which she displayed on the walls of her classroom and in the halls of the high school. The principal of the school found the posters to be offensive and asked Appellant to remove them, but she refused. When Appellant continued to refuse to remove the posters from the walls of her classroom after additional requests, the principal went into the classroom and removed the posters. He then suspended Appellant and began the dismissal proceedings.

Appellant was notified by a letter, dated March 26, 1981, that she was temporarily relieved from duty, and that the Local Board would be asked to terminate her contract on the grounds of insubordination, willful neglect of duties, encouraging or counselling students to violate board policies and rules, and other good and sufficient cause (tolerating or encouraging immorality). The basis for the charges, i.e., Appellant's refusal to remove the posters, was outlined, and a date for the hearing before the Local Board was given. In addition, the known witnesses were listed. The hearing before the Local Board was held on April 6, 1981, and the Local Board made its decision

on the same day. The appeal to the State Board of Education was filed on April 15, 1981.

When Appellant began teaching her unit, she asked the principal if the posters made by her students could be hung on the walls of the classroom and the school. The principal gave his permission, although he had not seen the posters. When he saw the posters in the halls, he found them offensive in that he viewed them as encouraging the students to be sexually active. He immediately removed all of the posters from the hall and discussed with Appellant why he had removed them. On the next school day, the principal learned that there were also posters in Appellant's classroom. He asked one of the supervisors to have Appellant remove the posters from the classroom. The next day, the supervisor met with Appellant, and she told him she would remove the posters. The following day, the principal heard rumors that some students planned to demonstrate against the removal of the posters. He went to Appellant's classroom to ask about the demonstration and discovered she had not removed the posters. The principal explained to Appellant that he wanted the posters removed and that he did not want the students to conduct a demonstration. Appellant refused to remove the posters. A little later, the principal again visited with Appellant and her class, and explained that he wanted the posters

removed and that the students should not demonstrate against the removal. Appellant told her students that if any of them participated in a demonstration, they would be suspended from school for two weeks. She neither encouraged or discouraged the students from conducting the demonstration, but did inform them of the consequences of their participation.

The principal asked Appellant to meet him in his office in the afternoon. He once again asked her to remove the posters or face termination. Appellant again refused to remove the posters. When the meeting ended, the principal went to the classroom and personally removed all of the posters.

The only evidence concerning the planned demonstration was that the students planned on asking for a meeting with the principal which was to occur before the regular school hours. At the meeting, they wanted to express their view concerning the posters and the removal of the posters. The principal testified only that he had heard rumors concerning a demonstration, but he did not testify about any details he might have heard.

Appellant taught her course without attempting to inject her own views into the course material. In the particular assignment, she had given the students a list of agencies to contact about birth control and teenage

pregnancies. The students were then directed to make posters concerning what they had learned. Typical of the agencies contacted by the students was the Planned Parenthood Association. The bulk of the posters prepared by the students contained advice to use contraceptives, or had reference to various types of contraceptives. The principal testified that he felt that encouraging the use of contraceptives was the equivalent of urging the students to engage in sexual activity.

### PART III

#### CONCLUSIONS OF LAW

Appellant was charged with four counts: 1) insubordination; 2) willful neglect of duties; 3) encouraging or counselling students to violate board policies and rules, and 4) other good and sufficient cause (tolerating or encouraging immorality). The Local Board found against Appellant of all four charges. On appeal, Appellant argues that the posters represented free speech, which is protected by the First Amendment of the United States Constitution, and the order by the principal that she remove the posters was an illegal order. She, therefore, could not be found guilty of insubordination because insubordination requires willful disobedience of a lawful command. Appellant then argues that there was insufficient evidence to

sustain any of the other charges. Additionally, Appellant claims that the decision of the Local Board is void because the Local Board would not permit the hearing to be open to the public.

The first issue to be faced in this case is whether the order of the Local Board is valid, because the hearing was closed over the objection of Appellant's attorney. Ga. Code Ann. §40-3301 provides, in part:

"All meetings of any agency at which official actions are to be taken are hereby declared to be public meetings and shall be open to the public at all times. No resolution, rule, regulation or formal action shall be binding except as taken or made at such meeting. . ."

Boards of education are defined as an "agency" in subpart (a) of Ga. Code Ann. §40-3301. An exception is provided in Ga, Code Ann. §40-3302 for:

"Meetings when:  
(1) any agency or other unit is discussing the . . . disciplinary action or dismissal of a public officer or employer, or  
(2) any agency or other unit is hearing complaints or charges brought against a public officer or employee, unless he requests a public meeting."

In order to assert any error for violation of the statute, the complaining party must make a formal and proper motion in the record at the time of the hearing in order to preserve the complaint. Williams v. Mayor, 118 Ga. App. 271, 273 (1968). In the instant case, the attorney for Appellant stated at the beginning of the hearing that he wanted

the hearing to be open to the public, objected to it being closed, and then said, "At this time, I would again move that this hearing be open to the public." The Local Board denied his motion to have the hearing open, and the attorney stated, "Madam Chairman, at the risk of being obnoxious I would like to put this on the record as a continued objection." It appears, therefore, that Appellant's objections to having a closed meeting were properly preserved in the record prior to the conduct of the hearing.

One of the exceptions is applicable when the agency is "discussing ... disciplinary action or dismissal" of a public employee. The other is applicable when the agency is hearing "complaints or charges brought against" a public employee. Only the second exception permits the public employee to request that the meeting be open. In the instant case, the Local Board was discussing the dismissal of Appellant. Arguably, the exceptions in the statute contemplate a bifurcated proceeding where the hearing is open to the public, and then the deliberation can be closed. This approach would be similar to the approach of a trial where the jury retires to deliberate and reach a decision. In the absence of any court decisions or any indication in the legislation that this was the legislative intent, the Hearing Officer does not believe that this was



the intention of the legislature in setting out of the two exceptions. The Hearing Officer, therefore, concludes that the meeting did not have to be open to the public and the actions of the Local Board were valid.

The next issue to be decided is whether the actions of Appellant were constitutionally protected as an exercise of "free speech". In essence, Appellant is maintaining that she had a right to teach whatever she wanted in the classroom, in any manner she desired, and the administration did not have any authority to control her, or what materials she placed upon the walls of the school building. Although there has to be a balancing between the interests of an efficient administration of the public schools and a teachers rights of free speech, see Pickering v. Board of Education, 391 U.S. 563 (1968), the scales tip toward the administration of the school when the question of maintaining discipline and authority, or a chain of command, is involved. The charges against Appellant, and the seeking of dismissal, did not arise because she placed the posters on the walls of her classroom. It does not appear that Appellant had any constitutional right to have the posters remain on the classroom walls after she had been requested by the principal to remove them. The order by the principal was a lawful order and Appellant's outright defiance of his order can only be classed as insubordination.

The Hearing Officer, therefore, concludes that the Local Board properly held that Appellant was guilty of insubordination and her termination was proper.

To the extent a teacher has a duty to obey the lawful orders of the principal, the proof of insubordination also sustains the charge of willful neglect of duties.

In reviewing the evidence concerning the other charges, i.e., encouraging or counselling students to violate board policies and rules, and for other good and sufficient cause (tolerating or encouraging immorality), the Hearing Officer does not find any evidence to support the decision of the Local Board. The charge of tolerating or encouraging immorality arose because the posters did not have any indication that the students should abstain from sexual relations before getting married. There was uncontroverted evidence, however, that Appellant taught her class that they should abstain. She was teaching a course which she had been directed to teach by the Local Board, the posters were prepared by the students and not by Appellant, and Appellant had obtained permission to place the posters on the walls of the school building. There was no evidence that Appellant attempted to assert or impose her views on the students. The fact that the principal, and others, found the posters to be objectionable does not establish that Appellant was encouraging immorality.

The charge of encouraging or counselling students to violate board policies and rules arose from the contention that Appellant encouraged the students to demonstrate. There was no evidence that Appellant did encourage the students to demonstrate. It does not appear from the record that the "demonstration" was anything more than a rumor in that a demonstration did not occur. Appellant complied with the principal's request to stop the demonstration by advising the student's they faced a two-week suspension if they took part in a demonstration. There was no evidence that anything more was required of Appellant in order to comply with the request of the principal. The Hearing Officer, therefore, concludes that there was not any evidence to sustain the charges of encouraging or counselling students to violate board policies and rules and the charge of tolerating or encouraging immorality.

#### PART IV

#### RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and oral arguments of counsel, the Hearing Officer is of the opinion the Local Board properly found that Appellant should be dismissed because of insubordination. The Hearing Officer,

therefore, recommends that the decision of the Local Board  
to terminate the contract of Appellant should be sustained.

*L. O. Buckland*

---

L.O. BUCKLAND  
Hearing Officer