

STATE BOARD OF EDUCATION

STATE OF GEORGIA

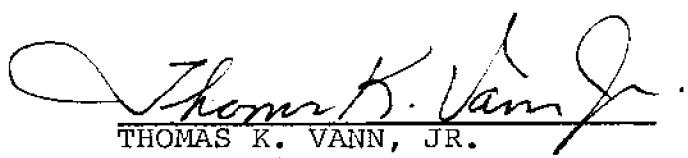
JACK RAINES, :
: Appellant,
: :
vs. : : CASE NO. 1977-15
: :
HABERSHAM COUNTY BOARD OF
EDUCATION, : :
: :
Appellee. : :

O R D E R

THE STATE BOARD OF EDUCATION, after due consider-
ation 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 decision herein
of the Habersham County Board of Education to eliminate
the position of county-wide music coordinator and demote
Appellant Jack Raines, be, and is hereby, affirmed.

This 8th day of December, 1977.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

| | | |
|---|---|------------------------------|
| JACK RAINES, | : | CASE NO. 1977-15 |
| | : | |
| Appellant, | : | |
| | : | |
| vs. | : | |
| | : | |
| HABERSHAM COUNTY BOARD OF EDUCATION, | : | REPORT OF HEARING OFFICER |
| | : | |
| Appellee. | : | |

PART I

SUMMARY OF APPEAL

The teacher in this action was demoted because of the elimination of the position of county-wide music coordinator. The appeal raises two issues: (1) was the teacher given procedural due process, and (2) could the teacher be demoted under the provisions of the Fair Dismissal Act of Georgia because the position of county-wide music coordinator was abolished? The Hearing Officer is of the opinion that the teacher was given procedural due process and could be demoted under the provisions of the Fair Dismissal Act of Georgia.

PART II

FINDINGS OF FACT

The Habersham County Board of Education (hereinafter "Local Board") adopted a resolution on August 29, 1977, which adopted recommendations of the Professional Practices Commission. The effect of the resolution was to demote Jack Raines (hereinafter "Appellant") from his position as county-wide music coordinator to the position of band director for Habersham Central High School at a salary which was less than he received during the school year 1976-77. The Professional Practices Commission had held a hearing upon the request of the Local Board on July 8, 1977, and this appeal was made to the State Board of Education three days after the decision of the Local Board. Appellant argues that the Local Board did not comply with the procedural requirements of Ga. Code Ann. § 32-2103c because he was never given written notification of the charges or reasons for the demotion. The Local Board, on the other hand, maintains that Appellant (1) received written notice, or (2) was given sufficient notice to comply with Ga. Code Ann. § 32-2103c.

The Local Board appointed Appellant to the newly-created position of county-wide music coordinator for the

school year 1976-77 and increased his local salary supplement to \$3,000. During the 1976-77 school year, the Superintendent recommended to the Local Board that the position of county-wide music coordinator be abolished, and that Appellant be offered the position of full-time band director at Habersham Central High School with a local salary supplement of \$1,800.

A contract which showed the local salary supplement of \$1,800 was given to Appellant on March 21, 1977. Two days later, Appellant followed local procedures and filed a grievance form with the Superintendent. The Superintendent responded on March 31, 1977 with a letter which stated that the action was taken because "we do not need a county-wide music supervisor in our program." Appellant then asked for an opportunity to meet with the Local Board. This was done at an April 11, 1977 meeting when the Local Board decided to affirm the actions of the Superintendent. Appellant did not appeal this decision to the State Board of Education, but instead, on April 29, 1977, he requested a hearing before the local board under the provisions of the Fair Dismissal Act and also asked for written reasons for his demotion.

The record then shows that on May 9, 1977, Appellant signed the contract which had been offered to

him on March 21, 1977. A week later, on May 16, 1977, the Superintendent responded to Appellant's request for charges with a letter which stated that a hearing was not in order since a demotion had not taken place. The Superintendent's position was that there was simply a reassignment of personnel and the remuneration was commensurate with the assigned responsibilities. His recommendation was based upon his own study and his professional judgment as an administrator.

Another request for charges was made on May 19, 1977 by Appellant's counsel. The Superintendent again responded, on May 30, 1977, that Appellant had not been demoted, but instead was to devote full-time to his duties at Habersham Central High School. Since Appellant's responsibilities were lessened, the local supplement was reduced to the same amount as was paid to him prior to the time he was given the additional duties. The Superintendent also responded that he could not supply a copy of any charges because there were no charges made against Appellant.

The Local Board asked that the hearing be held by the Professional Practices Commission. The hearing examiner found that there had been a demotion, and that adequate written notification had been given to Appellant.

The hearing examiner also found that the notice of appeal was not timely made, but that by referring the matter to the Professional Practices Commission, the Local Board waived its right to insist on the time requirements for the filing of an appeal.

PART III

CONCLUSIONS OF LAW

Ga. Code Ann. § 32-2101c provides that the contract of a teacher may be terminated or suspended for reduction in staff due to loss of students or cancellation of programs. In Salisbury v. Harrison, Case No. 1976-19, the State Board of Education held that a local board of education could also demote a teacher under the provisions of Ga. Code Ann. § 32-2101c(a). Section 32-2104c(b) also permits a school board to demote a teacher from one position in the school system to another position having less responsibility, prestige and salary.

Subsection (b) of Ga. Code Ann. § 32-2101c requires that before the discharge or suspension of a teacher, written notice of the charges must be given at least ten days before the date set for the hearing. The

written notice must state the cause or causes for the "discharge, suspension, or demotion in sufficient detail to enable him fairly to show any error that may exist."

The Hearing Examiner found that all the procedural requirements regarding notice had been met by the Local Board. The Hearing Examiner also ruled that Appellant had waived any additional rights he had when the matter was heard before the Professional Practices Commission because of his failure to appeal the decision made by the Local Board at the first hearing held on April 11, 1977. In the opinion of the Hearing Examiner, the Superintendent's May 30, 1977 letter to Appellant's counsel, coupled with his 1977-78 contract, was adequate to inform Appellant that he was being demoted for reduction in staff due to cancellation of programs and Appellant was sufficiently informed of and knowledgeable of the demotion and the reasons therefor.

Appellant insists that he was never given written notice of the reasons for the demotion. He further argues that the Hearing Examiner erred in holding that he waived any of his rights by not appealing from the first hearing before the Local Board.

It is the opinion of the Hearing Officer that the Local Board proceeded lawfully and that Appellant was

given notice of the causes for his demotion "in sufficient detail to enable him fairly to show any error that may exist." Formal "charges", in the sense that there were accusations made against Appellant, did not exist. The change in Appellant's position came about because of the Local Board's decision to eliminate the position of county-wide music coordinator based upon the recommendation of the Superintendent. Appellant was given notice of this decision from the very beginning when he submitted the grievance form to the Superintendent and the Superintendent responded by stating, "We do not need a county-wide music supervisor in our program." The only important part of these preliminary proceedings, however, is the fact that Appellant received notice of the tentative decision prior to April 15, 1977, as required by Ga. Code Ann. § 32-2103c.

The next important communication was the May 30, 1977 letter from the Superintendent to Appellant's counsel which set forth the reasons for the demotion, notwithstanding the fact that the Superintendent did not view the action as a demotion. In the letter, the Superintendent stated:

"It was my professional judgment, based upon an investigation made by me, that the music education program in Habersham County Schools could best be served by having Mr. Raines

devote his full time and attention
to the program at Habersham Central
High School."

However, I will appear as a witness
and will testify that in my opinion,
as a professional educator, the change
which was recommended by me and
adopted by the Board of Education was
made in order to provide the best
musical education for the students of
Habersham County Schools."

The letter was sent at least ten days before the hearing
was held before the Professional Practices Commission.
The record does not disclose that there was any other
reason for the change, nor does Appellant contend that
there were any other reasons for the change. It appears,
therefore, that Appellant was given every opportunity to
present an informed version of his contentions, he was not
deprived of any due process rights, and the Local Board
complied with all of the procedural formalities required
by statute.

PART IV
RECOMMENDATION

Based upon the above findings and conclusions, the
record, and the briefs and oral arguments of counsel, the
Hearing Officer is of the opinion that the Habersham County

Board of Education had the power and authority to eliminate the position of county-wide music coordinator and hire Appellant as band director in the high school at his former salary level, that such decision was not an abuse of discretion, and that Appellant was not deprived of any rights of due process. The Hearing Officer, therefore, recommends that the decision of the Habersham County Board of Education be sustained.

L. O. Buckland
L. O. BUCKLAND
Hearing Officer