

STATE BOARD OF EDUCATION

STATE OF GEORGIA

MYRA WILBURN, :
Appellant, :
v. : CASE NO. 1981-33
CLARKE 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,

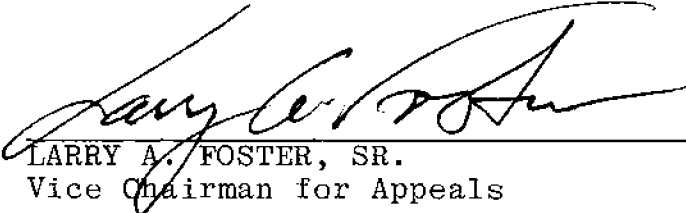
DETERMINE AND ORDER, that the decision herein of the Clarke County Board of Education, be, and is hereby, affirmed.

Messrs. Vann and Foster dissented.

Mr. Smith abstained.

Messrs. Lathem and McClung were not present.

This 10th day of December, 1981.


LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION
STATE OF GEORGIA

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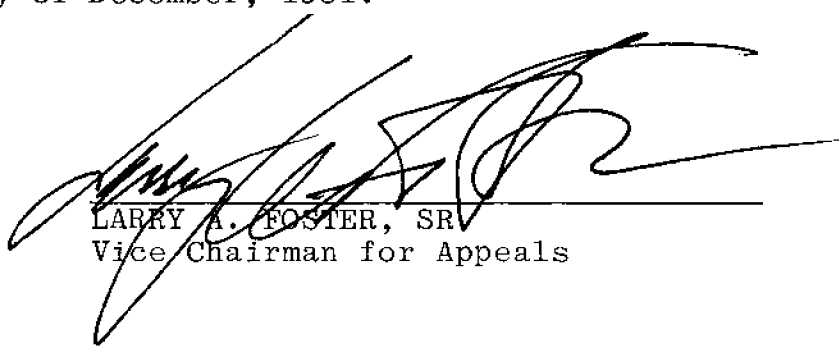
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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

Mrs. Oberdorfer and Messrs. Vann and Foster dissented.

Messrs. Lathem and McClung were not present.

This 10th day of December, 1981.


LARRY A. FOSTER, SR
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

MYRA WILBURN,	:	
	:	
Appellant,	:	
	:	CASE NO. 1981-33
vs.	:	
	:	REPORT OF HEARING OFFICER
CLARKE COUNTY BOARD	:	
OF EDUCATION	:	
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is an appeal by Myra Wilburn (hereinafter "Appellant") from a decision by the Clarke County Board of Education (hereinafter "Local Board") not to renew her teaching contract on the grounds of incompetency and wilful neglect of duties after a hearing tribunal of the Professional Practices Commission found that the evidence was insufficient to support the charges. The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II

FINDINGS OF FACT

On April 6, 1981, Appellant was notified that a recommendation would be made to the Local Board not to

renew her teaching contract for the 1981-1982 school year. Appellant made a timely request for a statement of the reasons why her contract would not be renewed and for a hearing on the charges. On May 28, 1981, a detailed statement of the charges was mailed to Appellant. The Local Board requested the Professional Practices Commission to constitute a tribunal to conduct the hearing on the charges. The hearing was held on July 16, 1981. The Professional Practices Commission tribunal, which issued its findings and recommendations on September 1, 1981, found that the evidence presented was insufficient to sustain the charges. On September 15, 1981, the Local Board voted to decline the report of the Professional Practices Commission tribunal. The Local Board did not make any statement of its reason or reasons for rejecting the report of the tribunal and did not make any other findings of fact. Appellant filed her appeal to the State Board of Education on September 30, 1981.

In the April 28, 1981 letter, Appellant was charged with incompetency in that she failed to demonstrate adequate subject matter knowledge, failed to diagnose the learning needs of students, failed to appropriately administer tests and record data in student files, failed to develop specific objectives, relate objectives to curricular goals, communicate objectives and goals to students, and to

monitor student performance, and failed to develop varied techniques and materials relevant to student needs, abilities, and specific objectives. She was also charged with willful neglect of duties on the grounds that she: failed to establish and maintain a positive relationship with co-workers; failed to complete assigned tasks promptly and accurately; failed to follow proper procedures; failed to follow lesson plans; failed to use varied techniques and materials; failed to actively pursue a program of self-improvement; failed to report for conferences scheduled by the principal; failed to notify the principal when she was leaving school early, and failed to maintain confidentiality of student information.

The Professional Practices Commission tribunal found that Appellant was employed by the Local Board in 1957. During the 1980-1981 school year, she taught in the first grade developmental program. The tribunal found that there was no evidence to support the charges made against Appellant. Specifically, the tribunal found that Appellant had good working relationships with her co-workers, had adequate subject matter knowledge, and she maintained her classes. The tribunal also found that there was no evidence presented in support of the other charges.

PART III
CONCLUSIONS OF LAW

The primary issue in this case is the value to be given to the findings of the Professional Practices Commission tribunal. The Local Board did not give any reasons for disregarding the findings of the tribunal.¹ The Local Board argues that it is required by law to make the final decision and that the members of the Local Board can make the decision based upon their review of the transcript and record developed at the hearing before the Professional Practices Commission tribunal. The Local Board also argues that it is well-established that local boards of education are not required to make findings of fact.

The same issue presented herein has previously been decided by the State Board of Education in the case of Barker v Twiggs County Bd. of Ed., Case No. 1978-34. In the Barker case, as here, a Professional Practices Commission tribunal did not find any facts to sustain the non-renewal of a contract. The local board in the Barker

¹The minutes of the Local Board simply stated that a motion was made and approved to "decline to accept the recommendation of the hearing tribunal of the Professional Practice Commission regarding the termination of employment of ...[Appellant]." There was not, however, an order entered not to renew Appellant's contract. The parties have treated the motion as constituting a decision not to renew and it has been treated as such herein.

case similarly did not give any reasons for rejecting the findings of the Professional Practices Commission tribunal. The State Board of Education reversed the decision of the local board on the grounds it was arbitrary and capricious because it was not supported by the facts of the case.

A local board of education can refer a request for a hearing on non-renewal to a tribunal constituted by the Professional Practices Commission, which is required to conduct the hearing and "submit its findings and recommendations to the board for its decision thereon. . . ." Ga. Code Ann. §32-2101c(e). In the case of Poland v. Cook County Bd. of Ed., Case No. 1977-4, the State Board of Education decided that a local board of education did not have to follow the recommendations of the Professional Practices Commission tribunal, and, if the findings of the tribunal supported the decision of the local board, the local board could dismiss a teacher. The statute and the decisions do not require findings of fact when the local board conducts the hearing, but they do require findings when a tribunal conducts the hearing. The findings by the tribunal are then the basis from which any decisions are to be made. One explanation of this is because the ability to judge the credibility of the witnesses is unique to the person or persons who have the opportunity to hear and see the witnesses. If the local board of education does

not accept the findings of the tribunal, and does not make its own independent findings, the State Board of Education does not have any basis for reviewing the decision and is placed into the position of having to make its own findings of fact in order to make a determination on the validity of the local board's decision. The State Board of Education, however, does not have the authority to make independent findings of fact, but must act as an appellate review body and base its decision on the facts determined in the initial hearing. See, Ransum v. Chattooga County Bd. of Ed., 144 Ga. App. 783 (1978). The Hearing Officer concludes that when the local board of education requests the Professional Practices Commission to constitute a tribunal to conduct a hearing, the findings of fact made by the tribunal become the facts of the case and will control the determinations of the case by the local board. In other words, the decision of the local board must be based upon the facts as determined by the tribunal.

In the instant case, the Professional Practices Commission tribunal did not find any facts which would sustain the dismissal of the teacher. The school system had the burden of proving the charges against Appellant, but, based upon the tribunal's findings, there is no basis for the Local Board to make a determination that Appellant willfully neglected her duties, or that she was incompetent.

The Hearing Officer, therefore, concludes that the decision of the Local Board, therefore, was arbitrary and capricious.

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 of Education is not supported by the evidence of the case, and the decision is, therefore, arbitrary and capricious. The Hearing Officer, therefore, recommends that the decision of the Local Board be reversed.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer