

**IN THE COURT OF APPEALS 02/13/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CC-00012 COA**

**DR. W. L. TOBIAS, JR.**

**APPELLANT**

**v.**

**AMITE COUNTY BOARD OF EDUCATION**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. R. B. REEVES, JR.

COURT FROM WHICH APPEALED: AMITE COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

NORMAN B. GILLIS, JR.

ATTORNEY FOR APPELLEE:

PERRY SANSING

NATURE OF THE CASE: CIVIL/NON RENEWAL OF EMPLOYMENT CONTRACT

TRIAL COURT DISPOSITION: AFFIRMED DECISION OF THE AMITE COUNTY SCHOOL  
BOARD NOT TO RENEW CONTRACT

BEFORE BRIDGES, P.J., KING, AND PAYNE, JJ.

BRIDGES, P.J., FOR THE COURT:

The appellant, Dr. Tobias, appeals to this Court from the decision of the chancery court affirming the decision of the Amite County Board of Education not to renew his contract as principal of Amite

County High School for an additional year. Tobias claims that the Amite County Board of Education acted in an arbitrary and capricious manner and that the decision was not supported by substantial evidence. Finding that the chancellor did not err in refusing to overturn the decision of the school board, we affirm the decision of the lower court.

## FACTS

On February 11, 1994, the Amite County Board of Education (the Board) decided not to renew Dr. W.L. Tobias' (Tobias) contract to be principal of Amite County High School for an additional year. According to the record, the school's superintendent, Curtis Bishop (Bishop), had recommended to the high school's administration not to renew Tobias' contract as principal of Amite County High School. The school administration accepted the recommendation and notified Tobias. Tobias requested a hearing pursuant to section 37-9-101 of the Mississippi Code. Also, in accordance with the statute mentioned above, the administration sent Tobias a statement of reasons and factual basis for his non-renewal.

The three-day hearing began on March 29, 1994. During the course of the hearing, the hearing officer heard testimony concerning fourteen reasons given by the administration for non-renewal. Out of the fourteen reasons set forth by the school administration, the hearing officer decided that two of the reasons stated by the administration, supported non-renewal of Tobias' contract. The two reasons concerned Tobias' failure to submit a timely Chapter I report and his submission of a false schedule report to the school administration.

The Board reviewed the evidence from the hearing and took into consideration the hearing officer's findings of fact. The Board decided to uphold the recommendation for non-renewal, and as a result, Tobias appealed to the Amite County Chancery Court which affirmed the decision of the Board. Aggrieved, Tobias timely filed an appeal to this Court.

## ARGUMENT

On appeal, Tobias claims that the Board and the chancellor failed to take into consideration the allegations made by Tobias that he was fired, not because of his competency as a principal, but because of pressures put on Bishop by certain prominent businessmen in the community. Tobias claims that the businessmen disliked him and wanted him fired because he failed to cooperate with them as previous principals had. Tobias claims that the businessmen hounded Bishop until he finally gave in to the pressure and decided to "find" reasons to fire Tobias. Tobias claims that the Board's actions were "solely and exclusively the result of Bishop's malicious and unlawful design" to get rid of Tobias. Tobias claims that he had been given a favorable, written evaluation for the previous year and therefore was entitled to a renewal. He further argues that there was no substantial evidence to support the reasons given by the Board to terminate his services and that the actions of the Board were arbitrary and capricious.

The Board argues that the chancellor did, in fact, take into consideration the effect of the external pressures on the superintendent alleged by Tobias, as is evidenced by the chancellor's written opinion. It is the Board's opinion that the chancellor correctly decided that it was not the court's

position to rule on the issue since this particular issue concerned a conflict in the evidence. In effect, the Board's argument is that the chancellor did not err because when a conflict in evidence exists, the Board is entitled to determine which testimony it will give the most weight, and the Board's decision cannot be overturned unless there is no credible evidence to support the Board's finding.

## DISCUSSION OF LAW

The pertinent sections of the Mississippi Code of 1972 which determine the procedures used when a school employee's contract is not renewed are referred to as the "School Employment Procedures Law of 1977" (SEPA) which is encompassed in sections 37-9-101 to 37-9-113 of the Mississippi Code. The situation where a school board fails to renew a school employee's contract is treated differently from situations where an employee is fired or terminated. The procedures used when a school employee is terminated can be found in section 37-9-59. One difference between termination and non-renewal is the time period in which notice must be given. If a school district decides not to offer an employee a renewal of his or her contract for the successive year, written notice of the non-renewal must be given within seven days of the date when the recommendation not to rehire would have been made and no later than March 1 if the employee is a principal. Miss. Code Ann. § 37-9-105 (1972). In the case of termination, the code states that the employee shall be notified of the charges and may request a public hearing which should occur no sooner than five days but no later than thirty days after the request. Miss. Code Ann. § 37-9-59 (1972).

Most important to the disposition of this case are the substantive differences between the two sections. Section 37-9-101 of the Mississippi Code of 1972 sets forth the legislative intent which states in sum that SEPA was enacted to provide public school employees with notice and an opportunity to be heard, but not to "establish a system of tenure or require that all decisions of non-reemployment be based upon cause with respect to employment in the school district." Miss. Code Ann. § 37-9-101 (1972). Before a hearing concerning the non-renewal of an employee, the superintendent must give a demonstrable reason for non-renewal. At the hearing, the burden shifts to the employee to prove both affirmatively and conclusively that the school board's reasons for non-renewal have no basis in fact. The burden of proof at the non-renewal hearing is not on the superintendent or principle, but on the employee. *Calhoun County Bd. of Educ. v. Hamblin*, 360 So. 2d 1236, 1240 (Miss. 1978). In contrast, the section of the code which governs termination requires that good cause be shown in order to dismiss or suspend a public school employee and that the burden of proof at the hearing rests with the superintendent. Miss. Code Ann. § 37-9-59 (1972).

Sections 37-9-109 to 37-9-111 set forth the rights of the employee once the employee has received notice and the procedures to be followed once the employee has requested a hearing. In brief, the above sections provide that the employee be given written notice of the reason(s) for non-renewal, and opportunity for a fair and impartial hearing at which the employee is represented by counsel. The employee shall be given the opportunity to present matters relevant to the reasons given for the non-reemployment and should have the opportunity to present witnesses and submit evidence. After the hearing has been conducted, the school board shall review the evidence and determine whether the non-reemployment decision was a proper employment decision. The school board is then obligated to inform the employee in writing of its final decision. Miss. Code Ann. §§ 37-9-109 to -111 (1972).

If an employee is aggrieved by the final decision of the school board, then the employee may appeal

to the chancery court of the judicial district in which the school district is located. Miss. Code Ann. § 37-9-113 (1972). If the employee is aggrieved by the decision of the chancery court, then the employee may appeal to the Mississippi Supreme Court. *Id.*

The standard of review in chancery court in such cases is limited to a review of the record before the school board. The chancellor must determine if the school board's actions were unlawful on the grounds that they were (a) in violation of some statutory or constitutional right of the employee; (b) arbitrary or capricious; or (c) not supported by substantial evidence. *Harrison County Sch. Bd. v. Morreale*, 538 So. 2d 1196, 1201 (Miss. 1989). If the employee elects to appeal the chancery court's decision, then this Court is required to employ a similar standard of review. *Harris v. Canton Separate Pub. Sch. Bd. of Educ.*, 655 So. 2d 898, 901 (Miss. 1995).

In reviewing a non-renewal decision, this Court's focus of inquiry concerns whether the decision was made for a reason not specifically prohibited by law, and whether or not the decision was made in accordance with the applicable legal requirements. *Id.* at 903 (citing *Harrison County Sch. Bd. v. Morreale*, 538 So. 2d 1196, 1201 (Miss. 1989)). The Mississippi Supreme Court has stated that the only grounds for dismissal which are "prohibited by law" are constitutional grounds. *Id.* Tobias does not claim that the actions of the Board violated First Amendment or other constitutional rights or that he was deprived of any legal process.

Next, this Court must undertake a careful review of the record to determine if a decision of a school board should be overturned on the grounds that it is not supported by substantial evidence and/or is arbitrary and capricious. *Id.* at 902; *Byrd v. Greene County Sch. Dist.*, 633 So. 2d 1018, 1022 (Miss. 1994); *Spradlin v. Board of Trustees of Pascagoula Mun. Separate School Dist.*, 515 So. 2d 893, 898 (Miss. 1987). In examining a school board's decision, our supreme court gives the school board's factual findings a great deal of deference. If there is any credible evidence to sustain the school board's finding of facts, even where the evidence is conflicting, we cannot overturn a school board's decision. *Board of Trustees of Hattiesburg Mun. Sep. School Dist. v. Gates*, 461 So. 2d 730, 737 (Miss. 1984). Moreover, when there is an issue of conflicting testimony, this Court will give great weight and deference to the prerogatives of school administrators in the discharge of their responsibilities. *Clinton Mun. Separate Sch. Dist. v. Byrd*, 477 So. 2d 237, 242 (Miss. 1985). Furthermore, a school board is entitled to determine which testimony it will give the most weight when conflicting testimony is presented. *Everett v. Board of Trustees Mun. Separate School Dist.*, 492 So. 2d 277, 283 (Miss. 1986). In effect, this Court cannot substitute its own judgment for that of a school board. See *United Cement Co. v. Safe Air For Environment, Inc.*, 558 So.2d 840, 842 (Miss. 1990).

The record shows that there was direct and conflicting testimony as to the reasons the superintendent decided to recommend non-renewal. The superintendent claims that he was not pressured into recommending non-renewal but did so because Tobias submitted false schedule reports and almost caused the school district to lose important funding by failing to submit Chapter I reports on time. There was also additional testimony in the record to show that Tobias failed to discharge these and other duties properly.

In direct conflict to the above testimony, Tobias testified that the real reason his contract was not renewed was because the businessmen were putting pressure on Bishop not to renew Tobias'

contract. Tobias also claims that the submission of a false schedule report and the delays in submitting the Chapter I reports were not his fault but were caused by circumstances beyond his control.

The Board weighed the testimony and the evidence and decided that the testimony of Bishop and the other school employees was more credible than Tobias' testimony. Our supreme court has repeatedly given deference to school boards in these matters. In this case, the Board was in a better position than the chancellor or this Court to examine the credibility of the witnesses. *Harris v. Canton Separate Pub. Sch. Bd. of Educ.*, 655 So. 2d 898, 902 (Miss. 1995) (citing *Noxubee County Bd. of Educ. v. Givens*, 481 So. 2d 816, 819 (Miss. 1985)). Based on the above, we are not at liberty to disturb the Board's decision in this matter.

We will next address Tobias' allegations that the superintendent sought out reasons not to renew Tobias' contract because of pressures placed on him by local businessmen. In furtherance of this argument, Tobias brings forth evidence of a written assessment presented to Tobias on October 5, 1993, by the superintendent. The assessment measured Tobias' performance for the 1992-1993 school year. Tobias' argument on appeal is that because his overall performance was rated as satisfactory and competent, the superintendent must have recommended non-renewal only four months later because of the pressures placed on the superintendent by the local businessmen. In addressing this issue, we would like to point out that the superintendent testified at the hearing that he was not receiving any pressure from the businessmen during the period in which he recommended non-renewal. Moreover, there was the additional testimony of the superintendent and other witnesses who testified as to Tobias' delay in performance of his duties and as to his submission of a false schedule report. In this case there was substantial evidence that Tobias failed to discharge his duties in the manner complained of by the superintendent. The supreme court has held that substantial evidence means evidence affording a substantial basis of fact from which the fact in issue can be reasonably inferred. *Harris v. Canton Separate Pub. Bd. of Educ.*, 655 So. 2d 898, 901 (Miss. 1995) (citing *Central Elec. Power Ass'n v. Hicks*, 110 So. 2d 351, 357 (Miss. 1959)). Substantial evidence comprises more than a scintilla of evidence, but does not rise to the level of a preponderance of the evidence. *Harris*, 655 So. 2d at 902 (citing *Johnson v. Ferguson*, 435 So. 2d 1191, 1194 (Miss. 1983); *Babcock & Wilcox Co. v. McClain*, 149 So. 2d 523, 523 (Miss. 1963)). Here, the record supports the chancellor's finding that there was substantial evidence in the record to support the Board's decision for non-renewal and that the school board did not act in an arbitrary and capricious manner.

For the foregoing reasons, we are unable to disturb the chancellor's ruling affirming the findings of the school board.

**THE JUDGMENT OF THE AMITE COUNTY CHANCERY COURT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**FRAISER, C.J., THOMAS, P.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**

