STATE BOARD OF EDUCATION

STATE OF GEORGIA

LIONEL GOODE, **Appellant,** **vs.** **ATLANTA CITY BOARD OF EDUCATION,** **Appellee.**	:	**CASE NO. 2005-07** **DECISION**

This is an appeal by Lionel Goode (Appellant) from a decision by the Atlanta City Board of Education (Local Board) not to renew his teaching contract for the 2004-2005 school year because of insubordination and willful neglect of duties under the provisions of O.C.G.A. § 20-2-940. Appellant claims that the Local School System denied him due process because the charge letter failed to provide him the ability to present a defense and the evidence did not support the charges. The Local Board's decision is reversed.

The Local Board employed Appellant as a seventh grade geography and social studies teacher for thirteen years through the 2003-2004 school year. For the first eleven years of his career, Appellant received satisfactory evaluations each year. In his twelfth year, a new principal came into the school and rated Appellant unsatisfactory in his twelfth and thirteenth years. The new principal then recommended against renewing Appellant's teaching contract for the 2004-2005 school year and the Local Superintendent supported the principal's recommendation.

Appellant asked for a hearing and a list of charges as permitted under O.C.G.A. § 20-2-942(a)(2) and O.C.G.A. § 20-2-940(b).[1] The Local Superintendent sent Appellant an initial charge letter, which recited that Appellant had been placed on two professional development plans but his performance did not show significant improvement and he had received unsatisfactory annual evaluations for the 2002-2003 and 2003-2004 school years. In addition, the letter said that Appellant's supervisor had "noted numerous

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[1] O.C.G.A. § 20-2-942(a)(2) provides, among other things, that a teacher has the right to request a hearing and "[w]ithin 14 days of a service of the request [for a hearing]..., the local board must furnish the teacher a notice that complies with the requirements of subsection (b) of Code Section 20-2-940." O.C.G.A. § 20-2-940(b) provides, in part: "Before the discharge ... of a teacher ...written notice of the charges shall be given ... and shall state: (1) The cause or causes for his discharge, suspension, or demotion in sufficient detail to enable him fairly to show any error that may exist therein ...."

deficiencies with [his] performance." Based on these factors, the Local Superintendent charged Appellant with incompetence, insubordination, and willful neglect of duties.

Appellant protested that the charge letter was deficient because it failed to outline any specific facts that would permit him to establish a defense. In response, another charge letter was sent to Appellant. The second charge letter recited the fact that Appellant received an unsatisfactory annual evaluation because his lesson plans were inadequate and because he failed to deliver quality instruction and his classroom management was deficient. The second letter also stated that Appellant did not meet the requirements set out in his professional development plan.

At the beginning of the hearing before a tribunal, Appellant moved to dismiss the proceedings because both charge letters failed to identify any specific facts that would permit him to show any error. The tribunal denied the motion and proceeded to hear the evidence.

At the end of the hearing, the tribunal found that the Local Board failed to show that Appellant was incompetent. The tribunal, however, found that Appellant was insubordinate and willfully neglected his duties because he failed to video tape himself teaching and failed to watch a video series, which were tasks he was directed to complete as part of his professional development plan. The tribunal recommended Appellant's suspension without pay for twenty days. Instead of adopting the tribunal's recommendation, the Local Board voted not to renew Appellant's contract.

On appeal to the State Board of Education, Appellant claims that the notices of charges given to him by the Local Superintendent were not specific enough to permit him to establish a proper defense. For example, the letters did not inform him that the video taping and his viewing of a video series were going to be issues, and had he known that these were issues, he would have subpoenaed the media director at the school to testify that a video camera was not available in the school and the video series similarly was not available in the school. In addition, Appellant claims that the evidence did not support a finding of insubordination or willful neglect of duties.

The statutory criterion for determining if a charge letter is sufficient is stated in broad terms: "sufficient detail to enable [the employee] to show any error that may exist [in the charges]...." O.C.G.A. S 20-2-940(b). The amount of detail required depends on the nature of the charges. In *Dowling v. Atlanta City Bd. of Educ.*, Case No. 1993-14 (Ga. SBE, July 8, 1993), the State Board of Education found that the notice issued by the local superintendent was inadequate because it only provided conclusions and did not specify who, what, where, and when. In *Johnson v. Pulaski Cnty. Bd. of Educ.*, Case No. 1996-44 (Ga. SBE, Nov. 14, 1996), *aff'd, Johnson v. Pulaski Cnty. Bd. of Educ.*, 231 Ga. 576, 499 S.E.2d 345 (1998), the State Board of Education found that the notice of charges was too broadly drawn when they related to "chaos in the school."

"'The test to be applied is whether the notice permits the person charged to establish a defense without the benefit of any discovery. The State Board of Education

has previously ruled that the notice does not have to contain specific dates, times, places, and people involved when the teacher has been previously warned during conferences about improper actions. *Morton v. Griffin-Spalding Cnty. Bd. of Educ.*, Case No. 1985-49 (Ga. SBE, Feb. 13, 1986), and when the notice was accompanied by a corrective action plan and letters that detailed the teacher's deficiencies, *Barfield v. Gwinnett Cnty. Bd. of Educ.*, Case No. 1984-8 (Ga. SBE, Sep. 13, 1984). In each case, the State Board of Education looked to see if the teacher or principal was able to present a defense against the charges.' *Haire v. Talbot Cnty. Bd. of Educ.,* Case No. 1993-12 (Ga. SBE, Aug. 12, 1993). '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.' *Smith v. Bryan Cnty. Bd. of Educ.*, Case No. 1987-24 (Ga. SBE, 1987)(prior written evaluations gave notice)." *Johnson v. Pulaski Cnty. Bd. of Educ.*, Case No. 1996-44 (Ga. SBE, Nov. 14, 1996).

The Local Board argues that the charge letters clearly informed Appellant that his contract would not be renewed because he received two unsatisfactory evaluations and failed to meet the requirements of his professional development plan. The tribunal found that Appellant was insubordinate and willfully neglected his duties because he did not video tape his class and he failed to view a video series. According to the Local Board, these two items are covered by the charge that Appellant failed to meet the requirements of his professional development plan.

The Local Board's position suffers from the fact that the professional development plan covered several different areas, thus leaving Appellant in the situation of having to guess where he was deficient since he had not received any feedback from his principal. There is no need for an employee to have to guess when preparing a defense. With no discovery available, except through the limited effectiveness of an open records request, the requirement to provide detail in the charge letter avoids, or attempts to avoid, "trial by ambush" and gamesmanship. There was no reason for the Local Superintendent not to specifically tell Appellant that he was being fired because he failed to video tape his class and he failed to view a video series. The State Board of Education, therefore, finds that the charge letter was deficient because it forced Appellant to engage in a guessing game to prepare his defense.

Appellant also claims that the evidence failed to support the tribunal's conclusion that he was insubordinate and willfully neglected his duties. We agree with Appellant.

"[F]or an act to constitute insubordination, some intent to disregard the orders of a superior must be shown on the part of the person who is alleged to be insubordinate. Mere negligence or error does not constitute insubordination. Likewise, violation of the orders of a superior based upon a legitimate misunderstanding of the nature of the orders does not constitute insubordination." *West v. Habersham Cnty. Bd. of Educ.*, Case No. 1986-53 (Ga. SBE, Jan. 8, 1987). Insubordination thus requires a showing of a deliberate refusal to execute a lawful command of a superior. In the instant case, while the evidence showed that Appellant did not complete the requirements to video tape his class and to view a video series, the evidence does not show that Appellant deliberately refused to

obey the instructions of his principal. The record shows that he attempted to complete these requirements but was told by the media specialist that the video camera had been stolen and that the video series he was to watch was unavailable. Although Appellant testified that he attempted to discuss the situation with the principal but she was dismissive and did not offer any assistance, the tribunal found that Appellant did not inform the principal of his inability to complete the two requirements. Appellant's failure to inform the principal, however, does not constitute insubordination. Appellant attempted to meet the requirements but circumstances that he did not control prevented completion of the tasks. The inability to complete a requirement is not a deliberate refusal to execute a command of a superior and, therefore, does not constitute insubordination. The State Board of Education concludes that the tribunal improperly found that Appellant was insubordinate.

"[T]o sustain the charge of willful neglect of duties, a local board of education has to establish that the teacher or employee knowingly undertook to avoid performing assigned or expected duties." *McLeod v. Gordon Cnty. Bd. of Educ.*, Case No. 1982-21 (Ga. SBE, 1982). Willful neglect of duty requires "a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct. Under either of these interpretations, 'willfulness' requires a showing of more than mere negligence." *Terry v. Houston Cnty. Bd. of Educ.*, 178 Ga. App. 296, 299, 342 S.E.2d 774, 776 (1986). Just as in the discussion of insubordination, above, Appellant's inability to complete two tasks on his professional development plan because of the unavailability of the required materials does not establish that he knowingly undertook to avoid an assigned task, or that his failure constituted a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct The State Board of Education, therefore, concludes that the tribunal improperly found that Appellant willfully neglected his duties.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Superintendent denied Appellant due process by failing to provide him with a charge letter that contained sufficient detail for him to show error. In addition, the State Board of Education is of the opinion that the evidence failed to show that Appellant was insubordinate or willfully neglected his duties. Accordingly, the Local Board's decision is
REVERSED.

This _____ day of January 2005.

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William Bradley Bryant
Vice Chairman for Appeals