

After a five-day hearing, a three-member tribunal issued its report. The tribunal found Appellant guilty of both willful neglect of duty and insubordination and recommended against renewing his contract. The Local Board adopted the tribunal's recommendation and Appellant filed an appeal with the State Board of Education.

On appeal, Appellant claims that the evidence does not support a finding of either willful neglect of duty or insubordination. We agree with Appellant.

The burden of proof rests with a local board of education in a hearing on charges brought against a teacher or other employee. O.C.G.A. § 20-2-940(e)(4). The courts have stated that "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 'willfulness' requires a showing of more than mere negligence." *Terry v. Houston County Board of Education*, 178 Ga. App. 296, 299 342 S.E.2d 774, 776 (1986). "[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, Jan. 13, 1983). The tribunal's report states that there were numerous instances of willful neglect of duty and lists seven examples of what the tribunal thought was willful neglect of duty. The main example was Appellant's failure to prepare a document each time he had an informal or formal conference with one of his teachers, although Appellant was not charged with failing to maintain documents. Appellant's supervisor claimed that the lack of documentation meant that Appellant was not providing feedback to his teachers, which represented neglect of his duties as a principal. Appellant testified that he provided feedback to his teachers on a daily basis even though he did not have documents to support his claim. Appellant further testified that while he tried to have all of the documents available when his supervisor asked for them, he sometimes was unable to comply with her requests because his assistants had the records, or because the meeting date was changed.

Appellant's failure to have documents to prove that he provided feedback to his teachers does not rise to the level of being "a flagrant act or omission," or "an intentional violation of a known rule or policy", or "a continuous course of reprehensible conduct," or that Appellant "knowingly undertook to avoid performing assigned or expected duties."² The tribunal did not make a finding that Appellant failed to provide feedback to his teachers. Appellant may have been negligent in failing to document each encounter with his teachers, but "'willfulness' requires a showing of more than mere negligence." *Terry, supra*.

All of the remaining examples of willful neglect of duty outlined in the tribunal's report relate to incidents that occurred in previous years, especially while

² Appellant's inability to maintain documents may have been evidence of incompetence, but such an inference is pure speculation since appellant did not attempt to defend himself against a charge that was not brought against him.

Appellant was the principal at Coan Middle School, which was two years before the 2003-2004 school year. Evidence relating to previous school years cannot be used to recommend against renewal in a subsequent year. *See, Moulder v. Bartow County Board of Education*, 267 Ga. App. 339, 599 S.E.2d 495 (2004). The State Board of Education, therefore, concludes that there was no evidence to support a finding that Appellant willfully neglected his duties.

Arguably, the transcript covering five days of testimony might contain some evidence that could support a finding of willful neglect of duty. The Local Board, however, merely adopted the recommendation of the tribunal. If a local board of education does not make separate findings of act, it is bound by the findings made by a tribunal. *See, Barker v. Twiggs Cnty. Bd. of Educ.*, Case No. 1978-34 (Ga. SBE, Feb. 8, 1979). The reviewer is also limited to examining whether there is any support for the specific findings made by the tribunal. In the instant case, the tribunal's general statement that there are numerous instances of willful neglect of duty outlined in the statements of the witnesses is insufficient to support a finding of willful neglect of duty because it forces a reviewer to speculate on what the tribunal might have considered to be willful neglect of duty. Based on the one thing the tribunal found to be willful neglect of duty, the State Board of Education concludes that there was no evidence that Appellant willfully neglected his duties.

The tribunal also found that Appellant was insubordinate. For "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 County Board of Education*, Case No. 1986-53 (Ga. SBE, 1987). The charge letter issued by the Local Superintendent did not specify any specific instances of insubordination. Again, the tribunal stated that there were numerous examples of insubordination and it listed four examples. Each of the examples, however, related to incidents that occurred before the 2003-2004 school year, none of which could be used as the basis for not renewing a contract at the end of the 2003-2004 school year. *Moulder, supra*. As with the willful neglect of duty charge, there is no evidence that the Local Board looked beyond the tribunal's report with regard to the charge of insubordination. There was no finding by the tribunal that Appellant intentionally disregarded the directives of his superior.³ The State Board of Education, therefore, concludes that there was no evidence to support a finding that Appellant was insubordinate.

³ The bulk of the tribunal's 65-page report consists of a simple recitation of the testimony by each of the witnesses without any findings concerning the testimony. The tribunal did not make any findings of fact concerning Appellant's actions during the 2003-2004 school year. The State Board of Education cannot undertake to speculate on what testimony the tribunal otherwise might have considered that led it to conclude that Appellant was insubordinate.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board failed to carry its burden of proof in presenting any evidence that Appellant willfully neglected his duties or was insubordinate during the 2003-2004 school year. Accordingly, the Local Board's decision is REVERSED.

This _____ day of February 2005.

William Bradley Bryant
Vice Chairman for Appeals