

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ISABELLA HUTTO,

Appellant,

v.

MARIETTA CITY BOARD OF EDUCATION

Appellee.

CASE NO. 1983-30

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,

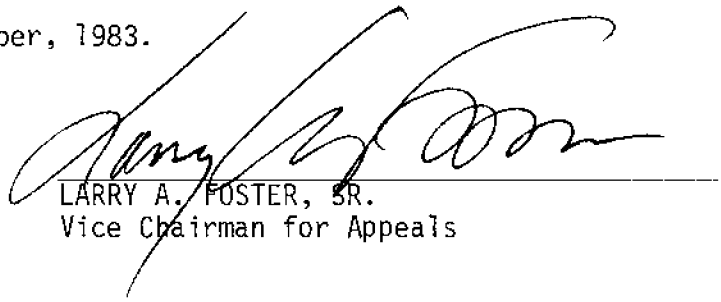
DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are hereby not accepted, and

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

Mrs. Cantrell and Mr. Smith were not present.

Mrs. Jasper and Mr. Foster dissent.

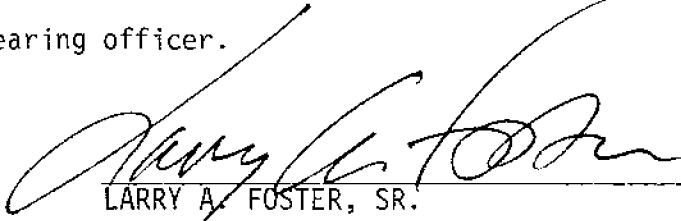
This 8th day of December, 1983.


LARRY A. FOSTER, SR.
Vice Chairman for Appeals

DISSENT OF JASPER AND FOSTER:

We disagree with the majority in this case because we believe the record shows that appellant was denied due process as a result of the presence of the local attorney and the local superintendent while the local board deliberated. It is our opinion that the presence of the accuser and the prosecuting attorney during deliberations is so fundamentally unfair

that a teacher cannot receive due process. We would accept the conclusions and recommendations of the hearing officer.



LARRY A. FOSTER, SR.



KATHRYN P. JASPER

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ISABELLA HUTTO,)	
)	
Appellant,)	CASE NO.
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)	
MARIETTA CITY BOARD OF EDUCATION,)	
)	REPORT OF
Appellee.)	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Isabella Hutto (hereinafter "Appellant") from a decision by the Marietta City Board of Education (hereinafter "Local Board") not to renew her teaching contract for the 1983-1984 school year because of willful neglect of duty. The appeal was made on the grounds the evidence did not support the decision, the decision was arbitrary and capricious, and Appellants' due process rights were violated. The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II

FINDINGS OF FACT

Appellant was sent written notification on April 1, 1983, that the Local Superintendent would not recommend renewal of her teaching contract for the 1983-1984 school year. Appellant requested a hearing and a list of charges against her. In a letter dated April 18, 1983, the Local Superintendent notified Appellant that she was charged with

willful neglect of duty because she had problems with classroom management and student discipline. Appellant was also notified that her appeal would be heard by a tribunal comprised by the Professional Practices Commission ("PPC").

The Hearing before the PPC tribunal was held on June 15, 1983. The PPC tribunal found that Appellant had taught continuously for the Local Board since the 1968-1969 school year. The principal who rated Appellant each year had rated her as satisfactory in thirty of thirty-two rating areas. He did indicate that Appellant needed improvement in class control and supervision and ability to handle problems. The evaluation prepared for the 1982-1983 school year was virtually the same as the one prepared for the two preceding school years.

The PPC tribunal noted that there was evidence presented that Appellant's classes were noisy, but that the noise was no greater than the noise that came from other classes. Additionally, Appellant's class was sometimes noisy in the halls, but the problem was not significant. The students taught by Appellant were at least as prepared for the next higher grade as the students in classrooms of other teachers. Appellant was aware of the policies of the Local Board governing discipline and attempted to comply with the policies.

The PPC tribunal concluded that the evidence was insufficient to show that Appellant was guilty of willful neglect of duties, and the evidence was insufficient to show that

there was other good and sufficient cause not to renew Appellant's teaching contract. The PPC tribunal recommended Appellant's reinstatement, with a possible transfer to another school within the Local system.

After the PPC tribunal issued its recommendation, the Local Board met with the Local Superintendent, an associate superintendent, and the Local Board's attorney. The minutes of the Local Board reflect that the chairman of the Local Board had attended the hearing before the PPC tribunal. The chairman of the local board, the Local Superintendent, and the associate superintendent gave the other Local Board members their impressions of the hearing. The Local Board voted that it could not accept the findings or recommendation of the PPC tribunal, and it issued its own findings of fact.

The Local Board found that the evidence showed that Appellant had been told of her deficiencies in controlling students, she had been given help, she was able to control her students when she desired, but she continued to allow the discipline of her students to go beyond the limits which should be found in a classroom. The Local Board then voted not to renew Appellant's teaching contract. The Local Board's decision was made on August 17, 1983, and Appellant filed her appeal to the State Board of Education on August 30, 1983.

PART III

CONCLUSIONS OF LAW

Appellant's appeal claims that: (1) the Local Board failed to carry the burden of proof and establish by a preponderance of the evidence that Appellant willfully neglected her duties or establish that there was other good and sufficient cause justifying non-renewal of her contract; (2) the decision of the Local Board was arbitrary and capricious; (3) the decision process denied Appellant due process, and (4) there was insubstantial evidence before the Local Board to support its decision not to renew Appellant's contract.

Appellant argues that the Local Board could not refer the matter to a PPC tribunal and then reject the tribunal's findings of fact out of hand. Additionally, Appellant argues that the presence of the Local Superintendent, an associate superintendent, and the Local Board's attorney while the Local Board deliberated, denied her due process because it resulted in the Local Board making a decision based upon the impressions and comments of her accuser in her absence and without her having an opportunity to present evidence. With respect to the evidence presented, Appellant argues that since the PPC tribunal found that the noise level which came from Appellant's room was no greater than from other classrooms, the Local Board could not find otherwise and the decision, therefore, was arbitrary and capricious.

The Local Board argues that the State Board of Education is bound by the "any evidence" rule; the record supports the findings of the Local Board in that there were several instances shown of Appellant's inefficiency in maintaining discipline and control in spite of efforts to assist her. The Local Board also argues that it could reject the findings and recommendations of the PPC tribunal since it made its own findings of fact.

The State Board of Education has previously held that a local board of education is not bound to follow the recommendations of a PPC tribunal if the facts found by the PPC tribunal support the decision of the local board. See, Poland v. Cook Cnty. Bd. of Ed., Case No. 1977-4. The State Board of Education has also previously held that a local board of education is bound by the findings of the PPC tribunal which are supported by the evidence contained in the record. See, Balthrop v. The Board of Public Education for the City of Savannah and The County of Chatham, Case No. 1983-20; Board v. Laurens Cnty. Bd. of Ed., Case No. 1977-14.

In the instant case, the Local Board rejected both the recommendation and the findings of fact made by the PPC tribunal. The Local Board then argues that, since it made its own findings of fact, if there is any evidence in the record to support its decision, then the decision should be upheld. There is some support for the Local Board's argument in

Georgia case law. In the case of Georgia Real Estate Commission v. Horne, 141 Ga. App. 226, 233 S.E.2d 16 (1977), the Court took the position that if the deciding body imposed a more severe sanction than recommended by a hearing officer, then the reasons for the action must be a part of the record.

Appellant was charged with willful neglect of her duties, and the Local Board found that, although she was capable of exercising discipline, she willfully failed to discipline her students and permitted them to exercise conduct which was not permissible. The PPC tribunal, however, found that the conduct of Appellant's students was not materially different from the students of other teachers, that Appellant attempted to follow the directives of the Local Board, and that Appellant's performance had not materially deteriorated from previous years (when her contract had been renewed). Based upon the findings of the PPC tribunal, there does not appear to be any evidence that Appellant willfully neglected her duties. Appellant's principal rated her satisfactory in thirty out of thirty-two categories, and indicated that she "needed improvement in class control and supervision and her ability to handle problems." The need for improvement does not equate to willful neglect of duties. The testimony presented by both sides indicates that Appellant had her share of problems with her students, but her problems were not significantly different from

those of the other teachers. The Hearing Officer, therefore, concludes that Appellant did not willfully neglect her duties, and the evidence supports the findings made by the PPC tribunal. Since the State Board of Education has held that a local board of education is bound by the findings of fact of a hearing tribunal which are supported by the record, the Hearing Officer concludes that the Local Board could not reject the findings of the PPC tribunal and make its own findings which were inconsistent with the findings of the PPC tribunal.

Another difficulty with the Local Board's argument in the instant case is the fact that the Local Board's attorney, the Local Superintendent, and an associate superintendent were present when the Local Board deliberated. The decision of the Local Board was based upon the "impressions" of these people, with references to the transcript to support certain observations. It is difficult to imagine that an honest, unbiased presentation would be made to the Local Board by Appellant's accuser, an assistant to Appellant's accuser, and the attorney who prosecuted the case. The situation is akin to a jury being presented with only one side of a case, and then being expected to render a decision which is fair and impartial. In such a situation, it seems fundamental to the Hearing Officer that Appellant has been denied due process.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs of counsel, the Hearing Officer is of the opinion that the Local Board failed to provide Appellant with due process by making a decision based upon the impressions of the Local Superintendent, the Associate Superintendent, and the Local Board's attorney, and rejecting the findings of the PPC tribunal. The Hearing Officer is also of the opinion that the Local Board failed to establish that Appellant willfully neglected her duties and the Local Board exceeded its authority by rejecting the findings of fact of the PPC tribunal which were supported by the record. The Hearing Officer, therefore, recommends reversal of the Local Board's decision.



L. O. BUCKLAND
State Hearing Officer