


STATE OF GEORGIA

Appellee.

CASE NO. 1983-31

January, 1984.


LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

BESSIE FLUELLIN,)	
)	
Appellant,)	CASE NO. 1983-31
)	
v.)	
)	
LAMAR COUNTY BOARD OF EDUCATION,)	
)	REPORT OF
Appellee.)	HEARING OFFICER

PART I

SUMMARY OF CASE

This is an appeal by Bessie Fluellin (hereinafter "Appellant") from a decision by the Lamar County Board of Education (hereinafter "Local Board") not to renew her teaching contract following a hearing on charges of incompetency, willful neglect of duty, and insubordination. Appellant claims on appeal that the evidence presented did not support the Local Board's decision and that errors were made in the conduct of the hearing. The Hearing Officer recommends that the Local Board's decision be sustained.

PART II

FINDINGS OF FACT

In the spring of 1982, Appellant was completing her twenty-eighth year of teaching, and her sixth year of teaching for the Local Board. She had taught the first grade for three years. On March 8, 1982, the Local Board met and voted not to renew Appellant's teaching contract because the Local Superintendent

did not recommend renewal. Appellant was notified of the Local Board's action by the Local Superintendent in a letter dated April 13, 1982. The Local Superintendent's letter stated that the Local Board would not issue her a contract for the 1982-83 school year.

Appellant requested a hearing before the Local Board and a listing of charges. On April 30, 1982, the Local Superintendent charged that Appellant had committed various acts which led to his decision not to recommend renewal. After a delay of more than one year, which neither party claims is the responsibility of the other, Appellant was notified that a hearing would be held before the Local Board on August 15, 1983. The notice also stated that the charges made by the Local Superintendent constituted insubordination, willful neglect of duty, and incompetence.

The hearing before the Local Board was held on August 15, 1983. Much of the testimony against Appellant was in the form of a deposition of the former principal. Appellant objected to the introduction of the deposition on the grounds it denied her an opportunity to cross-examine,* and there was no statutory provision for deposition testimony to be entered. Appellant's objections were overruled and the deposition was admitted.

There was testimony that a student had been removed from Appellant's class, but Appellant continued to report end-of-term grades for the student. A second grade teacher testified

*Appellant's counsel participated in the deposition and cross-examined the principal.

that seven students in her second grade did not exhibit the necessary achievement to be in the second grade, and that two of the seven students had been in Appellant's first grade class. Three of the seven students were special education students.

The principal's deposition testimony established that a student had left Appellant's room without permission and had gone to the principal's office. When Appellant was asked why the student was there, Appellant replied that the student had simply left the room and she did not have any control over him, but she had watched him go to the principal's office.

In another incident involving the same student, it was established that Appellant was told by another student that the student had swallowed a quarter. The student did not appear to be in any distress and Appellant was in the process of collecting money from the children of her class, so she asked the oldest child in the class to escort the student to the principal's office. The principal was passing near Appellant's room and found the student in the hall choking. He immediately rushed the student to the hospital where the quarter was removed. Appellant testified that she thought her best course of action was to immediately send the student to the principal's office without leaving her class because she had to make arrangements for the remainder of the class and the student did not appear to be in any danger.

During the year, the principal confronted Appellant and two other teachers and told them they needed to acquire additional credits in order to maintain their teaching certification. Appellant responded by stating that she had a life certificate and did not need any additional credits. The principal did not follow up with the incident, or explain to Appellant why she needed the additional credits.

First grade students were not supposed to be taught cursive writing, but the principal observed cursive writing on Appellant's blackboard. Appellant explained that the writing was put on the board because the students wanted to see an example of cursive writing and she was simply showing them an example rather than teaching them. When the principal confronted Appellant about the cursive writing, however, Appellant became confused and said that cursive writing was in the curriculum for first grade. When she began looking for cursive writing, she realized that she had been thinking about the second grade curriculum, which she had taught before teaching the first grade. The principal wrote Appellant a letter of reprimand and directed her not to teach cursive writing.

At the conclusion of the hearing, the Local Board voted not to renew Appellant's contract. The motion was made that the Local Board

stand by our prior decision to not rehire Miss Fluellin on the following grounds: that we as

a Board followed the instructions of her principal and superintendent in the original decision, and we as a Board feel that in the best interest of the children of our system that it would be to the best interest not to reemploy Ms. Fluellin.

The following exchange then occurred between Appellant's counsel and the Chairman of the Local Board:

COUNSEL: ... It's my understanding, then, the Board has not made a particular finding as to one of these particular grounds alleged, and that the Board feels that it is in the best interest of the system to support the original recommendations made in this case?

CHAIRMAN: ... That's true.

The decision of the Local Board was made on August 15, 1983. The appeal to the State Board of Education was filed on September 14, 1983.

PART III

CONCLUSIONS OF LAW

Appellant's appeal stated six grounds for reversal: (1) insufficiency of the evidence; (2) error in permitting into evidence the deposition of the former principal; (3) denial of due process by not having the former principal available and by admitting his deposition testimony; (4) the decision was arbitrary and capricious; (5) the requirements of due process were not followed, and (6) the decision was not based upon the charges and evidence presented. Appellant's primary contentions are that the evidence does not support a finding of incompetence,

willful neglect of duty, or insubordination, and the Local Board erred in admitting the deposition testimony of the former principal.

In any hearing regarding the dismissal or contract non-renewal, the burden of proof rests with the Local System. O.C.G.A. § 20-2-940(e)(4). The State Board of Education, however, follows the rule that if there is any evidence to support the decision of the Local Board, then the decision will not be disturbed upon review. See, Ransum v. Chattooga County Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty Bd. of Ed., Case No. 1976-11.

In the instant case, Appellant was charged with insubordination, willful neglect of duty, and incompetency. Appellant argues that the evidence did not support any of these charges, and the Local Board explicitly found that the evidence was insufficient to support the charges, but the Local Board supported the earlier decision not to renew her contract because renewal was not in the best interests of the children, which is not a statutorily permitted basis for non-renewal.

Insubordination involves the failure of an employee to carry out the instructions of an employer, or to defy the directives of an employer. The Local Board argues that Appellant was insubordinate because her attitude was insubordinate when the principal questioned her about the teaching of cursive writing and when he told her that she would have to obtain

additional credits. The record, however, does not show that Appellant failed to carry out any directive given to her by the principal, or that she attempted to defy any instruction he gave to her. The uncontradicted testimony was that Appellant was merely showing her students examples of cursive writing and was not teaching them cursive writing. In addition, Appellant did not refuse to obtain additional credits; she merely informed the principal that she did not think she needed additional credits because she had a life certificate, and he did not take any further action. The Hearing Officer, therefore, concludes that the record does not support a finding of insubordination. Similarly, the same incidents do not support a finding of willful neglect of duty. The record does not show any particular duty which Appellant neglected, nor does it show that Appellant was ever made aware that she was neglecting any of her duties. The Hearing Officer, therefore, concludes that the record does not support a finding of willful neglect of duty.

Appellant was also charged with incompetency. The Local Board argues that the evidence that Appellant permitted a student to leave her room unescorted, that she failed to react properly during an emergency situation, that she continued to enter grades for a student who was removed from her class, that she thought cursive writing was supposed to be taught in the first grade, and that she improperly promoted two students,

establishes incompetency. In each instance, Appellant put forth evidence which either explained the situation or mitigated the circumstances. Taken individually, the different situations may have been insufficient to establish incompetency. The Local Board, however, could conclude from all of the evidence that Appellant was incompetent. The Hearing Officer, therefore, concludes that there is evidence in the record which supports the Local Board's finding of incompetence.

Appellant argues on appeal that she was denied due process because the Local Board permitted the deposition testimony of her principal to be entered into evidence. Appellant maintains that the use of a deposition is not permitted by the statutes, and that the use of a deposition denied her the opportunity to cross-examine and denied the Local Board a chance to observe the witness' demeanor. O.C.G.A. § 9-11-32 provides that

... the deposition of a witness ... may
be used by any party for any purpose if
the court finds:

(B) That the witness is out of the
county ...

(C) That the witness is unable to attend
because of ... illness, [or] infirmity ...

O.C.G.A. § 20-2-940(e)(4) provides that the rules governing non-jury trials will govern hearings relating to the dismissal of teachers. The record shows that the former principal no longer was in the county, and that he suffered from a back ailment which made travel difficult. The circumstances, therefore, fit

within two of the permissible reasons for permitting deposition testimony. The Hearing Officer, therefore, concludes that the Local Board did not abuse its discretion or deny Appellant due process by allowing the deposition testimony to be admitted in evidence.

Appellant also maintains on appeal that because of the exchange that took place at the end of the hearing, the Local Board specifically found that the evidence did not support the charges and that the Local Board was merely supporting the recommendation of the principal and superintendent not to re-hire Appellant. There is no statutory requirement governing the wording a local board has to use in making its decision. Local boards of education are not composed of persons who are skilled or knowledgeable about the requirements of law. Although Appellant's counsel raised a question regarding the decision, it is not clear from the record that the question was understood, or that the members of the Local Board did make a finding that the evidence was insufficient to support the charges. The Hearing Officer concludes that the evidence before the Local Board would support a finding of incompetence, that the Local Board was not required to place the finding into any particular language, and that the colloquy at the end of the hearing does not establish that the Local Board found the evidence insufficient to support the charges.

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 there is evidence in the record which supports the Local Board's finding of incompetency, and that the Local Board did not err in permitting the deposition testimony of the principal to be entered into evidence. The Hearing Officer, therefore, recommends that the decision of the Local Board be sustained.



L. O. BUCKLAND
Hearing Officer