

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SAMUEL W. JOHNSON,

Appellant,

V.

**LEE COUNTY BOARD
OF EDUCATION,**

Appellee.

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CASE NO. 1987-37

DECISION

PART I

SUMMARY

This is an appeal by Samuel W. Johnson (hereinafter "Appellant") from a decision of the Lee County Board of Education (hereinafter "Local Board") not to renew his teaching contract because of charges of insubordination, willful neglect of duty, inciting, encouraging, or counseling students to violate a valid State law and policies of the State and Local Board, and other good and sufficient cause. The decision of the Local Board is sustained.

PART II

FACTUAL BACKGROUND

On May 27, 1987, the Local Board voted to terminate Appellant's teaching contract. This occurred after the Local Board provided Appellant a hearing at which Appellant's principal testified he had visited Appellant's class on March 19, 1987, and observed that students who were operating metal lathes, as well as other students in the same room, were not wearing safety glasses. Appellant's principal testified that it was a violation of Local Board policy for the students not to be wearing the safety glasses, as well as a violation of state law. The principal stated that the Local Board had a policy similar to the State Board of Education's policy. State Board of Education executive

procedure JGFGB-EP requires, as a minimum, that every student, teacher and visitor using or observing machines or operations which present potential eye injury from physical, chemical or radiation agents shall be provided with eye protection equipment that should be durable and capable of being disinfected. Appellant's principal further testified he had questioned Appellant about the availability of eye safety wear and that Appellant had assured him that everything needed in the classroom was available.

Appellant's principal further testified that some of Appellant's students told the principal that Appellant let students leave campus in violation of Local Board policies. When the principal questioned Appellant whether a certain female student had left his class, Appellant denied that the student had left the class. The principal testified he questioned the student and others and received different stories from different people. The principal then testified that he asked Appellant to prepare a written report by a specific time, but Appellant failed to turn in the report. The principal discussed the situation with Appellant again and Appellant informed the principal that Appellant had allowed the female student to leave on two occasions at the request of the Student's mother. Other students later told the principal that the student had left on six to eight occasions. The written report was finally submitted shortly before the hearing before the Local Board.

The student testified she was allowed to leave Appellant's class approximately twenty times and occasionally other students took her off campus. She testified she had her parents' permission to leave campus, and, in fact, she was going to her father's business to help him out. Two other students testified they each took the female student to her job and then returned to school on two occasions.

Appellant testified he told the students to wear their safety glasses and that he had never been warned that he was not enforcing the Local Board policy regarding

safety glasses. Appellant further testified he was aware the other two students had left his classroom without parental permission. He did state that students had to go to the office and get parental permission to leave and sign out. Appellant further testified he had informed all the students of the Local Board policies requiring them to sign out when they left campus. Appellant admitted that, when he first talked to the principal, he did not tell the principal how many times the student had left class, or about the other students being allowed to leave to drive the student to work, and that he did not turn in the written report requested by his principal.

The mother of the student who had left school to work testified that the student's father had given her permission to leave school and that, when the student left school, it was with permission.

PART III

DISCUSSION

O.C.G.A. §20-2-942 (b) provides that a tenured¹

teacher can be nonrenewed only for those reasons set forth in O.C.G.A. §20-2-940(c).

The Local Board has set forth the following reasons, contained in O.C.G.A. §20 2-940(c) as the reasons for Appellant's nonrenewal: (1) insubordination,

(2) willful neglect of duties, (3) inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board of education, and (4) any other good and sufficient cause. Appellant contends there is no evidence to support the charges.

¹ After 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".

If there is any evidence in the record to support the decision of the Local Board, the State Board of Education must uphold the Local Board's decision absent an abuse of discretion 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.

After a careful review of the evidence, it appears there is evidence in the record to support the following findings of fact:

1. Students in Appellant's class did not wear protective glasses on an occasion when the principal visited Appellant's classroom, as well as on one other occasion.
2. Students left Appellant's classroom and the school campus, without signing out, which was in violation of school policy.
3. Appellant failed to provide a written report to the principal, in a timely manner, after the principal requested the report.
4. Appellant initially told the principal that a student had not left his classroom when she and other students had left his classroom.

The principal's testimony was that he asked Appellant if the Student had left Appellant's class without permission, that Appellant told him the Student had not left his class, and that later Appellant told him the Student had left on two occasions because her mother had requested she be allowed to leave. Appellant's testimony was that when he first talked with the principal about the Student leaving class he did not tell the principal how many times the Student had left class, nor about the other students being allowed to leave to drive the Student to class.

The evidence that Appellant attempted to mislead the principal was offered to support the charge of other good and sufficient cause for non-renewal of Appellant's contract. An administrator must be able to rely on the statements of the teachers and other employees. When the principal was misled by Appellant and heard contrary statements from others, he was forced to check into the validity of what he was told. When he found that Appellant had been untruthful, he was faced with a subordinate

whose statements he could not trust. Such facts constitute other good and sufficient cause for non-renewal of Appellant's contract.

Appellant's other contentions relate to whether the evidence was sufficient to support the charges for insubordination, willful neglect of duties and inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the Local Board. The State Board of Education is inclined to agree that the evidence presented does not support those charges.

The interpretation of insubordination by the State Board of Education in Rena West v. Habersham County Board of Education, Case No. 1986-53, requires more than has been shown by the facts of the instant *case*. The principal allowed Appellant to respond to the principal's request for the written explanation by stating Appellant would get it in, without directing Appellant that further failure to provide the report would be considered insubordination. Failure to meet a timeline for a report does not itself show insubordination, especially where it is shown that the superior allows the employee to state that it will be turned in later, and the superior does not object to that response. The interpretation of willful neglect of duties set forth by the Court of Appeals in Terry v. Houston County Board of Education, 178 Ga. App. 296, requires more than the facts proved in this case. Terry requires a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct. The facts proved do not show willful neglect of duty. Finally, the facts do not show evidence that Appellant incited, encouraged, or counseled students to violate any valid state law, municipal ordinance, or policy or rule of the Local Board. This charge would require Appellant to have an intent to have students violate law or policy, which intent was not shown. However, in light of the fact that good and sufficient cause was shown to warrant non-renewal of Appellant's contract, the failure of the Local Board to support its other charges does not require reversal of the decision of the Local Board.

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 of other good and sufficient cause sufficient to warrant the Local Board's decision to non-renew Appellant's contract. The decision of the Local Board is, therefore,

SUSTAINED.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals