

STATE BOARD OF EDUCATION

STATE OF GEORGIA

LYNN SMITH, :
 :
 Appellant, : **CASE NO. 1987-24**
 :
 v. :
 :
 BRYAN COUNTY BOARD :
 OF EDUCATION, . : **DECISION**
 :
 Appellee. :

PART I

SUMMARY

This is an appeal by Lynn Smith (hereinafter "Appellant") from a decision by the Bryan County Board of Education (hereinafter "Local Board") not to renew his contract as a teacher for the 1987-1988 school year on the grounds of incompetency, willful neglect of duties, and other good and sufficient cause. Appellant contends numerous procedural errors were made at the hearing and that there was no evidence to support the decision of the Local Board. The decision of the Local Board is sustained.

PART II

FACTUAL BACKGROUND

Appellant is a tenured teacher¹ who was employed by the Local Board to teach physical education and health, and to coach football. Appellant was notified that the Local Board did not intend to renew his teaching contract for the 1987-1988 school year and requested the reasons and a hearing under the Fair Dismissal Act. By letter dated May 4, 1987, the Local Board notified Appellant that it did not intend to renew his teaching contract for the following reasons:

¹After a specified period of employment, O.C.G.A. §20-2 942 grants teachers certain rights which are commonly called "tenure" rights, even though the statute does not use the term "tenure".

1. Incompetence:
 - (a) Your classroom performance is unsatisfactory. You do not adequately plan your lessons and your lesson plans do not meet Board policy in that they do not indicate the course objectives are being met;
 - (b) Your classroom performance assessment indicates that you do not possess adequate classroom teaching skills.
2. Willful neglect of duties:
 - (a) On or before June 6, 1986, you failed to turn in your football inventory in a timely manner;
 - (b) You have failed to adequately supervise your students during Physical Education and at other times, creating a dangerous situation for the students;
 - (c) Your record—keeping has been unsatisfactory;
 - (d) You failed to give semester exams for the first semester of this year.
3. Other Good and Sufficient Cause:
 - (a) Your performance as a coach has been unsatisfactory. You were reprimanded on October 6, 1986, for your language and behavior toward students. You also permitted non-certified personnel in the press box and on the playing and practice fields in violation of Georgia High School Association rules.

A hearing was held on May 18, 1987, concerning the charges. Prior to the beginning of the hearing, Appellant, through his attorney, made motions to dismiss the charges of incompetence and willful neglect of duty on the grounds the charges were not set forth in clear enough detail to enable Appellant to show any error that may exist, and also moved to dismiss charges relating to Appellant's conduct as a coach. Both motions were denied. Appellant further offered a motion in limine to exclude evidence of matters arising after the date on which the teacher first contended he received notice of non-renewal. That motion was denied except to the extent of matters which occurred after the date formal notice of non-renewal was given. Finally, Appellant moved to voir dire the school board members based upon prejudicial statements allegedly made by several of the board members. That motion was also denied.

At the hearing, the Local Board presented the principal at the school where Appellant worked, two assistant principals who worked with Appellant, and the Superintendent

of the school system. The principal possessed a Masters degree, was certified in health and physical education, and was a certified data collector. He testified that he had evaluated Appellant and that he felt that Appellant was not a competent instructor. He testified that he had evaluated Appellant twice a year for the last three years and that his evaluations had shown Appellant to be below average to average and to have poor lesson planning and poor delivery to students. He also testified that Appellant continually made mistakes on the registers he turned in, failed to turn in a checklist as a coach that he was supposed to turn in, failed to supervise students properly, and used profanities at a football game. The past Assistant Principal testified that several years before, Appellant had allowed students to climb up on the roof of the elementary school building after he had been told not to allow that activity. The other assistant principal testified that Appellant made many mistakes on the state registers, and that so any of those mistakes were repeated after Appellant had been told about them that his neglect must have been willful. The Superintendent testified she had reviewed Appellant's lesson plans and that they were poor and failed to cover the required course objectives. She further testified that even the minimum was not fifty percent covered in most cases. Finally, the Superintendent testified that she had observed Appellant cursing at a student, kicking something in anger, and throwing something in anger, at a football game she attended.

The Local Board issued its decision to non-renew Appellant by written letter dated May 20, 1987.

PART III

DISCUSSION

Appellant makes the following contentions on appeal:

1. The proceeding was fundamentally unfair because the members of the Local Board had prejudged the outcome of the proceeding.
2. The notice of the charges was insufficient.
3. The Local Board erred in considering *charges* of misconduct relating solely to Appellant's performance as a coach.
4. No evidence supports the decision of the Local Board.
5. The Local Board failed to provide remediation.
6. The Local Board erred when it did not allow Appellant to show his lesson plans were as good *as* teachers' lesson plans who were renewed.
7. A teacher should not be non-renewed for conduct for which he has already been disciplined, and for which another employee was not disciplined.
8. A teacher may not be non-renewed for conduct which had been remedied and had not recurred during the last two school years.

Appellant's first contention, that the proceeding was fundamentally unfair because the members of the local Board had prejudged the outcome of the proceeding, does not provide grounds for reversal of the decision. Appellant contends that two of the members of the Local Board made statements to members of the public which indicated that they had prejudged the proceeding. At the hearing, however, the board members stated they could decide the can only on the evidence presented. The fact that one member of the Local Board may have made a statement that the *system* would be "better off" by non-renewing Appellant, and that one member may have indicated he had already made a decision, does not mean that the hearing violates Appellant's due process when each member at the hearing states that he or she can fairly decide the matter based on the evidence presented at the hearing. See, Welch v. Barham, 635 F.2d 1322, 1326 (8th Cir. 1980).

Appellant's second contention is that the notice of the charges was insufficient to allow him to respond. Appellant does not contend that the charge of inadequacy of lesson plans

was vague but that the charge of incompetence based upon classroom evaluations failed to specify in what respect the classroom performance was deficient, and the charge of willful neglect as to record-keeping was deficient. While it is important that charges be drawn as specifically as possible, non-renewal proceedings are administrative and not criminal, and, therefore, do not require the specificity of a criminal proceeding. The statutory requirement is that the employee be given notice “in sufficient detail to enable him fairly to show any error that may exist therein”. O.C.G.A. § 20-2-940(b) (1).

Appellant had previously been given the opportunity to see the written evaluations of his classroom performance which were the subject of the charge and was aware that his lesson planning was deficient, and, during the hearing, he was able to present a defense against the charges. The State Board of Education, therefore, concludes that the Local Board’s notice was specific enough to satisfy the statute.

Appellant’s third contention, that the Local Board erred in considering charges of misconduct relating solely to his performance as a coach, does not warrant reversal of the decision of the Local Board. It is Appellant’s position that, because he cannot earn tenure in the position of coach, his activities as a coach cannot be used against him to terminate his teaching contract. Such a position is simply not supported by any authority under Georgia law. Even if Appellant were not a coach, the Local Board could consider his conduct at a football game as a spectator under the other good and sufficient cause provision of the Fair Dismissal Act, O.C.G.A. § 20-2-940(a)(8). Even if Appellant’s conduct as a coach may not be as unusual, that does not mean the Local Board of Education is required to accept cursing at students during athletic games. The State Board of Education is bound by the any evidence rule, and the testimony of the Superintendent that Appellant cursed at a student provides evidence constituting good and sufficient cause for which the Local Board can determine it does not desire to renew Appellant’s teaching contract. See, Ransum v. Chattooga Cnty. Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty. Bd. of Ed., Case No. 1976-11.

Appellant's fourth contention, that no evidence supports the decision of the Local Board, is not supported by the record. The State Board of Education is bound to sustain the decision of the Local Board if there is any evidence to support the Local Board's decision absent an abuse of discretion on the part of the Local Board or a violation of law. See, Ransum v. Chattooga Cnty. Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty. Bd. of Ed., Case No. 1976-11. The Superintendent, an educational expert, testified that Appellant's lesson plans were inadequate, in spite of training, in that they failed to coordinate with the course content guides as was required. Additionally, the principal testified in his evaluations of Appellant, that Appellant rated only "acceptable" to "improvement needed" in 1984, that Appellant received a passing rating on only one of fourteen competencies in another evaluation in the 1984-1985 school year, that Appellant had poor lesson planning and poor delivery to students in the principal's evaluation in 1987, and that in his opinion Appellant is not competent. The Local Board thus had sufficient evidence to support its decision.

Appellant's fifth contention is that the Local Board erred because it failed to provide remediation. Appellant contends remediation is required by O.C.G.A. §20-2—210 and, therefore, as a matter of law, was required in order to non-renew Appellant. O.C.G.A. §20-2 210, at the time Appellant was non-renewed provided as follows:

All personnel employed by local units of administration, including elected or appointed school superintendents, shall have their performance evaluated annually by an appropriately

Dismissal Act may result in automatic renewal by specific operation of law, O.C.G.A. §20-2-942(a) (3), but there are, however, no such automatic renewal provisions associated with O.C.G.A. §20-2-210. Appellant's "theory would totally obliterate the distinctions carefully drawn by the ... legislature in providing for different procedures for renewal of tenured versus non-tenured teachers...." Burk v. Unified School District, 646 F. Supp. 1557, 1563 (D.C. Kan. 1986). The State Board of Education, therefore, concludes that the failure of the Local Board to provide the evaluation required under O.C.G.A. §20-2-210 does not require renewal of Appellant's teaching contract.

Appellant's sixth, seventh and eighth contentions also do not warrant reversing the decision of the Local Board. It was not error for the Local Board to disallow Appellant's attempt to show that his lesson plans were as good as those of another teacher who was renewed. Evidence of another teacher's poor lesson plans, even if proven, would not be relevant to Appellant's competency. It also was not error for the Local Board to consider Appellant's cursing, even though he had already been reprimanded and another coach had also cursed. The Local Board had not taken any action previously based on Appellant's cursing and the reprimand had come from the school administration, not the Local Board. Additionally, the Local Board is authorized to consider such factors in making its determination whether to non-renew Appellant or to possibly take a lesser action against Appellant. While the State Board of Education might agree with Appellant that a teacher may not be non-renewed solely for conduct which has not occurred for several years, that does not mean that such conduct is precluded from consideration along with other evidence in a non-renewal hearing. Such conduct becomes one of the factors which the Local Board may consider in determining the severity of the action it wishes to take.

PART IV

DECISION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Board of Education concludes that there was evidence to support the charges of incompetency and other good and sufficient cause, and that the Local Board did not abuse its discretion or violate any laws warranting reversal of its decision. The decision of the Local Board is, therefore,

SUSTAINED.

Juanita P. Baranco
Acting Vice Chairman for Appeals

Mr. Foster did not participate in any cases in Executive Session and specifically recused himself in Case No. 1987-27, Laura Fry v. Clayton County.