AN EXAMINATION OF THE FIRST TWO YEARS OF IMPLEMENTATION OF THE TEXAS TERM CONTRACT NONRENEWAL ACT AT THE STATE AGENCY LEVEL

DISSERTATION

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Before the 1981 enactment of the Term Contract Non-renewal Act in Texas, term contract teachers were entitled to a hearing only when the employment contract was terminated during the contract period or when the cause for nonrenewal was made public and had a stigmatizing effect on the reputational rights of the teacher. This new act has the effect of bridging the gap between what has been legal and what many would consider to be fundamentally fair in employment practices. The immediate impact of this law has left educators with the need to investigate the adequacy of the procedure used by the Texas Education Agency in implementing the hearings and appeals process regarding nonrenewal of term contracts. This, then, is the problem of this study.

Selected plaintiff and defense attorneys, Texas Education Agency adjudicators, and legal directors for teachers and school board associations were interviewed with regard to procedures in the administrative law process. Responses to each question were organized to permit within-group and
between-group comparisons. Similarities and differences were then assimilated to recommend changes in the implementation process.

It took the Texas Education Agency nearly two years to promulgate rules and regulations implementing the new law. This two-year delay triggered criticism from those representing both defendants and plaintiffs. Criticism also focused on some Texas Education Agency interpretations issued in its quasi-judicial actions during this period.

Most of the criticism advanced by the respondents focuses on what constitutes substantial evidence, the type hearing provided at the agency level (i.e., de novo or transcript), and procedure rules. The views of the respondents vary depending upon their position. For example, those sympathetic to plaintiffs favor a de novo hearing on appeal, while those sympathetic to defendants favor a hearing based on transcripts of local hearings.
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CHAPTER I

INTRODUCTION

On May 12, 1981, the Texas Senate passed a bill that has been called by many names. Among those names are "The Teacher Tenure Bill" and "The Lawyer's Retirement Act." However, the most accurate name is the "Texas Term Contract Nonrenewal Act."

The term Contract Nonrenewal Act, often referred to as Senate Bill 341 (see Appendix A), won final approval after amendments on June 17, 1981. The law, which adds Sections 21.201 through 21.211 to Subchapter G of the Texas Education Code (13) went into effect on August 31, 1981.

Before passage of this act, term contract teachers were entitled to a hearing only when the employment contract was terminated during the contract period or when the cause for nonrenewal was made public and had a stigmatizing effect on the reputational rights of the teacher (5). For this reason, many attorneys simply recommended to their client school districts that term contract teachers should be given neither reasons for nonrenewal nor a hearing before an impartial tribunal unless dismissals occurred during the school year. This recommendation simplified the decision-making process for the employers, but it did not give the
teacher the opportunity to review such evidence as evaluations, recommendations, or allegations of incompetence (4).

Prior to the passage of the Term Contract Nonrenewal Act, only two other pieces of legislation had been passed regarding employment contracts for Texas professional educators. In 1905 the Texas Legislature passed the "Term Contract" statute. While this law empowered boards of trustees to enter into employment contracts with teachers and administrators, it provided little direction for administering these contracts, and no guidelines for the terms of the contract.

The second piece of legislation dealing with employment contracts was the "Continuing and Probationary Contract" law, which added Subchapter C, Sections 13.101 through 13.116, to the Texas Education Code in 1969. This law, which is quite specific and provides procedural due process, is basically a tenure act. The provisions for continuing contracts apply only to those districts that choose to adopt it. The majority of Texas school districts, not wishing to give tenure to their professional employees, have not adopted the law. In addition, administrators are specifically excluded from continuing contracts according to Section 13.108 of this statute.

The Term Contract Nonrenewal Act (TCNA) has the effect of bridging the gap between what has been legal and what
many would consider to be fundamentally fair in employment practices. Even though there is often an adversary nature to the relationship between teachers and their employers in nonrenewal decisions, there is still room for reasonable dialogue (7). The Term Contract Nonrenewal Act puts teachers and their employers in a position where reasonable dialogue is a necessity for both.

Statement of the Problem

The problem of this study is to investigate the adequacy of the procedures used by the Texas Education Agency in implementing the hearings and appeals process regarding nonrenewal of term contracts.

Statement of the Purpose

The purpose of this study is two fold. The first purpose is to examine the views of parties involved in the appeals process before the Commissioner of Education during the period from September 1, 1981, through August 31, 1983, regarding the impact of the Term Contract Nonrenewal Act on school district nonrenewal decisions with respect to professional personnel. The second purpose is to propose recommendations for changes in the administrative law process on the basis of the responses obtained.
Research Questions

The research questions of this study are as follows.

1. What steps has the Texas Education Agency taken to implement the Term Contract Nonrenewal Act?

2. How do (a) selected counsels for the plaintiffs and defendants who were involved in the twenty-four cases reaching final administrative appeal during the first two years, (b) the counsel for the Texas Association of School Boards, and (c) the adjudicators for the Texas Education Agency respond to this initial effort by the State of Texas to confer procedural rights upon teachers whose contracts are nonrenewed?

3. Based on the responses obtained from the parties specified in research question two, what changes, if any, should be made in the law itself or the procedures of the Texas Education Agency to ensure fundamental fairness in employment practices?

Background and Significance of the Study

Basically, Senate Bill 341 (see Appendix A) provides for three things: the annual evaluation of teachers [In the law, "teacher" is defined to include a superintendent, principal, supervisor, classroom teacher, counselor, or other full-time professional employee (see Appendix A).]; a regulated decision-making process for the renewal or nonrenewal of teacher contracts; and hearings and appeals processes to
resolve conflict between teachers and administration. For
the remainder of this study, the term teacher is used as
defined in Senate Bill 341.

Texas school boards have the option of adopting Chapter 13 of the Texas Education Code, which provides for continuing contracts, or of hiring teachers under term contracts. In the past, those school boards that had not adopted subchapter thirteen (Continuing Contracts) could decline to renew a teacher's contract at the end of its term, and the board was not required to inform the teacher of reasons for the nonrenewal. Furthermore, such decisions were not required to be based on an evaluation of the teacher's performance.

Under the new act, if a recommendation is given for nonrenewal of a teacher's contract, the board of trustees, after consideration of the written evaluation required by Section 21.202 of the Texas Education Code and the reasons for the nonrenewal recommendation, shall "either reject the recommendation or shall give the teacher written notice of the proposed nonrenewal on or before April 1 preceding the end of the employment term fixed in the contract" (see Appendix A). The teacher then has ten days to request a board hearing, which will be closed unless the teacher requests that it be open. While the procedure for such a hearing is not prescribed by the statute, given the purpose and requirements of the hearing, the procedure should not be
difficult to design. The purpose of the hearing is twofold. First, the hearing should afford the teacher an opportunity to respond to the reasons upon which the proposal for non-renewal was based (otherwise, the requirement that those reasons be furnished to the teacher makes no sense). Second, the hearing should afford the board of trustees a basis for taking "such action as it deems lawful and appropriate" (see Appendix A). This law prescribes that on request, a hearing be afforded the teacher as a precondition to a non-renewal decision. One can conclude that a board member must rest his or her decision on the evidence heard at the hearing, not on hearsay (7), nor solely on the administrator's recommendation.

If after the hearing, a board decides not to renew a teacher's contract, the board must notify the teacher in writing of that action within fifteen days following the conclusion of the hearing. If the teacher is aggrieved by the decision of the board, the board's decision may be appealed by the teacher to the State Commissioner of Education.

It is at this point that this research was conducted. The law left many questions unanswered, and the Texas Education Agency has had to render decisions on these questions. The experience of the first two years under Senate Bill 341 regarding personnel decisions that have been appealed to
the Commissioner of Education, and the implementation of this new law by the Texas Education Agency, provide an important topic for study.

This study is significant in that the views of the experts with regard to the implementation of the law for the first two years provide a means for assessing the effectiveness of the administrative law process as well as determining changes which might be made in that process or in the statute itself. For example, do these experts view the procedures as being fair to all parties? What changes have they recommended to make the process more expeditious and equitable? This study also conveys the views of the experts at the state agency level regarding the future course of action for employment practices and personnel management decisions made at the local level.

In addition, the study addresses the question of whether a de novo hearing (one where testimony is presented anew rather than read from a record) is necessary for the Commissioner to decide if the decision of the local board was fair. One reason why this is significant is that it closely approaches the question of whether the Term Contract Non-renewal Act implies a property interest beyond the specified dates of the contract.

Under prior case law, a teacher whose term contract was nonrenewed had neither the right to receive the reasons for
the board's action nor the right to a hearing to review that decision. In 1972, the Supreme Court upheld this practice in the cases of Board of Regents vs. Roth (1) and Perry vs. Sinderman (12). The Court ruled that unless a person has a property right in a contract, there is no legal basis for a due process claim. Property rights, according to the court, are determined by state law. Under Texas law at that time, the teacher's property right expired at the end of the contract term, thus no hearing was required.

However, with the enactment of the Term Contract Nonrenewal Act, school districts are now required by virtue of state law to give reasons for nonrenewal and a hearing to the teacher, if requested. The expert opinions of those involved with the Term Contract Nonrenewal Act at the state level may influence future judicial decisions regarding the property right question, and this research reflects their views.

Definition of Terms

The following terms are defined as they relate to this study.

The Texas State Teachers Association is the professional teacher organization that has assisted the majority of the teacher plaintiffs in their appeals to the Commissioner of Education during this time period.
The Texas Association of School Boards is the professional association that assists school districts in developing personnel management policies.

School districts refer to the local public school districts in Texas. Senate Bill 341 does not affect non-public schools or schools outside of Texas.

Senate Bill 341 -- The Term Contract Nonrenewal Act passed by the Sixty-Seventh Session of the Texas Legislature; the content of this act is presented in Appendix A.

Limitations

Data were collected primarily through focused interviews and subsequently analyzed qualitatively. In naturalistic studies of this type, researcher bias cannot be totally eliminated, and data conclusions should be treated with appropriate caution. Much of the data is phenomenological (i.e., respondents were asked to give their "point of view"). Qualitative researchers approach respondents with a goal of understanding their point of view; while this is not perfect, Bogdan and Biklen (2) argue that it distorts the subject's experience the least.

This study is not concerned with local policies and evaluation methods and procedures in general. Rather, it examines procedures once an appeal has been made to the Commissioner of Education. Thus, it focuses on the actions
taken by the Texas Education Agency to implement the state statute.

**Procedures for Collection of Data**

Primarily, data were collected by open-ended, in-depth interviews. According to Oppenheim (11), flexibility is the greatest single advantage of the focused interview in that the interviewer has the option to change the order of questions and to both provide and seek necessary clarification. Brandt (3) suggests that interviews allow one to obtain an individual's current retrospective account of a setting, event, and practice, and he contends that this information is almost impossible to observe directly and too complex to gain by means of a questionnaire.

The focused interview strategy was used by Hord (8) to measure the impact of the ethnographic research methodology on the subjects of particular studies. The current study involves interviews that focus on the Term Contract Non-renewal Act as implemented at the state agency level. The validity of the focused interview and the reliability of ethnographic research have been given increased confidence by the results of Hord's study.

The accuracy and comprehensiveness of the collected data are the major concerns of researchers who do qualitative studies. In this way, reliability is viewed as a fit between what is recorded as data and what actually occurs in the
setting under study (2). Bogdan and Biklen (2) further conclude that reliability would be questioned only if two researchers yielded contradictory or incompatible results from the same research.

LeCompte and Goetz (9) report that ethnographic research strategies have recently been advocated for studies involving program implementation because of their high internal validity and because of a lack of satisfactory results from other constructs and models. Ethnographic strategies evoke data that are phenomenological. This involves acquisition of first-hand sensory accounts of phenomena as they occur in real world settings (10). For this reason, ethnographic research strategies are empirical and naturalistic. For all these reasons, this research topic was best handled using ethnographic strategies.

The subjects of the focused interviews were selected from three groups. Group I consists of counsel for both defendants and plaintiffs involved in the twenty-four cases that reached final administrative remedy during the first two years under this new act. Group II consists of association lawyers for teachers and school boards. Group III consists of those persons involved in adjudicating appeals made to the Commissioner.

Three attorneys for the defendants and three for the plaintiffs were interviewed to represent group I. The Director of Legal Affairs for the Texas State Teachers
Association and the Director of the Texas Association of School Boards were interviewed to represent group II. Group III is represented by the Commissioner of Education, the Director of Hearings and Appeals, and the General Counsel for the Texas Education Agency.

Eleven interviews were conducted with persons in groups I, II, and III. The data base for this study consists of these eleven focused interviews, the twenty-four written decisions signed by the Commissioner, the rules recently promulgated by the Texas Education Agency for hearings and appeals, and the state law itself. All of these lend themselves to qualitative rather than quantitative analysis.

Data from the focused interviews were collected by means of audio recordings made during the interviews with the respondent's permission.

Procedures for Analysis of Data

Upon completion of the focused interviews, the data were compiled so that they could be analyzed for similarities and differences (6, 11). The diverse responses were examined and divided into categories for between-group and within-group comparisons; this established a basis for the iterative process of developing tentative generalizations, which produced a descriptive categorization of responses.

Data collected by means of audio recordings were carefully reviewed. The researcher carefully listened to each tape in order to transcribe the most characteristic response.
to each question onto paper. Each respondent was assigned a category and code. Answers were transcribed into summaries with key comments being recorded verbatim. Accuracy was assured by asking three persons knowledgeable in school law to validate the researcher's summary of the responses. Each person validated one response on three different tapes. Additionally, the typed interview schedule and responses were sent to each respondent for verification or changes.

Within-group comparisons were made by developing a matrix of responses for each group. These responses were recorded in appropriate cells. This function reduced the data to allow for within-group comparisons. In this form, data were searched for similarities and differences.

A final step was to analyze the interview material and the following documents: (a) the twenty-four appealed cases (Appendix D), (b) the newly adopted rules for hearings and appeals (Appendix C), and (c) the statute itself (Appendix A). Inferences were developed about the implementation of the Term Contract Nonrenewal Act. These inferences were developed through the iterative process with repeated reviews of the gathered data until the researcher was satisfied that these inferences explained the data.
CHAPTER BIBLIOGRAPHY


CHAPTER II

REVIEW OF RELATED LITERATURE

In Texas, prior to enactment of the Term Contract Nonrenewal Act, teachers fit into one of three contract categories—probationary, continuing, or term. The first category encompassed those teachers who were employed on a probationary contract by a district that had formally adopted Chapter 13 of the Texas Education Code (25).

According to Section 13.102 of the Texas Education Code:

Any person who is employed as a teacher by any school district for the first time, or who has not been employed by such district for three consecutive school years subsequent to August 28, 1967, shall be employed under a "probationary contract," which shall be for a fixed term as therein stated; provided, that no such contract shall be for a term exceeding three school years beginning on September 1 next ensuing from the making of such contract; and provided further that no such contract shall be made which extends the probationary contract period beyond the end of the third consecutive school year of such teacher employment by the school district, unless the board of trustees determines and recites that it is in doubt whether the particular teacher should be given a continuing contract, in which event a probationary contract may be made with such teacher for a term ending with the fourth consecutive school year of such teacher's employment with the school district, at which time the employment of such teacher by such school district shall be terminated, or such teacher shall be employed under a continuing contract as hereinafter provided (25, Sec. 13.102).
At the end of this preset probationary period, a teacher's employment must either be terminated or elevated to continuing contract status (tenure). If the board decides to end the probationary contract at the end of the current contract period, a teacher may request a hearing and is entitled at the hearing to know the reasons for non-renewal (25, Section 13.104).

The second category was comprised of those teachers who were employed on continuing contracts. After three successful years of teaching, a teacher in this category was placed on a continuing contract and was required to notify the board of trustees of the acceptance of such a contract within a thirty-day period following the offer. Additionally, the statute very clearly and specifically delineates the procedures required to terminate the employment of a continuing contract teacher. Section 13.109 of the Texas Education Code deals with discharge of a probationary contract or a continuing contract teacher during the school year. Reasons constituting lawful cause for discharge include

1. Immorality;
2. Conviction of any felony or other crime involving moral turpitude;
3. Drunkenness;
4. Repeated failure to comply with official directives and established school board policy;
5. Physical or mental incapacity preventing performance of the contract of employment; and
At the end of the school year, a continuing contract teacher may have his employment with the school district terminated for any of the reasons cited in Section 13.109 or for any of the reasons specified in Section 13.110. These reasons include

1. Inefficiency or incompetency in performance of duties;
2. Failure to comply with such reasonable requirements as the board of trustees of employing school district may prescribe for achieving professional improvement and growth;
3. Willful failure to pay debts;
4. Habitual use of addictive drugs or hallucinogens;
5. Excessive use of alcoholic beverages;
6. Necessary reduction of personnel by the school district (such reductions shall be made in the reverse order of seniority in the specific teaching fields); or
7. For good cause as determined by the local school board, good cause being the failure of a teacher to meet the accepted standards of conduct for the profession as generally recognized and applied in similarly situated school districts throughout Texas (25, Sec. 13.110).

In effect, the teacher employed on the continuing contract has tenure.

The third category for teachers—and for virtually all public school administrators in Texas—was the term contract. Prior to the enactment of S. B. 341, a teacher worked, the district paid, and the employment relationship could be ended by the district at the end of any contract period for any reason, and the district was not required to offer a hearing to the teacher.
Senate Bill 341 (see Appendix A), known as the Term Contract Nonrenewal Act, was signed into law on June 17, 1981, by Governor William P. Clements, as part of the Texas Education Code (25). According to its sponsor, Representative Hamp Atkinson, the purpose of the bill is to protect all public school administrators and those teachers not under continuing contracts from being fired unjustly (18). This chapter henceforth is devoted to a study of the literature relating to Senate Bill 341 and to the hearings and appeals procedure at the state level.

Literature Search Methods


A manual search was made in the current educational journals and the card catalogs at the North Texas State University library. One additional article pertaining to S.B. 341 was found. Hall (11), a Houston attorney, wrote an article for Texas Outlook, the T.S.T.A. professional association journal, entitled "Reasonable Dialogue."
An examination of the Education Index and Current Index to Journals in Education also yielded the article by Thomas and Davenport (28). No other articles were found.

Additionally, a computer search was run through Dissertation Abstracts (1861 to February, 1984). Olgilvie (18) completed a dissertation at East Texas State University in May, 1983, entitled, "Texas Senate Bill 341: Its Passage, Implementation, and Impact on the Local School Districts in Texas." Olgilvie was contacted on two occasions, once by personal interview (17) and once by telephone. His dissertation deals with the historical background of the bill and the events leading to its passage.

One final computer search was made. In the Legal Resource Index, under the descriptors "Term Contract Non-renewal" and "Texas," no articles or cases were found for the period 1980 through February, 1984.

Most of the literature available on Senate Bill 341 has been produced by educational associations for their members. These consist of articles in newsletters, legal reports, state journals, and in handbooks sent to local schools. Information was requested from all major educational associations regarding Senate Bill 341. These requests produced nearly all the information currently available on the subject.
Passage of Senate Bill 341

Olgilvie’s (18) unpublished historical account of the passage of Senate Bill 341 is the only such work compiled to date. This research indicates that even though the original bill was introduced by the Senate, much of the work was done by the House Public Education Committee, which was chaired by Representative Hamp Atkinson. The committee met with leaders and attorneys from several educational associations in the development process for a new employment law that would provide not only due process but also be acceptable to everyone.

The following paragraphs include a summary of the important findings of Olgilvie’s (18) unpublished dissertation on the historical background of S.B. 341. According to Olgilvie, there were initially five "fair dismissal bills" filed in either the Texas House of Senate.

Senate Bill 341 was filed in the Senate February 2, 1981, by freshman Senator Kent Caperton. A companion bill, House bill 644, was filed by Representative Bryant in the House of Representatives. Three other "fair dismissal bills" were also introduced: House Bill 398 by Berlanga, Senate Bill 663 by Mauzy, and House Bill 1320 by Atkinson. The number of bills introduced illustrates the interest in the legislature for a "fair dismissal bill" (18, p. 21).

Olgilvie points out that only S.B. 341 was successful in being favorably reported out of committee. Still, there are many changes in the original version of S.B. 341. Olgilvie says, "If this bill had passed the legislature, it would have greatly eroded the authority of the local
school board and would have virtually awarded lifetime contracts to teachers and principals" (18, p. 55).

This work also points out that the "game plan" was to let the Senate bill pass so that the House could write the compromise bill. Olgilvie quotes [Brad] Duggan, who was Executive Director for Texas Elementary Principals and Supervisors Association.

There were several reasons why the Senate passed such a bill. First of all, there are several senators who are very labor oriented and see a very strong need to tie the public sector to the private sector. . . . Several senators committed themselves to organizations who wanted an extreme bill (T.S.T.A.). The Senate, in my opinion, supported and passed the bill not because they really agreed with it; they passed it because the bill was so outlandish they saw absolutely no possibility of it passing the House and had guarantees that it would not pass the House (18, p. 56).

Olgilvie also reports that [Hamp] Atkinson, who was chairman of the House Public Education Committee, said, "I'm not going to send my bill to the Senate to be changed. They are going to send their bill to me" (18, p. 57).

It seems that almost all groups wanted to prevent educators from being fired unjustly. All that remained was to work through the "behind the scene" politics of the major educational organizations in order to reach a compromise that would be acceptable to all parties.

In summary, Olgilvie says

... the passage of S.B. 341 was the result of educational associations working with legislators to develop a bill which would remedy the abuses which were believed to exist in nonrenewing teachers. Much
work and compromise "behind the scene" took place in order to pass a bill which would ensure due process for teachers without destroying the authority of local boards. Hamp Atkinson provided the leadership which enabled S.B. 341 to be passed by the 67th Texas Legislature (18, p. 60).

According to Olgilvie, the most significant unresolved legal question is whether S.B. 341 created a property interest for term contract employees. If S.B. 341 created a property right, this makes it a tenure bill. If not, then it is simply a bill to provide some procedural due process. This may be interpreted by some to be a way of assuring fundamental fairness in employment practices without imposing a constitutionally protected right to tenure beyond the terms of the contract. It appears that the question will remain unanswered until resolved by the courts or the legislature (18, p. 141).

Raymon Bynum (16), Texas Commissioner of Education, indicated in a February, 1984, interview with this researcher that the final version of the bill was formed by the House. Karen Johnson (15), General Counsel for Texas State Teacher's Association, and John Aldridge (2), General Counsel for Texas Association of School Boards, also stated that although the final version of the bill was primarily written by the House Public Education Committee chaired by Atkinson, the bill has a Senate number.
Terms of the Law

Senate Bill 341 is an act "relating to standards and procedures for the nonrenewal of contracts for teachers and superintendents under term contracts and to probationary teachers in the public schools of Texas" (see Appendix A). In this act, the Legislature defines "teacher" very broadly to mean "a superintendent, principal, supervisor, classroom teacher, counselor or other full-time professional employee, except paraprofessional personnel, who is required to hold a valid certificate or teaching permit" (see Appendix A).

In contrast, Chapter 13 of the Texas Education Code (see Appendix A), which provides for continuing contracts, specifically limits its protection to classroom teachers.

Both the Term Contract Nonrenewal Act and the Continuing Contract Act have probationary provisions. However, they refer to different things. As previously described, the teacher on a probationary contract under the Continuing Contract Act was entitled to certain due process rights when that contract was nonrenewed. The probationary period under the Term Contract Nonrenewal Act extends for two years and stipulates that teachers enjoy no more protection during this period than they did prior to enactment. Beginning with the third year of continuous employment in a school district, teachers subject to the probationary period provision come under the protection of the terms of S.B. 341.
According to Section 21.203, boards of trustees must establish local policies and procedures for receiving recommendations from their school administration for the non-renewal of teacher term contracts, except when the board of trustees determines that the term contract of the general superintendent of schools should be considered for nonrenewal. The board must also establish reasons for nonrenewal. Annual personnel performance evaluations are required specifically by Section 21.202 of the Term Contract Nonrenewal Act and "shall be considered by the board of trustees prior to any decision by the board not to renew the term contract of any teacher" (25, Sec. 21.201).

If a board of trustees receives a recommendation for nonrenewal, it must "either reject the recommendation or shall give the teacher written notice of the proposed nonrenewal on or before April 1 preceeding the end of the employment term fixed in the contract? (see Appendix A). Section 21.204 stipulates that the reasons for the proposed nonrenewal must be given to the teacher at the time notice is given. Failure to adhere to the April 1 deadline automatically extends the employment contract for the succeeding school year in the same professional capacity.

Upon receipt of the proper written notice of nonrenewal, a teacher who desires a hearing must notify the board within ten days with a request for a hearing. The board must then
provide a hearing within fifteen days after receipt of notification from the teacher. This hearing is to be closed unless an open hearing is requested by the employee, and it must be conducted in accordance with rules promulgated by the school district. Teachers who fail to request a hearing must be notified by the board of trustees of its action to nonrenew the teacher's employment contract within fifteen days of the expiration of the ten-day period for requesting a hearing (see Appendix A).

A teacher who receives a hearing, and who is aggrieved by the decision of the board of trustees, may appeal to the State Commissioner of Education pursuant to Section 11.13 of the Texas Education Code. This section requires a written notice to the commissioner, who affords the aggrieved party a hearing and renders "a decision without cost to the parties involved" (see Appendix A). However, nothing contained in that section shall deprive any party of any legal remedy, which means that teachers are free to file court actions alleging other reasons for the nonrenewal (e.g., illegal race or sex discrimination). In both Sections 11.13 and 21.207(b) of the Texas Education Code (25), it is stated that decisions of the State Commissioner of Education are appealable to the State Board of Education; from there, appeals can be taken to state court under Texas Education Code Section 11.13(c).
Finally, S.B. 341 indicates that its provisions do not prohibit a board of trustees from discharging a teacher for cause during the term of the employment contract. It also exempts from its provisions those teachers who are employed under the provisions of the probationary or continuing contract law as set out in Subchapter C of Chapter 13 of the Texas Education Code.

Initial Implementation Efforts

Regardless of how or why the Term Contract Nonrenewal Act was passed, the fact remains that school districts—with the assistance and leadership of the Texas Education Agency—are charged with implementing it. As stated in Section 21.207 of the act:

(a) If the teacher is aggrieved by the decision of the board of trustees, he may appeal to the State Commissioner of Education pursuant to Section 11.13 of this code. The commissioner may not substitute his judgment for that of the board of trustees, unless the decision below was arbitrary, capricious, unlawful, or not supported by substantial evidence.

(b) The State Board of Education shall have jurisdiction to hear appeals from such decisions of the State Commissioner of Education (25, Sec. 21.207).

This left the Texas Education Agency with the responsibility of developing the hearing and appeals procedures at the state agency level. It was July of 1983 before the agency promulgate a set of rules for such appeals. These rules come to school districts as a part of the rules for hearings and
appeals under Subchapter A, Title 19, Part II, of the Texas Administrative Code and Statutory Citations. Specifically, Section 157.64 sets out procedures brought under the Term Contract Nonrenewal Act. Prior to this time, educational associations advised their respective groups as to how the requirements of the Term Contract Nonrenewal Act should be met.

The Texas Association of School Boards took the lead in keeping their members informed about Senate Bill 341. In August of 1981, as the bill was taking effect, Aldridge (1), who was TASB Legal Director, wrote an article in the *TASB Legal Report* entitled "Are You Ready for Nonrenewal Hearings?" He points out the need for uniform policies on the part of school districts across the state. Even at this early date, Aldridge urged school districts to "take a united stand on the issue of hearings and appeals by initiating a uniform structure for teacher nonrenewals" (1, p. 1). TASB offered a package of materials that included a hearing guide, as well as sample policies and procedures for meeting specific requirements of the statute.

Two additional articles by TASB staff attorneys appeared in the November, 1981 issue of that same publication. The article by Elizalde (8) is entitled "New Questions Arise on Nonrenewal Act." This article attempts to answer some of the questions TASB members had raised concerning the law.
Heiligenthal's (13) article, "Prepare Early to Avoid S.B. 341 Surprise," encourages school districts to start early to evaluate their employees and to document any noted deficiencies in order to avoid "unpleasant surprises" in the spring.

Four additional articles appeared in the February, 1982 issue of TASB Legal Report. Aldridge (4), who is Director of Legal Affairs for TASB, wrote "Time for Nonrenewal Hearings: Do You Know What Your Reasons Are?" While presenting some reasons why teachers can be nonrenewed, Aldridge also stresses that school administrators should rely on "common sense" in proceeding with their notice and hearings under Senate Bill 341. He states, "the statute did not intend that each hearing be conducted in the same manner as would a courtroom nor did it intend that reasons be detailed with specificity to equal that of a criminal charge" (4, p. 1).

Heiligenthal's (12) article, "Employee Contracts: Multi-Year + Multi-Purpose = Multi-Problems," discusses multi-year contracts given to administrators and multi-purpose contracts given to employees with dual roles, such as teacher/coach. The TASB recommends that in the case of dual-role employees, it should be written into their contracts that unsatisfactory performance in one role, such as coaching, would constitute grounds for dismissal in both capacities. Heiligenthal states,
In some districts, veteran teachers are promoted to part-time principal under a one-year contract. Unfortunately, these promotions are not always successful and the district wants to offer the employee a full-time teaching position for the next school year. Education Code Section 21.204 states that if the employee is not notified of nonrenewal by April 1, the Board must employ him in 'the same professional capacity for the succeeding school year.' Therefore, the employee's contract as assistant principal probably would need to be nonrenewed, unless he resigns, and a new contract offered as a full-time teacher (12, p. 4).

In the case of an administrator with a multi-year contract, Heiligenthal advises that if the board decides not to extend that contract period, the Term Contract Nonrenewal requirements need not be invoked until the last year of the contract.

Additionally, Heiligenthal and Elizalde (14) co-authored "How Do Your Contracts Measure Up?" In the thrust of this article is the need for a review of employee contracts to determine if they are serving their purpose under the new requirements of Senate Bill 341, (i.e., whether they bind the parties to workable, reasonable obligations).

A TASB staff article (20), "The Twilight Zone: Senate Bill 341 and Beyond," presents an analysis of some legal questions, such as dealing with teachers on probationary contracts and returning an administrator to a teaching position. Also, included in the issue is a sample term contract that a district may choose to adopt.
"Term Contract Renewal in Perspective," by Hairston (9), who is an Austin school attorney and former associate director of TASB, appeared in the December, 1981, issue of the TASB Journal. Hairston outlines what S.B. 341 does and does not require, and he warns school boards not to carry S.B. 341 beyond what it is intended to do. According to Hairston, "S.B. 341 does not create a property right or tenure" (9, p. 19).

In the same issue of the TASB Journal Johnson (16), who is T.S.T.A. General Counsel, published "S.B. 341 Term Contract Nonrenewal Act: Another View." Johnson stresses the importance of using performance evaluations to improve instruction, rather than for documenting cases for non-renewal. "Just cause" is the only reason a person should be "nonrenewed," according to Johnson (16, p. 23).

A materials packet was published by the Texas Association of School Boards (22) for use in a 1981 workshop that examined Senate Bill 341. Included in the packet was a copy of the bill, procedures to follow when nonrenewing an employee, questions and answers regarding S.B. 341, and sample policies a school board may wish to adopt.

Previously, the T.A.S.B. legal staff published a handbook edited by Joe B. Hariston (10), entitled "Employee Rights and Responsibilities." This handbook, which was designed to provide a general discussion of the relationship
between school boards and their employees, was updated with a supplement in August, 1981, to explain the new procedures required under Senate Bill 341.

In 1982, the TASB published another handbook, "How to Conduct Nonrenewal Hearings," co-authored by Aldridge, Elizalde, and Heiligenthal (5). This handbook outlined the essentials of the Term Contract Nonrenewal Act and offered information regarding the role of the board president in conducting a hearing. In addition, it presented a hearing guide for the nonrenewal of a term contract as well as evidence guidelines for nonrenewal hearings. The authors clearly state that the hearing guide is designed to assist school boards with procedures for nonrenewing the term contract of an employee under the Term Contract Nonrenewal Act, and it is not intended for use by employees who are covered by the Continuing Contract Law (Chapter 13 of the Texas Education Code).

The Texas Classroom Teachers Association's (T.C.T.A.) May, 1982, issue of The Classroom Teacher (7) published "Senate Bill 341: Reviewing Current Trends in Implementation." The article explains the effect S.B. 341 was having on those probationary teachers encompassed by its provisions. T.C.T.A. states that these probationary teachers may not be receiving all the opportunities they deserve to develop their teaching skills. If a probationary teacher is borderline, the trend may be to nonrenew these teachers before the
probationary period ends and S.B. 341 privileges begin. [This probationary period is fully explained in this chapter under Terms of the Law.] The T.C.T.A. article addresses the fear that some school boards have of being forced to retain "weak" teachers or of having to follow the more "stringent procedures of nonrenewal under the provisions of S.B. 341" (7, p. 21). The indication is that it is easier to nonrenew a teacher under the two-year probationary period provided by the law than it is to attempt to assist teachers to develop strong teaching skills but later have to nonrenew an unsuccessful teacher under the full protection of the new law.

In a survey conducted by the Texas Elementary Principal and Supervisors Association (T.E.P.S.A.) (24), it was found that 69 per cent of the respondents rated their initial feelings for Senate Bill 341 as good to excellent. The T.E.P.S.A. Newsletter reports, however, that 45 per cent of the respondents said they would oppose any further legislation which would make it more difficult to nonrenew teachers.

Texas Association of School Administrators (T.A.S.A.) sent a report to its membership in 1982 under the title, "Employment Contracts, Evaluations, and Due Process: An Opportunity to Enhance Performance Also" (21). In this report, T.A.S.A. asserts its belief that the most immediate impact of S.B. 341 is in the area of teacher evaluation and "the opportunity to enhance professional performance" through improved evaluation techniques.
Another administrators' group, the Texas Association of Secondary School Principals (T.A.S.S.P.), apprised its membership of the implication of Senate Bill 341 with an article in its November, 1981, newsletter written by Strahan and Stevens (19). The article, "Guidelines for Principals in the Implementation of the Term Contract Non-renewal Act: S.B. 341," explains the new law, and points out the specific requirements of the act and the principal's role in fulfilling these requirements.

The Texas State Teacher Association informed its membership on the implementation of S.B. 341 with an unpublished report, "T.S.T.A.'s Reasons for Termination under S.B. 341" (27). In this report, "just cause" is given as the best reason to nonrenew a teacher and is listed as T.S.T.A.'s first choice for nonrenewal of a teacher's contract under S.B. 341. Their second choice is "just cause as defined by the pattern of conduct that relates to the ineffective operation of the school system" (27). T.S.T.A's third choice is a list of seven reasons taken from Section 13.109 and 13.110 of the Texas Education Code.

To counteract information distributed by the Texas Association of School Boards, T.S.T.A. developed its own guidelines for hearings procedures and evaluations (26). This information was mailed in 1982 to the membership in the hope that it would provide guidance to teachers who were involved in developing such procedures at the local level.
Thomas and Davenport (28) produced the only article recorded in E.R.I.C. documents. "Legal Update: The Term Contract Nonrenewal Act" gives a brief description of S.B. 341 including the major provisions of the act. Thomas and Davenport conclude that "The act required procedural due process; it does not require the continued employment of incompetent teachers" (28, p. 71).

Hall (11) published "Reasonable Dialogue" in the Spring, 1982, issue of Texas Outlook. Hall, who is a Houston attorney, notes that even though the employment relationship is often-times an adversarial relationship, S.B. 341 provides for reasonable dialogue between the employer and the employee. He also outlines the legal procedural requirements for a nonrenewal hearing before a local board of trustees.

Summary

A review of the literature relating to the Texas Term Contract Nonrenewal Act (Senate Bill 341) revealed that information on the subject is limited in both scope and availability. Since only one article was accessible through E.R.I.C., attention turned to the information available through educational associations and from the Legislative Library of the Texas State Capitol. Virtually all of the available literature consists either of descriptions of the new law or recommendations on how the law should be implemented at the school district level.

2. __________, General Counsel and Director of Legal Affairs, Texas Association of School Boards, personal interview, Austin, Texas, February 16, 1984.


15. Johnson, Karen L., General Counsel and Director of Legal Affairs, Texas State Teacher Association, personal interview, Austin, Texas, February 17, 1984.


CHAPTER III

METHODOLOGY

Senate Bill 341, formally known as the Texas Term Contract Nonrenewal Act, has generated much interest and speculation as to the status of teachers employed under term contracts. While this act is not what everyone would like, it is at best a reasonable compromise and as such could be the subject of future legislative sessions. The problem of this study is to investigate the adequacy of the procedures used by the Texas Education Agency in implementing the hearings and appeals process regarding nonrenewal of term contracts. The present study addresses the implementation of this new law at the state level. The views of experts involved in the appeals process during the period from September 1, 1981, through August 31, 1983, are examined.

Eleven individuals, key informants who have first-hand involvement in the appeals procedures, were interviewed to gain an expert assessment of the adequacy of the procedures followed by the Texas Education Agency in fulfilling its responsibility to administer the new law. These eleven individuals include persons involved in adjudicating appeals made to the Commissioner of Education, teacher and school board association lawyers, and selected counsels for both
defendants and plaintiffs involved in appeals made during the first two years of implementation.

A focused interview was chosen as the primary data collection procedure with these eleven experts. The effective use of such interviews for the collection of data has been well substantiated throughout the aggregate of ethnographic literature (2, 6, 7, 14).

The interview schedule was designed to collect relevant information regarding the implementation of the Term Contract Nonrenewal Act. Interviewees responded to questions regarding their understanding of the purpose and implementation of Senate Bill 341 by the Texas Education Agency. They also rendered their assessments of the procedural legal requirements for appealing a nonrenewal decision to the Texas Education Agency. Finally, they were asked to offer specific recommendations regarding improving the hearings and appeals process on the basis of their professional judgement and experience.

Procedures for Collection of Data

Instrumentation

An open-ended, in-depth interview format served as the primary method of data collection (see Appendix B). In order to discern the knowledge each respondent possessed regarding the purpose and implementation of the Term Contract Nonrenewal Act, questions were addressed to assist in focusing
on the fit between what is considered minimally legal and what is actually practiced by the Texas Education Agency. The focused interviews offer great advantages for a study of this nature. Methodology of this type affords flexibility to the researcher in having the option to change the order of the questions, to clarify any questions, and to build upon respondents' comments. The success of the interview rests on the ability to probe into the feelings and insight of the interviewees (2, 6, 11, 14). This information would be impossible to observe directly and too complex to obtain by means of a questionnaire (2).

Data for ethnographic research such as this is multimodal, i.e., such research involves verbal interaction with the researcher, observation of nonverbal behavior, and examination of archival records and documents. This allows the researcher to collect more complete and complex data on the phenomena being examined than would a unimodal research design which calls for collection of data from one source (8, 14).

In addition to the focused interviews, also analyzed were the cases decided by the Commissioner of Education during the period September 1, 1982, through August 31, 1983, letters from parties closely involved with the hearings and appeals process, Texas Education Agency rules for hearings and appeals, and the law itself. Even though the Texas
Education Agency rules for hearings and appeals were adopted at the end of the two-year period being studied, interviewees were questioned about the rules to determine their knowledge of them.

LeCompte and Goetz (8) suggest that there are three types of data provided by ethnographic research strategies in assessing the impact of a new program. Baseline data are the information about the human and technological context of the research population and program setting. Process data are the information determining what happened in the implementation of a program. Values data are information about the values of the participants, program administrators, and the policy makers who financed the program.

Baseline data for this research were collected by making several trips to Austin, Texas, to consult with knowledgeable persons about the Term Contract Nonrenewal Act. The legal staff at the Texas Association of School Boards, and the director of legal affairs for the Texas State Teachers Association, were consulted to provide their viewpoints of the events leading up to the passage of this new law. Also contacted for information were Joe Hairston and Jim Walsh, well-known Austin school law attorneys. Lanier Cox, who is professor emeritus of school law at the University of Texas at Austin, as well as Frank Kemerer and Roosevelt Washington, professors of school law at North Texas State University,
were also asked for information about the human and technological context of the events leading to the passage of Senate Bill 341.

Process data were collected by contacting the Texas Education Agency and professional educational associations for documents, reports, and articles that were provided to their membership regarding the implementation of the law. Key informant interviews provided further enlightenment on the implementation of Senate Bill 341 by the Texas Education Agency.

Value data for this research were gained by means of participant-observation, by key informant interviews, and by an investigation of Olgilvie’s (10) research of the historical account of the passage of Senate Bill 341. Additionally, letters and other documents exchanged between educational associations and practicing attorneys were gathered to assess the values and feelings of different interest groups.

In the interactive mode of data collection, participant observation is a primary technique used by ethnographers to gain access to data (1, 8). Participant-observation serves to elicit from subjects their definition of reality and the organizing constructs of their world (8). As a member of the Texas Public School System and one who is affected by Senate Bill 341, this researcher entered the field with the ability
to "shag around" (8, p. 391) in order to identify key informants for the collection of data through the interview process and to gain access to documents, reports, and articles regarding the implementation of Senate Bill 341 that are not easily accessible to the general public.

Wilson (14), explains that an observer's subjective bias is minimized through the use of a technique called disciplined subjectivity. He explains this concept by referring to a qualitative-phenomenological hypothesis about human behavior. The assertion is that "the social scientist cannot understand human behavior without understanding the framework within which the subjects interpret their thoughts, feelings, and actions" (14, p. 253). This assertion requires that the knowledge of a participant-observer is essential for the adequate identification and accession of data. Yet, the rival causal factor of bias is also a question. Denzin states that "no single method will ever permit an investigator to develop causal propositions free of rival interpretation" (3, p. 98). He does, however, go on to explain that because each method of data collection reveals different aspects of empirical reality, multiple methods of observation must be employed. This, according to Owens (12), is termed triangulation.

Triangulation involves multiple methods of data collection, coupled with corroboration of data, information, and the
perceptions of participants to enhance credibility of research findings (3, 12). By implementing data collection procedures as described above, the researcher utilized a number of sources of information and data to triangulate findings for this study.

The researcher's status as a participant-observer allows him to understand the framework of his research topic and to synthesize the experiences of the participants. The use of triangulation in data collection minimizes bias created by the researcher's role as a participant-observer.

LeCompte and Goetz (8) and Wilson (14) emphasize that objectivity achieved by a "disciplined subjectivity" involves exercising care that the researcher's sampling is representative and that data are interpreted in terms of the situation being examined. In this study, the researcher's sample of interviewees includes three different viewpoints as described in the following section.

Subjects

As previously mentioned, key informant interviewing provided a major source of data for this research. The informants identified by the researcher and selected for interviews are individuals who possess special knowledge and status in the educational community and are recognized as experts with regard to the implementation of Senate Bill 341 at the state agency level. According to LeCompte and
Goetz (8), data collected from key informants may add material to baseline data that is otherwise inaccessible to the ethnographer because of time constraints in a study. They also suggest that key informants may sensitize the researcher to values, dilemmas and implications.

Group I subjects consisted of six attorneys—three who had represented defendants and three who had represented plaintiffs in nonrenewal cases. One defense attorney was selected because he had represented more school districts in nonrenewal cases than any other attorney; it was therefore assumed that he had a working knowledge of what to expect from the Texas Education Agency in this type of case. A second defense attorney was selected because he is retained by several school districts, is past president of the Texas Council of School Attorneys, and because the nonrenewal case he was involved with was likely to be appealed to the state court system. The third defense attorney was selected because her nonrenewal case had already been appealed to the state court system.

One of the plaintiff attorneys was selected because he had represented appellants in the vast majority of the appealed cases. The other two plaintiff attorneys were selected because of their close association with the first selected plaintiff attorney and because each was previously employed in the legal division of the Texas Education Agency. It was assumed by this researcher that those two attorneys
had had an opportunity to see each side of the issues involved in Senate Bill 341.

Group II subjects were composed of the Directors of Legal Affairs for both the Texas State Teachers Association (TSTA) and the Texas Association of School Boards (TASB). TSTA, the largest teacher organization in Texas, was very instrumental in the passage of Senate Bill 341; in addition it has represented the majority of teachers involved in non-renewal cases. The TSTA Legal Affairs Director also was previously employed in the legal division of the Texas Education Agency. TASB is the professional organization that assists the majority of school districts in Texas in personnel policy development. The TASB Director of Legal Affairs supervises a staff of five attorneys. He and his staff assisted in the drafting of Senate Bill 341 and took the lead in disseminating information to school boards regarding its implementation.

Group III subjects consisted of the Commissioner of Education, the Deputy Commissioner of Legal Affairs, and the Director of Hearings and Appeals for the Texas Education Agency. The researcher selected these adjudicators on the basis of their actual experience in the appeals process.

Even though the Commissioner relies heavily on his staff to assist in making decisions in the nonrenewal cases, the ultimate responsibility for the decision rests with him.
Since he also worked very closely with the legislature in developing the law, he was chosen as a key informant to be interviewed.

Under the guidance of the Deputy Commissioner for Legal Affairs, the Director of Hearings and Appeals is responsible for appointing the hearing officer for each appeal in nonrenewal cases. He and the hearing officer have the primary responsibility for entering a proposal for decision for the Commissioner's approval. Since he also has a large responsibility for the implementation of Senate Bill 341, he was selected as a key informant for interviewing.

The Deputy Commissioner for Legal Affairs serves as General Counsel for the Texas Education Agency. He has the responsibility to oversee the Division of Hearings and Appeals and to provide counsel to the Commissioner of Education. This individual spearheaded the development of the rules governing the hearings and appeals of nonrenewal cases and was selected for interview because of this involvement. Every attempt was made to select respondents in an objective, unbiased manner.

Reliability and Validity

According to LeCompte and Goetz (9), reliability in ethnographic research refers to the extent to which studies can be replicated. They further explain that while it is not always possible to replicate a study exactly, especially since
human behavior is never static, the generation, refinement, and validation of the constructs of research may not require exact replication. Bogdan and Biklen point out that

In qualitative studies, researchers are concerned with the accuracy and comprehensiveness of their data. Qualitative researchers tend to view reliability as a fit between what they record as data and what actually occurs in the setting under study, rather than the literal consistency across different observations (1, p. 43).

In dealing with social situations and conditions it is important to delineate the physical, social, and interpersonal contexts within which the data are collected. According to LeCompte and Goetz (9), this will enhance the replicability of ethnographic studies. A previous section of this chapter describes the selection of key informants to be interviewed. Although each of the interviewees was contacted by telephone to arrange for an appointment to discuss the implementation of the Term Contract Nonrenewal Act, none was told the interview questions in advance. At the appointed interview time, the researcher went to each respondent's office and at that time gave each a copy of the interview questions. The interviews were conducted in the natural work surrounding of each respondent. The researcher asked each respondent for permission to record the interview, and each was assured of receiving a transcribed copy of the session for inspection to further assure the accuracy of responses. Additionally, each respondent subsequently received a copy of the text in
which he was quoted, along with a request for permission to use the quotations (see Appendices E and F). The interviews were then conducted by the researcher. Questions were not always asked according to the order on the interview instrument since each respondent's train of thought was not the same. However, each had an opportunity to respond to every question.

According to both LeCompte and Goetz (9) and Williams and Raush (13), it is crucial to internal validity that the extent to which the sets of meanings held by multiple observers are sufficiently congruent so that they describe phenomena in the same way and arrive at the same conclusion about them. In this research, efforts to reduce the threat to internal reliability involved mechanically recording interview data on audiotapes and enlisting the aid of three persons knowledgeable in school law to validate the summary of responses to interview questions. After the interviews were conducted, the audiotapes were first transcribed. Then a summary was prepared of each informant's response to each question, and the tapes were again reviewed to assure that the feelings of the respondents for the answer were accurately reflected in the prepared summaries.

An individual, who was not involved in the study, selected names and numbers from three boxes that contained the names of the three validators, names of the interview subjects, and
numbered questions between two and twelve. [Question one was eliminated because of its nature (see Appendix B).]

Each validator then reviewed the summary made by the researcher and the actual response of the key informants for one of the questions answered by three different key informants. This validation procedure was utilized to assure that the researcher had made an accurate summary of the responses for each interview. The researcher received letters from each of the validators indicating the accuracy of the summary of responses. Bogdan and Biklen (1) indicate that the reliability of an ethnographic study would be questioned only if contradictory or incompatible results were obtained in replication of the study.

According to LeCompte and Goetz, validity is concerned with the accuracy of research findings. They state that internal validity refers to the extent to which scientific observation and measurements are authentic representation of some reality. External validity addresses the degree to which such representation may be compared legitimately across groups (9, p. 52).

Furthermore, Owens says,

in order to avoid unreliable, biased, or opinionated data, the naturalistic inquirer seeks not some 'objectivity' brought about through methodology but, rather, strives for validity through personalized, intimate understanding of phenomena stressing 'close in' observations to achieve factual, reliable, and confirmable data (12, p. 19).

Denzin (4) indicates that the very nature and design of ethnographic studies provide high internal validity. As
previously described in this chapter, the process of triangulation reduces the threat to the internal validity of this research.

Threats to the external validity of research findings are those that obstruct or reduce its comparability and translatability. According to Wolcott (1973), comparability requires that the ethnographer delineate the characteristics of the group studied so clearly that they can serve as a basis for comparison with other like and unlike groups. Translatability assumes that research methods, analytic categories, and characteristics of phenomena and groups are identified so explicitly that comparisons can be conducted confidently.

In the present study, eleven interpersonal interviews were conducted with key informants who were carefully selected because of their knowledge and expertise regarding the implementation of the Term Contract Nonrenewal Act at the state level. Additionally, also analyzed were the twenty-four appealed cases during the first two years, the newly adopted rules for hearings and appeals, and the law itself. The eleven key informants were composed of individuals from three different groups. According to Denzin (4), ethnographic research such as this possesses more credibility because it assesses processes as well as provides specific information.
As described above, this researcher has taken every precaution to structure this study in an unbiased manner, taking into account the need for objectivity and reliability, and following the rigorous constructs for ethnographic research (1, 3, 9, 12). Still, it may be impossible to attain absolute validity and reliability. While the reliability and validity of this study has been carefully addressed, it is in the nature of ethnographic research that generalizability is necessarily limited. The purpose is to draw accurate conclusions about the subject under discussion and not to project the results to other phenomena which are not part of the focused study.

Procedures for Analysis of Data

As previously described, the interview material was transcribed and validated by the use of multiple observers who are knowledgeable in school law. The interviewees were provided with transcriptions of their interviews to obtain assurance that the recording accurately reflected their views. Any changes made by the interviewees were duly recorded on the final transcription analyzed for the study.

Next, the data were organized to prepare for within-group and between-group comparisons. A matrix for each of the three groups was developed to record responses for comparison within each group. Respondents were assigned a code
to be used in making between-group comparisons. This procedure was followed to describe similarities and differences in responses, as suggested by Doyle (5) and Oppenheim (11), and thus provides the basis for the iterative procedure of developing tentative generalizations and producing a descriptive categorization of responses. The procedures described in the following example were utilized consistently throughout the process of analysis. The last step involved the reduction of the data to enable the comparison of within-group responses. The responses of Texas Education Agency personnel to question two provide an example of this step.

Question number two asks, "What is your perception of the purpose of Senate Bill 341?" One TEA representative's transcribed response follows.

To understand the purpose, you have to trace its legislative history, and it started out as a much more stringent bill and in the Senate it came out as a much more stringent bill, and then when it came out of the House... and in truth it was written in the House, not in the Senate, and it is kind of a misnomer to have a Senate bill number... what it came out was... just simply the intent was to put some kind of fairness... that you tell a person when you are not going to reemploy him, that you tell him why, and that that why [emphasis added] be based on a professional decision--the evaluation... that purpose and that purpose alone.

For use in the matrix this response was reduced to the following:

To add fairness to employment practice... to tell them why they are not going to be reemployed and that that why [emphasis added] be based on a professional decision based on evaluation.
Another TEA representative's complete transcribed response to question two is as follows:

... to promote good decision-making by the boards of trustees. It doesn't promote good decision-making to allow the board of trustees to merely rubber stamp the superintendent's position or recommendation without testimony by all sides. One of the other facets of the act that leads to good decision-making is the provision in the act for evaluations.

The reduced response appeared as follows:

To promote good decision making by boards based upon evaluation and face-to-face contact at the nonrenewal hearing.

The final TEA representative's transcribed response was:

I think that the purpose was to permit competent teachers to have some certainty that they will be fairly treated and that their jobs were not at the whims of... teachers in general, not just continuing contract teachers... the administration.

This response was reduced to:

To permit competent teachers to have some certainty of fair treatment... not to be left to the whim of the administration.

Frequently, the reduced data in step two did not vary greatly from the original transcription of step one.

The next step in analyzing the data involved the combination of the data into a cell for comparison of responses within a single group to a single question. The cell for question two appears as follows for the Texas Education Agency representatives.
TABLE I

QUESTION 2: RESPONSES BY TEXAS EDUCATION AGENCY PERSONNEL; WITHIN GROUP COMPARISON

<table>
<thead>
<tr>
<th>Similarities</th>
<th>Differences</th>
</tr>
</thead>
<tbody>
<tr>
<td>All three are concerned with fairness in employment practices</td>
<td>Two mentioned the importance of evaluation.</td>
</tr>
<tr>
<td></td>
<td>One emphasizes face-to-face contact at the local hearing.</td>
</tr>
<tr>
<td></td>
<td>One is concerned that the teacher not be left to the whim of the administration.</td>
</tr>
</tbody>
</table>

In step four, all respondents were assigned a code to be used in making between-group comparisons. Step five involved the analysis and comparison of all groups for each individual question. The cell for comparison between groups for question two appears in Table II.

Step six, the final phase, involved analyzing the interview responses, the appealed cases, the agency-adopted rules for hearings and appeals, and the statute itself to develop inferences about the implementation of the Term Contract Nonrenewal Act during its first two years, and to suggest recommendations for improvement in the administrative law process. This information is contained in Chapter V.
### TABLE II

**QUESTION 2: RESPONSES BY ALL GROUPS**

<table>
<thead>
<tr>
<th>Similarities</th>
<th>Differences</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>T1, T3:</strong> Adding fairness to employment practices.</td>
<td><strong>T2:</strong> Promote good decision-making based on evaluation and face-to-face contact.</td>
</tr>
<tr>
<td><strong>D3, P3, A1, A2:</strong> Teachers be given reasons for non-renewal.</td>
<td><strong>D2:</strong> To put order to the way teachers were reviewed, evaluated, and nonrenewed.</td>
</tr>
<tr>
<td><strong>D1:</strong> Afford certain amount of protection.</td>
<td><strong>P1:</strong> To give teachers opportunity to improve prior to nonrenewal.</td>
</tr>
<tr>
<td><strong>P2:</strong> To achieve equalization between continuing contract districts and term contract districts.</td>
<td></td>
</tr>
</tbody>
</table>

*T = Texas Education Agency Adjudicators, A = Director of Legal Affairs for TASB and TSTA, P = Plaintiff Lawyers, D = Defendant Lawyers.

**Summary**

A series of focused interviews resulted in eleven transcriptions of the perceptions of key informant experts of the interpretation and implementation of a new law for dismissal of teachers. Inferences concerning interpretation and implementation of the hearings and appeals procedure were developed. Specifically, the procedures for data collection analysis used in this study made possible the following analyses:
1. Descriptions of individual perceptions of the interpretation and implementation of Senate Bill 341;

2. Descriptions of the similarities and differences held by members within these groups (Texas Education Agency adjudicators, Directors of Legal Affairs for TSTA and TASB, and attorneys for plaintiffs and defendants) in references to the implementation of Senate Bill 341;

3. Descriptions of the similarities and differences between the three groups regarding the implementation of Senate Bill 341; and

4. Recommendations for improving the administrative law process regarding hearings and appeals for cases brought under the Texas Term Contract Nonrenewal Act.
CHAPTER BIBLIOGRAPHY


CHAPTER IV

ANALYSIS OF DATA AND FINDINGS

The purpose of this study was to obtain the views of experts regarding the interpretation and implementation of the Texas Term Contract Nonrenewal Act by the Texas Education Agency. The study employs a focused, in-depth interview process to collect pertinent data. The researcher collected information from eleven professionals who had been involved in hearings and appeals before the TEA regarding its interpretation and implementation of Senate Bill 341; comparisons are made of similarities and differences of opinion, and recommendations are suggested for improving the administrative law process for cases brought under the Texas Term Contract Nonrenewal Act.

This chapter consists of four sections that correspond to the divisions used in the interview schedule. These divisions are Personal Information, Definition, Descriptions-Reactions, and Evaluations. Each section is divided into sub-sections that represent the individual questions included in the interview. Responses to each question are presented, along with comparisons of similarities and differences between groups and within groups for each interview question.
Conclusions and recommendations are presented in Chapter Five.

Personal Information

Question one of the interview afforded the collection of demographic data regarding the eleven participants. Additionally, it helped to verify the abilities of the respondents to contribute useable information to the study based on their involvement in the implementation of this new law.

**Question One: Current Positions**

A brief description of each respondent's current position was obtained in question one. There were three different groups participating in the study. Six private practicing attorneys comprise the largest group; three were attorneys for defendants and three were attorneys for plaintiffs. The interview data reveal that one attorney represents most of the teachers who are members of the Texas State Teachers Association when they have contractual disputes. Two other attorneys for plaintiffs were employed by the Texas Education Agency prior to entering private practice; one, in fact, had been the Director of Hearings and Appeals for the TEA, and the other had been a hearing officer. Two of the attorneys for defendants represent several school districts on a regular basis, while the third does so on an as-needed basis.
The second group consists of the General Counsel and Director of Teacher Rights of the Texas State Teachers Association (TSTA) and the Director of Legal Services for the Texas Association of School Boards (TASB). Prior to becoming associated with TSTA, its General Counsel and Director of Teacher Rights had served as general counsel for the Texas Education Agency. Both of these individuals had been active not only in the passage of Senate Bill 341 but also in its implementation.

Adjudicators for the Texas Education Agency include the Commissioner of Education, the Director of the Division of Hearings and Appeals, and the Deputy Commissioner for Legal Services, who compose the third group. It is interesting to note that the Division of Hearings and Appeals hears appeals of all types, not only term contract nonrenewal cases. These three individuals assume primary responsibility for the interpretation and implementation of the Term Contract Nonrenewal Act.

Definitions

**Question Two: Purpose of Senate Bill 341**

All respondents were asked to give their perceptions of the purpose of Senate Bill 341. While all did not respond with the exact same purpose, it is clear that they believe the general purpose is to afford some degree of protection to teachers who are employed on term contracts.
The Deputy Commissioner for legal service and one attorney for plaintiffs indicated that the purpose included the opportunity for teachers to improve themselves prior to facing contract nonrenewal. The other nine commented along the lines of "to add fairness to employment practices"; "a statement of reasons for nonrenewal and opportunity for a hearing"; to promote good decision-making based on evaluation"; and "fair treatment." The Director of Hearings and Appeals felt that prior to Senate Bill 341, teachers had been subject to the "whims of the administration." An attorney for defendants felt the law was designed to afford teachers a certain amount of protection from "high-handed action." One final perception, held by an attorney for plaintiffs was that this new law served to equalize procedural and substantive rights between continuing contract districts and districts that employed teachers on term contracts; preceding the enactment of Senate Bill 341, only continuing contract districts were required to give reasons and a hearing prior to contract nonrenewal.

**Question Three: Achievement of its Purpose**

All three TEA adjudicators, the TASB Legal Director, and two attorneys for defendants felt that the law was achieving its purpose, while the TSTA Legal Director and one attorney for plaintiffs felt that it was only partially achieving its
purpose. The TSTA Legal Director surmised that the law had done nothing more than stop "blatent" nonrenewals. The attorney for plaintiffs felt that it had achieved its purpose only to a "small degree," and the courts would ultimately have to interpret the purposes of the bill.

Still another attorney for plaintiffs expressed the view that the law as written would achieve its purpose, but that "there is some controversy with respect to this manner in which TEA handles the appeals." Additionally, an attorney for plaintiffs believes that the law was not achieving its purpose "because of the TEA." This respondent went on to indicate that when some of the nonrenewal cases are heard by the courts, the TEA ruling may be reversed and then accomplish the purpose of the law as perceived by this respondent.

Descriptions and Reactions

Questions four through ten of the interview (see Appendix A) elicited information regarding the legal requirements of the law, its interpretation and implementation by the Texas Education Agency, and reactions to those interpretations, which includes the agency's implementation of this new act. Also described is the impact of the Term Contract Nonrenewal Act on personnel decision-making at the local level.
Question Four: Is Senate Bill 341 a Good Law?

Responses to this question were generally positive. Comments such as "a very valuable bill" and "an excellent law" were used. It was mentioned that the "face-to-face" hearing and the opportunity for the board to "hear the teachers' side of the story" make it a good law. The TSTA Legal Director believes that it is a good law, but that the decision-making should be taken away from the local board because "they are too biased. I would like to see an impartial tribunal." One attorney for plaintiffs indicated that it is better than the previous law, but that it should have been more specific "especially when both constitutional and statutory deprivations are alleged." Another attorney for plaintiffs felt that the purposes are good, but "it is not a well drafted law. It has left too many questions open to interpretation."

"I don't know" was the answer given by one attorney for defendants. This respondent went on to express the opinion that local boards and administration are now reluctant to "weed out" marginal employees because of the legal ramifications of the act, the expense of defending against hearings, the fear that they themselves will be individually subjected to litigation, smeared, and so forth, in that sense. I think it may have worked to the detriment of improving the quality of public education.

Another attorney for defendants flatly stated that it is not a good law because it tends to "inject a substantial
degree of the judiciary into school systems." He further said that

very often a superintendent or principal will have an intuitive-type feeling as to whether a person is doing a good job or not. But because they are now exposed to the rigors of a trial, they tend to be far more careful, far more conservative, far more cautious, in weeding out inept, incompetent, or just average teachers. They are much less likely to stick their neck out on the line because if they have just an average case . . . let's say the teacher is not doing anything egregious, but they know they can do better by going out to the market, but they don't have anything they can really point to . . . they are not going to get rid of that teacher because if they go out there . . . the experience of being subjected to cross examination by an attorney, humiliated in public . . . they are not going to do it again. Because not only does the teacher get tried, but the superintendent is tried, but the principal is tried, and all of a sudden their integrity is on the line. When you go through that once or twice, you don't go through that again unless you have a strong, hard case. I think it hurts education.

TABLE III

OPINIONS OF RESPONDENTS REGARDING WHETHER OR NOT S.B. 341 IS A GOOD LAW

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Question Five: Implementation by TEA

In this question, subjects were asked what TEA had done to implement Senate Bill 341. There appears to be a general feeling that there was an unnecessary delay on the part of the TEA in implementation. Two respondents noted that it took almost two years after passage of the law for the TEA to adopt rules and regulations for implementation of the law. One of the Texas Education Agency adjudicators, however, pointed out that personnel changes at the agency is one reason for delayed adoption of rules.

Only one respondent, an attorney for plaintiffs, felt that the TEA had done nothing to implement the new law. This person felt that, in actuality, the TEA had "hindered" the implementation of Senate Bill 341. In clarification, he says,

> It took them over a year after the act was in effect to even adopt rules themselves. When they adopted rules, what they did was they tried to make it so difficult for a teacher to get a good fair hearing anywhere, that those rules are not an implementation, they are a hinderance.

The TSTA Legal Director indicated that the TEA had "done everything but throw up roadblocks at 341, and in essence had gutted the aim of 341 ... meaning the fact that we don't have the de novo hearing" on appeals.

However, the common answer given was that the only thing the TEA had done was to adopt rules and regulations governing appeals of nonrenewal cases heard before the
commissioner. Feelings about this are expressed in the responses to question six.

**Question Six: Feelings Regarding TEA's Implementation**

After noting the respondents' observations about what the Texas Education Agency had done to implement Senate Bill 341, the researcher then asked them to express their feeling about how the agency had interpreted and implemented the bill. All three of the Texas Education Agency adjudicators responded that they had done a good job in implementing Senate Bill 341; one went so far as to state that they had implemented the Senate bill "exactly" as the Senate wanted it to be.

However, none of the other eight respondents felt this way. The TASB legal director felt that the Agency had gone beyond the statute by putting "substantive aspects" into the act that the legislature did not intend. Disagreeing with the method by which the hearing officers review the transcripts, this respondent said,

They've taken this simple concept that the teachers just be told what the reasons are and be given a chance to discuss those, or in some way have a hearing before the board, and turned it into almost a criminal-type proceeding. The hearing officer first, in his own judgement, strikes all testimony which doesn't meet the rules of evidence, and then, with what's left of the transcript, he then determines whether the remaining evidence establishes by substantial evidence that the reasons are proven. If the teacher admits the charge, then it's established. But, if the teacher contovers the charge, then the administrator is required to go
back on the stand and either call the teacher a liar or explain away the teacher's explanation. In the cases where the teacher's have controverted the principal's testimony, the district generally has lost.

The TSTA legal director alleges that the TEA goes out of its way to support a district or an administration over a teacher, adding that this makes "a greater burden for teachers."

An attorney for defendants commented that the TEA has not properly interpreted the law with respect to procedures; the TEA has subjected school districts to "constant, constant nit-picking. Every place that you can trip up, they are going to challenge you." Another attorney for defendants replied,

I think the chances are excellent that a court is going to disagree with how they interpreted the act as they apply certain cases, and perhaps even change the validity of some of the rules. I think the agency is going to have a hard time defending them.

A third attorney for defendants responded,

I think there is a lot of their procedural rules that are poorly written. They are hard to follow, they don't tie down time periods very adequately, and they are not, to me, written by somebody that has done a lot of trial work and that knows how to make these kinds of cases flow as smoothly as possible.

Attorneys for plaintiffs were also in disagreement with how the TEA interpreted and implemented the act. One said that "if there are two ways to interpret the bill—a good way and a way that will destroy it—they've interpreted it in the way that will destroy it." Another feels that the
TEA has gone of its way to read the substance out of the bill; "When you read the procedure out of a procedural statute, you don't have a lot left." This comment is in reference to Salinas v. Ben Bolt-Palito Blanco ISD (1). In this case, the board nonrenewed a teacher's contract without a recommendation for nonrenewal from the administration, and the TEA upheld the board's decision to do so. This respondent feels that Section 21.204(a) of the law requires a recommendation for nonrenewal from the administration and cites Section 21.208, which specifically removes this requirement when the superintendent's contract is being considered for nonrenewal. The attorney commented that

The TEA, for political reasons—purely political reasons—says, 'naw, they didn't really mean that—they were just kidding.' So that's gone, and that was an important part of the statute. School boards are so much more susceptible to political pressure because they are elected officials. So you get some important people in the community who want a teacher out for some noneducational reason . . . . The bill was hopefully going to prevent that, but now TEA read that out.

The third attorney for plaintiffs disagrees with the way the TEA interprets the term substantial evidence on the basis that the only proper way to determine if the evidence is substantial enough to support the decision of the local board is to conduct a hearing de novo before the Commissioner of Education and not merely to conduct a review of a transcript of a hearing before a local board. In short, the TEA feels
that it has done a good job of implementation, while those who are sympathetic to both plaintiffs and defendants feel otherwise.

**Question Seven: Issues Predominating Appeals**

To this question, respondents were asked if there were particular issues that appeared to predominate the appeals heard by the Commissioner of Education through August 1, 1983. While one of the attorneys for plaintiffs and one of the attorneys for defendants admitted that they were familiar only with their own cases, the consensus is that there were a variety of issues.

One of the TEA adjudicators and the TASB Legal Director both mentioned that in many of the cases the attorneys for plaintiffs have "thrown constitutional allegations into their pleadings to preserve those issues for an ultimate appeal to federal court." TSTA's legal director said that "our association was taking cases that were testing the law."

An attorney for plaintiffs and two TEA adjudicators mentioned that procedural issues were common, meaning that plaintiff and defendants alike were trying to see what would happen if not every i was dotted and not every t was crossed. One attorney for defendants expressed the opinion that one issue had not been addressed and should be. This issue is the extent to which Senate Bill 341 creates "substantive" rights for the employee:
I think the issue that the agency has not dealt with is to what extent does Senate Bill 341 create in the employer any substantive rights, or does it only create procedural rights. Now, that gets very important. If it creates substantive rights, then it will to some degree have created, in effect, a property right in the contract that the employee to some extent has a right to be renewed, unless the school district can show to the contrary. That has not been addressed and, to my opinion, it has been avoided by the agency. I think many of them either want to believe or honestly do believe that Senate Bill 341 did create some substantive rights in the employees; they have not maybe been able to articulate what those rights are.

**Question Eight: Local Personnel Decision-Making**

Respondents were asked for their professional judgement regarding whether or not the Senate Bill 341 hearings and appeals procedure removes personnel decision-making from the local level to the state level. They were also asked how they feel about this. Table IV shows their responses.

**TABLE IV**

**OPINIONS OF RESPONDENTS REGARDING WHETHER OR NOT S.B. 341 HEARINGS AND APPEALS PROCEDURES TRANSFER PERSONNEL DECISION-MAKING FROM LOCAL TO STATE LEVEL**

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*To some degree*  
*Not completely*
It may be concluded from the summary responses in Table IV that the majority of the interviewees do not believe that the personnel decision-making is removed from the local level to the state level as a result of the enactment of Senate Bill 341. Those interviewees who are at the state agency level strongly believe that control remains in the hands of local officials. The Commissioner indicates that "if the locals do it right, it's about a ten-minute decision hearing." The Deputy Commissioner for Legal Services also agrees with this, remarking that the people who think otherwise are those "that just do a sloppy job." Furthermore, the Deputy Commissioner said,

If you want to do it right, you are never going to lose. Doing it right means . . . if you really want to do it right, then send the principal out, or your evaluator out, into the classroom in November. Based upon what he sees in the classroom, and anything else he knows, he does a write-up and gives the teacher notice, of, you know, this is what you are not doing adequately by our standards. Then he does a reevaluation . . . and anytime a teacher has failed to correct things that have been pointed out to them, then he recommends nonrenewal to the principal or superintendent, then the superintendent recommends to the board, they send notice to proposed nonrenewal, and you ask for a hearing. The principal comes in and testifies first-hand.

The Director of Hearings and Appeals indicates that the decision-making is supposed to be at the local level, and the state should not interfere unless the local decision, based on the record that the state agency receives, was unreasonable. Furthermore, this respondent points out, the
act itself states "that the Commissioner may not substitute his judgement for the local board of trustees unless the decision of the local board was arbitrary, capricious, unlawful, or not supported by substantial evidence."

To clarify the meaning of the term substantial evidence, the Director of Hearings are Appeals said,

Substantial, as a word, makes it sound like a lot, but the way the courts have construed substantial evidence is . . . if there is a little bit of evidence there from which reasonable people have based the decision that they actually made, that decision has to stand. If there is one witness who comes in and says this teacher is a bad teacher because of reasons a, b, c, and d . . . the teacher brings in ten witnesses and says what that one witness said wasn't true . . . the board of education members may choose to believe the one and not believe the other ten. There will be substantial evidence to support the local school board decision.

TSTA's legal director concurred that the decision-making has not been removed from the local level but that the justification for it has, and this respondent feels that the motives for a decision are going to be more closely scrutinized. The TASB legal director points out only twenty-four nonrenewed cases were appealed to the TEA during the first two years after the Act became effective; "That is not very many opportunities for state involvement considering you are talking about how many thousands of teachers from about 1,100 school districts."

Only one of the attorneys for plaintiffs felt that the decision-making had been removed from the local to the
state level. The comment was "to some degree, because prior to the bill, the district did whatever they wanted to and there was no review by the agency." The other two attorneys for plaintiffs responded by saying "no," but one of these said, "it wasn't meant to," and the other said, "good personnel management at the local level leaves the district with the ability to make local decisions to fire an employee if they have documentation to support it."

Each attorney for defendants expressed a different opinion. One simply said "no." Another said, "as applied to the case that I have dealt with, I think the answer is yes, it does remove it, and I think it is a shame." The third defendant attorney said,

Although not completely removed, the manner in which it is being interpreted and applied, does, in my opinion, limit the local school district from making contractual and personnel decisions a lot more than anyone thought Senate Bill 341 was intended to.

Question Nine: Procedural Legal Requirements

Question nine asked respondents what they believed were the procedural legal requirements of Senate Bill 341 as they apply to nonrenewal hearings conducted by local boards. This law does not clearly specify what procedures a local school board is to employ in giving a hearing to teachers whose contracts may be nonrenewed.

The Commissioner of Education, the TASB Legal Director, and two attorneys for plaintiffs specifically mentioned that
an evaluation is germane to the local hearing decision. In addition, the Commissioner and one attorney for plaintiffs indicated that the teacher must also be given an opportunity to improve deficiencies and be reevaluated prior to having his contract nonrenewed. This plaintiff attorney believes that other requirements are "evaluation, time to improve, adequate notice, list of witnesses and documents to be used against you, impartial board, burden of proof on the administration, afterwards a list of specifications, and findings of fact for nonrenewal."

The Director of Hearings and Appeals said that "the requirements are pretty much set forth in the agency's rules, Section 157.64, and particularly Subsection G" (see Appendix C). He also indicated that teachers must receive a fair opportunity to present their side of the story. "Boards set their own procedures" was the reply by the Deputy Commissioner for Legal Services at the TEA and by an attorney for defendants. The Deputy Commissioner also said, "We review it [the record] for an abuse of discretion standard," and that the courts define the legal term substantial evidence as

more than a scintilla and less than a preponderance. In other words, a scintilla—which means a trace of evidence on something—that is not enough. However, good solid testimony by anybody would be substantial evidence.

TSTA's Legal Director said that the requirements were

"Nothing more than the prerequisite of due process, and that's
notice and opportunity . . . written notice of reasons why you're being terminated and opportunity to present your defense."

Two attorneys for defendants stated that "timely notice" and "well articulated reasons for nonrenewal" are sufficient as long as the teacher was given opportunity to submit evidence and to refute nonrenewal charges. The remaining attorneys for plaintiffs concurred with this although one also suggested that a district should hire a court reporter to transcribe the hearing.

**Question Ten: Type of Hearing on Appeal**

Each respondent was queried as to preference for either a *de novo* hearing (a trial-like hearing for the gathering of evidence) or a hearing from the local record at the appeal to the state agency. They were also asked to explain their preference for one over the other.

As might be expected, there is a clear division among the respondents regarding this issue. All four respondents who are advocates for the plaintiff side of the issue favored a *de novo* hearing at the state level. One reason given is that since the local board is allowed to set its own rules, plaintiffs may not be allowed enough time to prepare a fair presentation of their cases. Another reason is that there is almost no way to include the important non-verbal testimony,
such as body language or the voice inflection of a witness, in a written record. One of these attorneys for plaintiffs bases his opinion on the common law procedure of this state:

There are different quantums of proof that you have to talk about, anyway, on appeal. It is my belief that the proof of whether an action is unlawful, or violates procedures or so forth, is not a substantial evidence question, and therefore can't be decided on a record hearing.

Prior to the adoption in this state of the Administrative Procedures Act, the common law of this state was when you appeal from an administrative agency to the courts, even though the substantial evidence rule applied to the agency's decision, the court still held a full hearing with all the evidence; they didn't look to the administrative record. That was the common law of this state, and that is still the common law of this state. Unless there is a statute to the contrary, a court will hear all the evidence, it will then decide based on all the evidence, whether or not the administrative decision is supported by substantial evidence . . . not the evidence the agency heard, but the evidence that the court heard . . . whether that is substantially sufficient to sustain the agency's decision. To me, that is the rule that should still apply. It is not what the board below heard that should count, given especially that the board has everything in its power—any witness, just about, that it wants it will have—but the teacher doesn't have that.

So the question should be whether, after a full hearing where both sides have the same rights and powers, there is substantial support for the decision that the board made below. I think that is very important if you want 341 to work right . . . is that you can't just look at some blank record that is one-sided and make a decision.

Two of the attorneys for plaintiffs were concerned that board members are "lay citizens" and are mostly "rubber stamps" to the administration. As a result, the indication is that fairness may not prevail at the local level, hence the need for an evidentiary hearing at the agency level.
Attorneys for defendants prefer that there be no de novo hearing at the state-agency level for appealed cases. They feel that there is no reason to try a case twice. In the words of one,

There is no reason to have anybody up here for the expense of making them say what they have already said before. When we try a case in court, we try it once and then it goes to the appellate court and they review the record. That ought to be good enough.

A second one was "strongly opposed to a de novo hearing at the state level because it is a pure waste of time and money."

The third attorney for defendants indicated that the type of hearing to be held at the state-agency level depends upon the philosophy of whether personnel decision-making should remain at the local level or at the state level; the de novo hearing would transfer decision-making from the local level to the state level. Table V shows the diversity of opinion among the respondents.

**Question Eleven: Amending the Procedure**

Reactions to the administrative law process were divided into separate parts. These parts represent opinions with regard to (a) amending the Texas Education Agency's interpretation and implementation of the statute regarding hearings and appeals procedures, or (b) amending the statute itself.
TABLE V

OPINIONS OF RESPONDENTS REGARDING PREFERENCE FOR TYPE OF HEARING TO BE HELD ON APPEAL

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Adjudicators from the TEA were generally pleased with their own interpretation and implementation of the law. However, each of the three offered suggested improvements. For example, the Commissioner observed that a law is not totally a law until it is adjudicated through the court system; hence few amendments are necessary until that time. The Director of Hearings and Appeals suggested that the Agency needs the ability to make the cases move faster, and the
Commissioner's decision should be final with direct appeal to the district court, solely on an abuse of discretion standard, rather than appealable to the state Board of Education prior to entering the state court system. [In the Summer of 1984, the Texas Legislation passed a bill eliminating the need to appeal Commissioner decisions to the State Board of Education.] The Deputy Commissioner stated that the hearings and appeals procedure should be left as-is.

The Legal Director for TASB indicated that the rules for hearings and appeals should be charged to "provide clearly that local hearing rules will be respected." This respondent clarified this by saying, "I think it is not so much the State Board of Education rules, in the final instance, as the hearing examiner's interpretation of those rules that may create a problem." The TASB Legal Director reemphasized that the problem is not so much the rules themselves as it is the fact that, in his opinion, the TEA has set requirements for school districts that the legislature did not intend.

For example,

One of the principal problems with the State Board of Education rules is that they have created a "strict compliance" rule--this has a legal meaning--for the procedural provisions of the act. As you look at the cases, most courts accept substantial compliance with procedural statutes, except in rare instances. For example, in the Open Meetings Act, you are supposed to post the meeting notice 72 hours prior to a meeting. But the courts have held if you post it for 71 hours
prior to the meeting, that is acceptable for "substantial compliance." A court will apply substantial compliance. Yet the agency set strict requirements, so that a district automatically will be reversed if the teacher did not receive a notice on or before April 1. The court will probably say that that is not a "magic" date... that if a district gives it to them by April 2, it will be all acceptable unless the teacher can prove some harm.

The agency also has taken the position that if a written evaluation has not been prepared, automatically the district will lose. That is not required in the statute. The statute requires written evaluations, but we've seen numerous instances, particularly with the superintendent, where the board has never been told that they need to have written evaluations. So, bingo, when they are considering nonrenewing a superintendent's contract, he drops State Board of Education rules on them so they would lose if they nonrenewed him. That kind of rule probably shouldn't have been adopted. More flexibility and practical rules are required in the school business.

TSTA's Legal Director would prefer that

after the board had made their decision, that it didn't go to the agency where the "good old boy" system still works, whether overtly or covertly, it still works. The fact that there would be an impartial tribunal, a truly impartial tribunal, which I would think would even be a greater standard because I'm not convinced that if you are in the "good old boy network" and you're, jokingly, a member of the "red, red rose," and you are all these things as a superintendent, and you make the decision... I think you still have a leg up to the commissioner that he is not going to overturn you... unless you were just playing space cadet when you made your decision, and I think that's the wrong burden to put on an employer, and you should be scrutinized more so than I think the Commissioner of Education is going to scrutinize you or his staff or his general counsel... so I'd like to see the impartial tribunal.

One of the attorneys for plaintiffs began by saying that there are two things that should be done to amend the hearings and appeals procedure:

First, you would have to separate the hearings and appeals off by itself so that no outside political influence is effective. The second thing you would
do is fire every hearing officer over there, or you would give them a competency test. My guess is that not one of them could pass the bar exam on school law today. I have not seen any evidence that they know the first thing about school law in any of their decisions. The best thing would be to fire them all and start over . . . hire good competent lawyers who will read cases and not only read cases but to have the ability to understand the principles of law and apply them to the facts of the particular case. That would be a big step.

While one of the attorneys for plaintiffs felt that no change in procedure was needed, another attorney for plaintiffs and an attorney for defendants were concerned with legal procedures that have special meaning to lawyers. Because of these concerns, the attorney for defendants suggested that the procedure should be streamlined to skip the TEA review and "go straight to district court." This plaintiff attorney suggested,

There needs to be some provision for pre-proposal of motions to be sent in, and that has caused a lot of problems. It is very frustrating to deal with.

I would not make "exceptions" to the proposal mandatory. There are so many pleadings required at the agency, it is kind of ridiculous to have an administrative procedure where first you file your notice of appeal, then your petition for review. If you are on the losing end of a proposal, you have to write "exceptions" where they weren't wrong in every respect, and if you leave anything out, you've lost the right to bring it up later on. So, I would make the "exception" optional, not mandatory.

Amending the procedure so that "substantial compliance in terms of this act be all that is required of a school" was recommended by one attorney for defendants who pointed out that board members are laymen in terms of practicing law, and
in some cases they are not always advised by an attorney; therefore, substantial compliance should suffice. This respondent pointed out that in one case "they challenged our failure to give a notice of proposed nonrenewal as opposed to nonrenewal." Furthermore, "That's almost like putting black magic into the act. If you don't whisper the right words, you lose. Well, that is not justice, and that's not reasonable."

While the Commissioner of Education and the Director of Hearings and Appeals did not offer ideas to amend the statute, the Deputy Commissioner for Legal Services suggested that the statute be amended to clarify dual-purpose contracts, i.e., a contract for a teacher-coach. This respondent indicated that clarification is needed because the statute uses the term "in the same capacity" when describing the position for which a person is employed because the district failed to give timely notice for nonrenewal of an employment contract. The question then becomes whether that person's capacity was as a teacher, a coach, or a teacher-coach. It raises the issue of whether a person's refusal to continue one of the duties is cause for nonrenewal and, if so, which function requires the notice.

The TASB Legal Director indicated that the statute should not be amended until the courts have "construed this act." However, the TSTA Legal Director would amend the statute to cover all employees, not just teachers and administrators.

Attorneys for plaintiffs suggested that the statute be amended to clarify whether or not the legislature intended
to create a property right in the teachers' continued employment, to clarify the meaning of the legal term "substantial evidence review," and to clarify whether a notice of proposed nonrenewal is to be received "by the end of this day or April 1 or prior to 12:01 a.m. on the second of April." The Attorneys for defendants wanted the act amended to clarify procedure. For example, two of them felt that further clarification was needed to give more structure to the rules for local hearings. The third wanted the act amended to the extent of

telling us and the state agency whether they intend the Administrative Procedure and Practice Act to apply to the state agency in reviewing these appeals and, if so, what areas of it do they intend for it to apply. If they intend for all of it to apply, then there is not much point of local districts going through the time, trouble, and expense of conducting these hearings. The teacher would go direct to the state agency with his case.

Tables VI and VII depict the suggested amendments for both the hearings and appeals procedure and the statute itself. These tables are presented on the following two pages.

**Question Twelve: Advantages and Disadvantages**

In a letter dated July 29, 1983, the Commissioner of Education, Raymon L. Bynum, apprised local school district administrations of the rules adopted by the State Board of Education pertaining to hearings and appeals to the Texas Education Agency. These rules became effective on August 4, 1983, and governed
### Table VI: Suggestions by Respondents for Amendments to Hearings and Appeals Process

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<td>1. No Amendments</td>
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<td>2. Facilitate movement of case to direct appeal from commissioner to district court, solely on abuse of discretion</td>
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<td>3. Respect local hearing rules with more flexibility and practicality</td>
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<td>4. Use an impartial tribunal outside the administrative network, i.e., arbitrators from the American Arbitration Association</td>
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<td>5. Replace the PEA staff in the hearings and appeals division</td>
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<td>6. Allow appeals to go straight to district court from the local hearing</td>
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<td>7. Make legal proceedings at the state level easier, i.e., make the filing of exceptions to the proposal optional and not mandatory</td>
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<td>8. Allow substantial compliance rather than requiring strict compliance in the procedures of the hearings and appeals process</td>
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<td>9. Allow de novo hearing at the state level</td>
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<td>2. Clarify the status of dual purpose contracts where nonrenewal may only be for one function, i.e., teacher/coach</td>
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<td>3. Bring all educational employees under the terms of the statute, not just teachers and administrators, i.e., probationary teachers and auxiliary personnel</td>
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<td>4. Clearly specify whether or not the statute creates a property right in the continued expectation of employment</td>
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<td>5. Clarify the legal term &quot;substantial evidence review&quot;</td>
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<td>6. Clarify whether strict compliance or substantial compliance is necessary for meeting procedural deadlines and specify the consequences for noncompliance</td>
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<td>7. Provide structure for local hearing rules</td>
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<td>8. Specify whether or not the terms of Senate Bill 341 fall under the provisions of the Administrative Procedures and Practices Act.</td>
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appeals from actions including but not limited to actions by local district boards of trustees; actions or decisions concerning denial, suspension, or cancellation of a teaching certificate; and recommendations made to the Commissioner of Education by the Teacher's Professional Practices Commission.

Interviewees were asked to give their views of the advantages and disadvantages of the rules to local districts, to the TEA, and to the plaintiffs involved in appeals.

Both the Commissioner of Education and the Deputy Commissioner for Legal Services feel that the rules benefit all parties involved and that there are no disadvantages to them. The Director of Hearings and Appeals is of the opinion that the rules provide a "fair opportunity to know what it is they [the parties involved] need to avoid, rather than just guessing what the statute means because the statute itself is fairly vague." The indication by all three of these adjudicators is that the rules are a "guideline" or "roadmap" to all parties.

The Legal Directors for both TASB and TSTA have divergent opinions about the answer to this question. TASB feels that, overall, the rules have advantages for all three groups. On the other hand, TSTA feels that the rules favor both local districts and the agency and are a great disadvantage to teachers. As mentioned in answers to previous questions, TSTA feels that a hearing at the agency level based on the record is a great disadvantage to teachers; they would prefer a de novo hearing.
"I think they are terrible rules, but I also think in essence they serve as a guideline to school districts, and it's an invalid guideline," was the reply of one attorney for plaintiffs. This respondent suggests that while the rules now appear to favor school districts and the TEA, when the courts have the opportunity to hear cases that are appealed, based on decisions made under those rules, the positions will be reversed.

Both of the other attorneys for plaintiffs feel that the rules favor local districts and the TEA, but the primary focus is on the hearing of the appeal based upon the local record rather than on a de novo hearing at the state level. Hence, they feel that the present procedure leaves the plaintiff somewhat "short-changed" because they do not have the opportunity for a fair hearing at the state level. One of these attorneys said that the TEA set this rule up to favor themselves because "its cheaper for them. They don't have to hold the hearing. They don't have to pay the court reporter, which is a major expense, they don't have to pay the hearing officer to sit there and hear the evidence." This respondent also indicated that, when the rules were discussed in the Spring of 1983,

there were some suggestions that the TEA hearings be held around the state and hearing officer travel, because one of the reasons that the TEA didn't want to hold the hearings de novo at the agency was because everybody would have to bring their witnesses from all corners of the state to Austin. This would be expensive for those parties.
This respondent further implied that the agency did not want to do that because the hearing officer did not want to travel. Hence, the appeals to the TEA are based on a record transcript of a local hearing, and this is considered a disadvantage to teachers.

Generally, the attorneys for defendants felt that the rules are good. There are, however, three different opinions regarding the advantages and disadvantages of the rules. One of these attorneys commented that the rules are poorly written and therefore are a disadvantage to all parties. For example, "if you don't have a record of the local board hearing, you automatically lose. There should be no automatic losses or automatic wins. They ought to be decided on the facts of each case. That is what the statute says."

A second attorney for defendants feels that the rules are a disadvantage to school districts because they "introduce the judiciary more into the educational process." However, the third attorney for plaintiffs expressed the opinion that the rules were more of an advantage to school districts than they were to plaintiffs.
CHAPTER BIBLIOGRAPHY

CHAPTER V

SUMMARY AND DISCUSSION

This study examines the first two years of implementation of the Texas Term Contract Nonrenewal Act at the state-agency level. The purpose was to investigate the views of parties involved in the appeals process before the Commissioner of Education during the period from September 1, 1981, through August 31, 1983, regarding the impact of the Term Contract Nonrenewal Act on school district nonrenewal decisions. Recommendations for changes in the administrative law process based on the responses obtained are presented in this chapter.

Data were primarily collected through the use of eleven open-ended, in-depth, key-informant interviews. The data were searched for similarities and differences in responses. Responses were analyzed and divided into appropriate categories for comparisons between and within groups. As related in Chapter III, the complete process resulted in tentative explanations that are testable by further research. The implications are presented in the following discussion.
Discussion

Research Question One: Implementation Steps

When the legislature passes a law, it is the responsibility of administrative agencies to develop rules and regulations to implement the law. These rules and regulations have the effect of law until some higher authority over turns them. In the absence of administrative procedures, those who are affected by the law are left to guess at its meaning.

After the law is passed and regulations are drawn up and promulgated, specific circumstances cause questions and issues to arise. These are resolved through quasi-judicial administrative channels and occasionally by the courts.

In reviewing what steps the Texas Education Agency (TEA) has taken to implement the Term Contract Nonrenewal Act, it should be noted that the law was passed effective September 1, 1981. It took the Texas Education Agency nearly two years to promulgate rules and regulations to implement it. The two-year delay has trigged criticism from those who represent both defendants and plaintiffs. Criticism has also focused on some TEA interpretations that were issued in its quasi-judicial actions during the two-year period.

According to the Deputy Commissioner for Legal Services at the TEA, personnel changes in the legal division are the
primary reason for the delay in adoption of administrative rules and regulations for the new law. Another consideration was the difficulty of trying to predict what questions would arise. The Commissioner of Education mentioned that some of his legal staff felt that rules should only be drafted as questions arose in each case that was appealed. Almost all of the interviewees expressed surprise that only twenty-four cases had been appealed to the agency during the first two years. A great deluge of appeals had been expected to swamp the hearings and appeals division of the Texas Education Agency, which consists of only four hearing officers.

In light of both this expectation of a large number of cases and the personnel changes that occurred at the TEA, the two-year delay may have been justified. Almost everyone familiar with the Term Contract Nonrenewal Act agrees that it is one of the most interesting and important pieces of legislation passed in many years that relates to the employment of educational employees; therefore, it was no simple task to interpret the new act and to write rules for its implementation. The TEA staff was faced with either hastily drafting a set of rules that could later need considerable revision or allowing enough time to pass for issues to arise. The Agency staff chose the latter approach. While the rules may undergo some revision at a
future time, they seem to address the majority of the
issues raised during the first two years as revealed by
the appeals coming from local board actions to the TEA.

As expressed by the Commissioner, the other two Agency
adjudicators who were interviewed, and the TASB Legal
Director, a law is really not fully implemented until it
is construed by the courts. To date, only one court de-
cision has been rendered. Hearsay evidence was a main
issue in *Seifert v. Lingleville I.S.D.* (1) [See Appendix
D]. Students had complained to parents about the teacher's
performance at school, and these parents, rather than the
students, were the ones who testified at the local board
hearing. When appealed to the TEA, the plaintiff's appeal
was granted. The district court later upheld the Commis-
sioner's decision.

What is important about *Seifert* is that it occurred
prior to the passage of any rules by the Texas Education
Agency, and thus illustrates what can happen in the absence
of policies developed by administrative agencies. Both
plaintiffs and defendants were left to grope in the dark
as to what would be the proper way to address the issues in
this case. Not only were they without guidance about the
Term Contract Nonrenewal Act itself, but, according to the
attorneys involved, there was even confusion surrounding the
appeal procedures used by the Texas Education Agency to
resolve the dispute. Ultimately, the Texas Supreme Court may hear the case and issue a ruling that will alter TEA rules and regulations concerning this matter.

Most of the initial work of the T.E.A.'s legal division was confined to hearing appeals and making numerous appearances at professional association meetings to discuss the new law. Later, additional appearances were made to discuss the rules adopted by the agency. It is generally agreed that the T.E.A.'s rules are effective guidelines in the appeals process.

Research Question Two: Reactions to Implementation

For this research question, an attempt was made to assess the reactions of top experts involved in the implementation process of the act. There was agreement among the interviewees that the purpose of the bill was both to afford some amount of protection to teachers employed under term contracts and to add fairness to employment practices. The majority felt that the law and the agency’s implementation of it were achieving the agreed-upon purposes.

Even so, there still exists some controversy with respect to the manner in which the TEA handles the appeals. The Texas Education Agency chose to administer the new law under the Texas Administrative Practices and Procedure Act. This brought about revisions in the appeals section of
agency rules. As a result, a major initial issue was whether a de novo hearing is required at the state-agency level or whether the record of the local board hearing would suffice. Section 21.207 of the Texas Education Code states that "the Commissioner may not substitute his judgement for that of the board of trustees, unless the decision below was arbitrary, capricious, unlawful, or not supported by substantial evidence."

At the heart of the de novo vs. transcript review issue is the determination of what constitutes substantial evidence. According to one legal interpretation, substantial evidence is more than a "scintilla" (or trace) and less than a "preponderance" (or superior amount). The substantial evidence standard is thus a lenient standard, and consequently it leaves considerable power with the local school board. In the words of the Deputy Commissioner of Legal Services for the TEA:

All substantial evidence review is, in law, is to try to correct obvious abuses. It is not a heavy standard of review; it was never intended to be. As long as the review is a substantial evidence review, there are several reasons why we should base appeals on local records. First, it is a waste of time not to. Second, it [to have a de novo hearing at the agency] would prevent teachers from ever winning, because any lawyer worth his salt ought to be able to put on substantial evidence for anything, just about, except maybe the moon is pink. I mean within reason, obviously; it is not much of an overstatement, is what I am saying, because it is not much evidence. Thirdly, it would discourage presentation of evidence at the local level because it would encourage people to hide behind the log.
Since the legislature set the substantial evidence review, it would be unusual to expect the Tea to use a different standard. The position taken by the agency is that the employment decision should be made at the local level rather than the state level and that, therefore, a transcript review is preferable in most situations.

Attorneys for plaintiffs and defendants alike disagree with the TEA's interpretation of the act as evidenced by their responses to interview question six (See Chapter IV). There is also a feeling on the part of attorneys for plaintiffs and at least one attorney for defendants that the TEA has not dealt with the extent to which the TCNA has created substantive rights for an individual employed under a term contract.

One attorney for plaintiffs said,

Well, I think it is obvious that after someone has served a probationary period in the state of Texas that they have a property right in their job. I don't think when in Roth, when the courts said you have to have a property right in your contract and it's established by state law, they said the state had to turn around and adopt a statute saying you had a property right. What it meant was that you had to have a tenure law that guarantees you an expectancy that you would be reemployed. And clearly, 341 does just that.

The TASB Legal Director, on the other hand, is one of the respondents who feels differently:

The original intent of the legislature was that there not appear to be hidden reasons for a teacher being nonrenewed, so you put your cards down on the table and you tell the teacher the reasons. The agency has taken that much farther, and now is saying not that you just have to tell the teacher the reasons, but additionally, you have to give the teacher notice of the reasons, with enough time to correct those reasons after a warning or
two before they are ultimately nonrenewed. That's not in the statute; that was not the intent of the legislature. They are buying into the northeastern tenure concept, that it's a protected employment. They haven't yet reached the question about whether there is a property interest directly. Their philosophy quacks like a duck, waddles like a duck, looks like a duck; it may be a duck; it may be a tenure duck! They've put substantive aspects into the act that the legislature didn't intend.

So far, TEA interpretations have dealt mainly with procedural issues such as time deadlines for adequate notice and for adoption of policies. Naturally, both plaintiffs and defendants would prefer to have the agency implement the new law in their favor.

**Research Question Three: Recommendations for Change**

In considering the reactions of all the interviewees, it is clearly apparent that the interpretation and implementation of a law of the magnitude of the Term Contract Nonrenewal Act is an extremely difficult and time-consuming process. It may take years to complete. While there is some disagreement about the way in which the TEA has interpreted the law, until state courts or the legislature itself clarifies or changes the law, the TEA's interpretation will most likely stand. However changes were offered by respondents for consideration. Table VI of Chapter IV indicates which of the respondents supports each suggested amendment in the hearings and appeals procedure. Table VII of Chapter IV indicates which of the respondents support each suggested
amendment to the statute. The following fifteen amendments were suggested. The following items pertain to the hearings and appeals procedure and are listed in priority according to the number of respondent supporting each one.

1. Allow de novo hearings at the state level.

2. Allow substantial compliance rather than requiring strict compliance in the procedural aspects of the hearings and appeals process.

3. Make the mechanics of legal proceedings at the state level easier for attorneys, i.e., make the filing of "exceptions" to the proposal optional and not mandatory.

4. Respect the local hearing rules when a case is appealed by allowing more flexibility and practicality to the structure of those local hearings.

5. Clarify the status of dual purpose contracts where nonrenewal may only be for one function, i.e., teacher-coach.

6. Facilitate the movement of a case with a direct appeal from the Commissioner to the district court, solely on an abuse of discretion standard.

7. Allow appeals to go straight to district court from the local hearing thereby eliminating the Texas Education Agency completely.

8. Upon appeal of a local board decision, go directly to an impartial tribunal outside the administrative network, i.e., the American Arbitration Association.
9. Replace the TEA staff in the hearings and appeals division.

Items that are recommended as amendments to the statute appear in the following priority order.

1. Provide some structure to the local hearing that allows adequate time for the plaintiff to submit testimony and witnesses in his defense and have the opportunity to rebut allegations made by the administration.

2. Clarify whether strict compliance or substantial compliance is necessary for meeting procedural deadlines and specify the consequences for noncompliance.

3. Specify whether or not the terms of Senate Bill 341 fall under the provisions of the Administrative Procedure Act.

4. Clearly specify whether or not the statute creates a property right in the continued expectation of employment.

5. Clarify the term "substantial evidence review."

6. Bring all educational employees under the terms of the statute, not just teachers and administrators, i.e., probationary teachers and auxiliary personnel.

Implications

At the very heart of the Term Contract Nonrenewal Act (TCNA) is the idea of fairness. An attitude and belief must prevail that everyone is acting in good faith. Employees should not expect lifetime tenure simply because they have
been given a contract, and employers should not lightly or flippantly withdraw employment without good cause.

There are those who feel strongly that local boards of education cannot be impartial in their judgement and that boards are merely a rubber stamp to the administration. It is interesting to consider the converse of this scenario. If it is necessary to have an outside, unrelated, impartial body to terminate employment, then is it not also just as important to have such a body available to engage the employment relationship? In other words, if local boards of trustees and school administrations are not capable of "fair dismissal" of an employee, then are they incapable of hiring employees? Another thought is that those same administrative employees, who may be deemed unfair in their recommendations to boards regarding employment decisions, are protected by the TCNA. Prior to its enactment, they also were unprotected.

Again, fundamental fairness is the key to understanding the TCNA. The only actual job security that any employee truly has is his ability to do his job well. The TCNA provides a certain amount of protection for employees who hold term contracts. That protection is basically that unless such individuals are serving a two-year probationary period, (a) they must be notified in advance of action to
nonrenew the contract, (b) they must be given reasons for that decision, (c) the decision must be based on their annual performance evaluation, and (d) they must be given an opportunity to face the administration and the board to give testimony on their behalf. As long as the employee has been given an opportunity to present his side to an impartial tribunal, then fairness will prevail. However, impartiality on the part of a board does not necessarily mean that they are detached and unknowledgeable; it does mean that they themselves do not have personal animosity toward an employee or a punitive motive in making a decision to nonrenew an employee's contract.

It is therefore recommended that teachers should

1. Be sure to read the employment contract issued by the school district; teachers should also read school board policies pertaining to nonrenewal of term contracts since these policies are a part of their contracts even if they are not reflected in it;

2. Exercise care to follow all administrative and school board directives;

3. Be aware of all evaluation reports contained in their personnel files as well as any other documents that may affect their employment status;

4. Be knowledgeable about the procedural legal requirements of the law, such as the timeline that must be adhered to in requesting a hearing before the board of education.
5. Keep their own documentary evidence pertaining to evaluation and administrative directives or of events that may lead to a proposed nonrenewal of their employment contract;

6. Seek outside professional help when the employment contract is being considered for nonrenewal.

It is therefore recommended that administrators should

1. Realize that they, too, are afforded the protection offered term contract employees as a result of the enactment of Senate Bill 341;

2. Seek to establish an atmosphere of fairness and trust in dealing with term contract employees;

3. Become very adept at the proper use of evaluative instruments (teachers whose performance is questionable should be evaluated more than once; even though the TCNA itself does not require it, marginal employees should be given an opportunity to improve on stated deficiencies);

4. Have a thorough knowledge of the law itself, of the rules and regulations from the agency regarding appeals, and of the local policies;

5. Make every effort to stay abreast of the latest decision of the TEA rulings and court cases regarding nonrenewal of term contracts;

6. Realize that an administrator will also be "on trial" in a hearing before the board; allegations regarding employees' performance and the recommendation for nonrenewal
of their contract should be well founded and backed up by solid documentation;

7. Seek professional counsel in order to minimize procedural or substantive errors when it is clearly apparent that a proposal for nonrenewal of a term contract is imminent.

It is therefore recommended that school boards should

1. Give attention to the adoption of policies that provide for annual performance evaluations, that state reasons for possible nonrenewal of term contracts, and that specify how a recommendation for proposed nonrenewal of term contracts will be received;

2. Insist that the administration promulgate board policies and administration regulations pertaining to evaluations and nonrenewal of term contracts;

3. Insist that recommendations for proposed nonrenewal of term contracts be well documented;

4. Engage legal counsel to ensure that proper notices are given of proposed nonrenewals and that all procedural requirements of the TCNA are met;

5. Make an honest effort at hearings to ensure fair treatment by allowing adequate time for both sides to express their views, and the board should make every effort to be truly impartial. In addition, a court reported should be employed to prepare a certified accurate transcript of the proceedings;
6. Make a decision in a timely manner after receiving all testimony and properly notify all interested parties. Care should be exercised that the performance evaluations be considered at the hearing.

Conclusions

The Legislature of the state of Texas did not intend to make the Term Contract Nonrenewal Act (TCNA) a tenure bill for educational employees. Its intention was to provide protection from abuses and to promote fundamental fairness in employment practices. Since the majority of the school districts in Texas were employing teachers under term contracts, a teacher could work in a district for twenty years and "wake up one morning" without a job; if the contract nonrenewal did not involve any alleged constitutional deprivations, then the employee had no recourse.

Texas lawmakers were faced with the dilemma of enacting legislation that was somewhere between no procedural due process and tenure. Senate Bill 341, known as the Texas Term Contract Nonrenewal Act (TCNA), is the compromise created by Texas lawmakers.

Only time will tell the complete story of the effectiveness of TCNA. Some of the disgruntlement about how the Texas Education Agency has implemented the new law stems from battles fought in its passage. During the first two years of
implementation, many issues were raised and resolved. This two-year delay triggered criticism from those representing both defendants and plaintiffs. Criticism also focused on some of the Texas Education Agency's interpretations that were issued in its quasi-judicial actions during the two-year period.

Most of the criticism advanced by the respondents focused on (a) what constitutes substantial evidence, (b) the type hearing provided at the Agency level (i.e., de novo vs. transcript), and (c) procedure rules. The views of the respondents vary depending upon their position. For example, those sympathetic to plaintiffs favor a de novo hearing on appeal, while those sympathetic to defendants favor a hearing based on a transcript of the local hearing.

One additional thought: if out of nearly 200,000 teachers, the majority of whom were employed on term contracts, only twenty-four nonrenewal decisions were appealed to the Texas Education Agency in a two-year period, the Term Contract Nonrenewal Act, as implemented by the Texas Education Agency, may very well be fulfilling the purpose for which it was intended.

Suggestions for Further Research

Although more than two years have passed since the enactment of Senate Bill 341, it has still not completely
evolved to maturity. Most of the procedural questions have been initially addressed by the TEA, and the decisions handed down by the Commissioner will likely stand until challenged by state courts. Areas where additional research can be profitably conducted include the following:

1. Utilizing either survey methodology or intensive case studies, investigate the impact of the TCNA on the number of term contracts that were nonrenewed prior to enactment of the TCNA in comparison to the number nonrenewed after its enactment.

2. Utilizing questionnaires, investigate whether it would be more advantageous for a school board to adopt Chapter 13 of the TEC, which provides for continuing contracts, or whether they should continue with term contracts.

3. Utilizing interviews or case studies, investigate the difficulty of obtaining employment at other school districts by those who were nonrenewed under the TCNA as compared to those who were nonrenewed prior to its enactment.

4. Utilizing interviews, questionnaires, or attitudinal surveys (i.e., semantic differentials), investigate the question of administrator and teacher attitude toward the TCNA.

5. Utilizing a case-study approach once the courts start ruling on TCNA, investigate the impact of court
decisions on the rules and regulations of the TEA and on the Commissioner's decisions prior to those decisions being construed by the courts.
CHAPTER BIBLIOGRAPHY

relating to standards and procedures for the nonrenewal of contracts for teachers and superintendents under term contracts and to probation in the public schools of this state; adding Sections 21.201 through 21.211 to Subchapter G in Chapter 21 of the Texas Education Code, as amended.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS

SECTION 1. This Act shall be known as "The Term Contract Nonrenewal Act."

SECTION 2. Subchapter G, Chapter 21, Texas Education Code, as amended, is amended by adding Sections 21.201 through 21.211 to read as follows:

"Section 21.201. DEFINITIONS. As used in this subchapter, the following terms shall have the meaning ascribed to them in this section.

"(1) 'Teacher' means a superintendent, principal, supervisor, classroom teacher, counselor, or other full-time professional employee, except paraprofessional personnel, who is required to hold a valid certificate or teaching permit.

"(2) 'Board' and board of trustees' means the governing board of a public school district.

"(3) 'School district' means any public school district in the state.

"(4) 'Term contract' means any contract of employment for a fixed term between the school district and a teacher.

"Section 21.202. Teacher Evaluations. The board of trustees of each school district shall provide by written policy for the periodic written evaluation of each teacher in its employ at annual or more frequent intervals. Such evaluation shall be considered by the board of trustees prior to any decision by the board not to renew the term contract of any teacher.

"Section 21.203. Nonrenewal of Term Contracts. (a) The board of trustees of each school district may choose not to renew the employment of any teacher employed under a term contract effective at the end of the contract period.

"(b) The board of trustees of each school district shall establish policies consistent with this subchapter which shall establish reasons for nonrenewal.

"(c) The board of trustees of each school district shall establish policies and procedures for receiving recommendations from its school administration for the nonrenewal of teacher term contracts, excepting only the general superintendent of schools.
"Section 21.204. Notice. (a) In the event the board of trustees receives a recommendation for nonrenewal, the board, after consideration of the written evaluations required by Section 21.202 of this subchapter and the reasons for the recommendation, shall, in its sole discretion, either reject the recommendation or shall give the teacher written notice of the proposed nonrenewal on or before April 1 preceding the end of the employment term fixed in the contract.

(b) In the event of failure to give such notice of proposed nonrenewal within the time herein specified, the board of trustees shall thereby elect to employ such employee in the same professional capacity for the succeeding school year.

(c) The notice of proposed nonrenewal required in this section shall contain a statement of all the reasons for such proposed action.

"Section 21.205. Hearing. (a) If the teacher desires a hearing after receiving notice of the proposed nonrenewal, the teacher shall notify the board of trustees in writing within 10 days after receiving the notice of nonrenewal. The board shall provide for a hearing to be held within 15 days after receiving written notice from the teacher requesting a hearing. Such hearing shall be closed unless an open hearing is requested by the employee.

(b) The hearing shall be conducted in accordance with rules promulgated by the district.

"Section 21.206. Decision of Board. (a) If the teacher fails to request a hearing, the board shall take such action as it deems lawful and appropriate and shall notify the employee in writing of that action within 15 days of the expiration of the 10-day period for requesting a hearing.

(b) If the teacher requests a hearing, the board shall take such action as it deems lawful and appropriate and shall notify the teacher in writing of that action within 15 days following the conclusion of the hearing.

"Section 21.207. Appeal. (a) If the teacher is aggrieved by the decision of the board of trustees, he may appeal to the State Commissioner of Education pursuant to Section 11.13 of this code. The commissioner may not substitute his judgment for that of the board of trustees, unless the decision below was arbitrary, capricious, unlawful, or not supported by substantial evidence.

(b) The State Board of Education shall have jurisdiction to hear appeals from such decisions of the State Commissioner of Education.

"Section 21.208. Superintendents. If a majority of the board of trustees of any school district shall determine that the term contract of the general superintendent of schools should be considered for nonrenewal, the provisions of this subchapter shall apply, except that there need not be a recommen-
dation from the designated school administration.

"Section 21.209. Probation. The board of trustees of any school district may provide by written policy for a probationary period not to exceed the first two years of continuous employment in the district, in which case the provisions of this subchapter shall not apply during such probationary period.


"Section 21.211. Exemptions. This subchapter does not apply to teachers who are employed under the provisions of the probationary or continuing contract law as set out in Subchapter C of Chapter 13 of this code."
Interview Schedule

Introductory Statement:
Thank you for granting this interview. I know you are busy, and I don't wish to take any more of your time than necessary. There are several questions I would like to ask. Do you mind if I tape record our conversation to save time and to capture the true feeling of this setting? Let us begin.

I. Personal Information
   1. Briefly describe your current position.

II. Definitions
   2. What is your perception of the purpose of Senate Bill 341?
   3. Is it achieving its purpose?

III. Descriptions/Reactions
   4. In your professional judgement, is Senate Bill 341 a good law? Why? or Why not?
   5. What has the Texas Education Agency done to implement Senate Bill 341?
   6. How do you feel about the way the Texas Education Agency has interpreted and implemented Senate Bill 341?
   7. Do you feel that there are certain particular issues that seem to predominate the appeals heard by the Commissioner through August 1, 1983? If so, what are the issues?
8. In your professional judgement, does the Senate Bill 341 hearing and appeals procedure remove personnel decision-making from the local level to the state level?
   a. How do you feel about this?

9. What do you believe are the procedural legal requirements of Senate Bill 341 as they apply to non-renewal hearings conducted by local boards?

10. Which is preferable?
    a de novo hearing at the state level or a hearing of the local board record? Why?

IV. Evaluation

11. Based on your experience and knowledge of Senate Bill 341:
    a. How would you amend the hearings and appeals procedure?
    b. How would you amend the statute itself?

12. As you may be aware, the Commissioner promulgated a set of rules in July of 1983 pertaining to hearing and appeals procedures. What do you think are the advantages and disadvantages of these rules?
    a. To local districts?
    b. To the Texas Education Agency?
    c. To the plaintiffs involved?
Subchapter A of Title 19, Part II of the Texas Administrative Code and Statutory Citations is entitled "Hearings and Appeals Generally". Section 157.64 set out procedures for cases brought under the Term Contract Nonrenewal Act (T.C.N.A.). However, several other sections also affect hearings brought under the T.C.N.A. For example, Section 157.45 requires the school district to file an Answer which should point out any matter of disagreement with the facts set forth in the appealing party's petition for Review and explain clearly why the school district's decision was proper and should be held valid.

Section 157.52 allows either party to submit written questions to the other for the purpose of discovering the other's position prior to the hearing before the Commissioner and, in certain instances, to allow the answer to those questions to be used in place of the other party's testimony. There are three other sections affecting Term Contract Nonrenewal Cases. These are Sections 157.53, 157.54, and 157.60. These allow for subpoenas of witnesses in hearings before its Commissioner, summary judgments, and filing of exceptions and replies in response to a proposal for decision.

Of particular interest to school districts and to those who appeal a contract nonrenewal decision to the
Commissioner, are the provisions under Section 157.64. Subsection (b) stipulates that "when a teacher appeals his or her nonrenewal, evidence will not be presented anew before the Commissioner". The indication is that a decision will be based on the evidence introduced at the nonrenewal hearing before the local board of trustees. Subsection (c) requires the school district to provide the Commissioner with a transcript of the nonrenewal hearing and certain other relevant documents.

Subsection (g) states that the Commissioner will affirm the school district's decision unless he finds it arbitrary, capricious, unlawful, or not supported by substantial evidence. Particular instances in which the Commissioner might decide to reverse the school district include the following:

(1) Where written notice that the teacher's nonrenewal was under consideration was not given to the petitioner on or before April 1. Notice sent by certified mail, addressed to the last known address of the teacher, postmarked by the United States Postal Service on or before March 25, will be considered timely.

(2) Where the required written notice to the teacher failed to state the reasons for the action under consideration.

(3) Where the required written notice failed to state the reasons in a manner sufficient to allow the teacher the opportunity to adequately prepare a response at the local hearing to the allegations in the notice, and the teacher, at the time the teacher requested a hearing, set forth clearly in
writing any deficiencies in the notice, and any such deficiencies were not promptly corrected prior to the date of the hearing.

(4) Where the evidence adduced at the local hearing does not support the specific reasons of which the teacher was given written notice.

(5) Where the teacher requested a hearing in writing within ten days after receiving the required notice, and such a hearing was not held within fifteen days after the request was received, except as provided in this subsection. The teacher may waive his or her right to be heard within fifteen days by written agreement. If the school district, within five days of receiving the request for hearing, schedules the hearing for a date outside of the fifteen day period, the teacher will be deemed to have consented to that date unless the teacher files an objection to that date within three days after receiving written notice of the date proposed by the district.

(6) Where the school district fails to provide the commissioner with a certified transcript of the local proceedings.

(7) Where the decision of the local board was not supported by substantial evidence which would have been admissible in an evidentiary hearing before the agency.

(8) Where no written evaluation of the teacher was prepared by the administration, or where the board of trustees failed to consider the administration's evaluation of the teacher prior to its decision not to renew the teacher's term contract. The board of trustees is not bound by the administrator's evaluation, but the evaluation must be considered.

(9) Where the reason for nonrenewal was not set forth in writing in the school district's
policies, unless the reason is one which is inherent in the employment relationship or otherwise clearly established as a basis for nonrenewal.

(10) Where the nonrenewal is based on a reason contained in a policy which was adopted so recently prior to its use as a reason for nonrenewal that the teacher did not have a fair opportunity to conform his or her conduct accordingly.

(11) Where the board of trustees prevented the teacher from introducing at the local hearing evidence which was material, relevant, and not unduly repetitious.
Summary of Cases

During the time period September 1, 1981 through August 31, 1983 there were twenty-four cases that had reached the final decision stage or had proposal for decision. A final decision indicates that the Commissioner of Education has made a decision and signed the opinion. A proposal for decision refers to a decision by the hearing officer, whose opinion is pending before the Commissioner. A proposed decision is one that the Commissioner has not yet signed. A brief description of each case is given below.


Hilda Phariss, a beginning teacher signed a one-year term contract on July 29, 1981. Dublin school district adopted a probationary status policy on December 8, 1981. Although the district's probationary policy did not require it, Ms. Phariss was given a term contract nonrenewal hearing.

Two issues were raised in this case. First, the issue of whether the probation policy adopted on December 5, 1981 applied to the teacher. Secondly, whether the teacher could attack the sufficiency of the notice, adequacy of the hearing, and the evidence to support her nonrenewal, once the board voluntarily offered her a hearing to which she was not entitled under the Term Contract Nonrenewal Act.
The Commissioner rules that the petitioner was a probationary teacher at the time of her nonrenewal and as such was not entitled to the protection afforded by the Term Contract Nonrenewal Act. Therefore her appeal should be dismissed, because she had not stated a claim which would entitle her to relief.


Lula Calderon, a term contract teacher, entitled to the protection of Senate Bill 341, appealed the district's nonrenewal hearing decision, alleging that it was not supported by substantial evidence. The district did not supply TEA with a certified transcript of the local hearing for review, but only supplied copies of all documents in the teacher's personnel file.

The issue raised was whether the district was required to provide TEA a certified transcript of the local board hearing. The Commissioner remanded the case pending submission of a hearing transcript.

Salinas vs. Ben Bolt-Palito Blanco ISD

Jesus Salinas, athletic director/teacher was nonrenewed for insubordination in refusing to refrain from practicing on the football stadium field, rather than a practice field, as directed by the school board and assistant superintendent. The superintendent recommended renewal but the board nonre-
newed the athletic director/teacher. Mr. Salinas accused
the board of violating Senate Bill 341 by nonrenewing him
without a recommendation for nonrenewal from the superin-
tendent. He also accused the board of violating the due
process impartiality requirement of the Fourteenth Amend-
ment by making an initial decision to terminate his employ-
ment before the hearing and by acting both as prosecutor
and tribunal at the hearing.

At issue in this case was whether Senate Bill 341
permits a board to nonrenew an employee that the superin-
tendent recommends for renewal and whether the board, on
its own motion proposing to nonrenew an employee, can offer
an impartial hearing in compliance with due process and
Senate Bill 341. The Commissioner held that there was no
violation of Senate Bill 341 nor of the petitioner's due
process rights, and that the board's decision to nonrenew
Mr. Salinas' contract was not without substantial evidence,
nor was it arbitrary or capricious.

*Patrick vs. Mineola ISD, Dkt. No. 111-Rla-382 (1983)*

Jack Patrick, a principal with twenty-one years ex-
perience in the district was nonrenewed. He specifically
demanded a de novo hearing at the Texas Education Agency.

Issues in this case were whether TEA is required by
law to offer a de novo hearing on nonrenewal appeals and
whether incidents in prior years may be considered in non-
renewals. In denying this appeal the Commissioner ruled that a de novo hearing is not required by Senate Bill 341 and the incidents in prior years can be considered in nonrenewal cases.

Brack vs. Lake Travis ISD, Dkt. No. 147-R1-582 (1983)

Lake Travis ISD split off from Dripping Springs ISD. With the split, Lake Travis assumed some schools of Dripping Springs ISD within the new Lake Travis ISD boundaries and many of the teachers teaching in those schools. Lamarr Brack was nonrenewed by Dripping Springs ISD and hired by Lake Travis ISD on July 9, 1981. On March 29, 1982, Lake Travis ISD nonrenewed her contract without reasons being given to her or a hearing.

The issue in this case was whether a policy requiring notice to all nonrenewal teachers, both probationary and nonprobationary by April 1 gives a probationary teacher a right to be re-employed upon the district's failure to notify her by April 1. It was ruled that the petitioner was a probationary teacher during the 1981-82 school year, therefore, she was not entitled to the protection of Senate Bill 341. Accordingly, the district's failure to give her notice of nonrenewal on or before April 1, 1982, as required by its own policy, did not harm the petitioner.
Essley and Reiter vs. Lake Travis ISD  
Dkt. Nos. 148-R1-582, 149-R1-582 (1983)

Joyce Essley and Deanna Reiter were both continually employed without termination by Dripping Springs ISD or Lake Travis ISD for more than two years. These nonprobationary teachers were informed on March 12 by their principal that they were recommended for nonrenewal. On March 29 the board voted to nonrenew their contracts. On April 5 the board gave written notification that their contracts had been nonrenewed.

In this case the issue was whether a "written" notice must be received by April 1 in order for a district to be in compliance with the provisions of Senate Bill 341. This appeal was granted because the district failed to give "written" notice as "clearly pronounced" by the legislature.

Seifert vs. Lingleville ISD, Dkt. No. 174-R1a-782 (1983)

Jeanette Seifert, a nonprobationary teacher was nonrenewed for "community feeling of incompetence". Evidence offered by the district included testimony from the superintendent, based on information from trustees; testimony from parents, based on information from their children; and the teacher's high failure rate.

At issue in this case was whether "community feeling of incompetence" is a permissible reason for nonrenewal under the Term Contract Nonrenewal Act, and whether substantial evidence of incompetence existed for the board
to conclude that the teacher was incompetent. In investigating the case, it was determined that the board based its judgment on hearsay evidence. The board's perception of the teacher was determined through complaints received from parents of students in Ms. Seifert's class. There was no report from her principal indicating that she was incompetent. The Commissioner stated, "The community's perception of a teacher's competence is irrelevant. What is relevant is--Is the teacher actually incompetent? And, what is the evidence pertaining to that issue?" The case was decided in favor of the teacher.

Salzman vs. Southwest ISD, Dkt. No. 186-R1-782 (1982)

For three years, Renee Salzman, was evaluated with decreasing ratings concluding with a nonrenewal recommendation by the superintendent. On March 15, 1982, the board adopted its nonrenewal policies. At the same meeting, it accepted the superintendent's recommendation to nonrenew the teacher. After receiving timely notice and reasons, the teacher requested and received a hearing on April 28. Testimony from the teacher's aide and principal showed that she often left her special education students without supervision, used profanity loudly enough for the students to hear, and failed to fulfill her job description duties. There was also evidence of other deficiencies.

There were three issues raised in this case. The
first issue was whether the teacher had received adequate
notice of the standards by which she was to be judged.
Secondly, whether the board's decision was based on substan-
tial evidence of deficiencies, failure to fulfill job
description responsibilities, and failure to comply with
official directives. Finally, whether Senate Bill 341 was
violated by the board informing her that on March 15 it
had "nonrenewed" her contract, rather than had "accepted
the superintendent's recommendation for nonrenewal" of her
contract.
In denying this appeal, the Commissioner found that
the agenda for the March 15, 1982 Board of Trustees meet-
ing was sufficient to place the petitioner on notice that
renewal or nonrenewal of her contract would be considered
at the meeting and that any error connected with the de-
cision to nonrenew her contract at that meeting was render-
ed harmless by the Boards subsequent agreement to provide
Ms. Salzman with a hearing on the matter. He ruled further
that the Board of Trustees' adoption of a nonrenewal policy
at the March 15, 1982 meeting and its immediate use to non-
renew Ms. Salzman's contract, under the circumstances of
this case, did not constitute a denial of due process, and
was consistent with the interest of the Term Contract Non-
renewal Act.
Lisa Black, a nonprobationary teacher, was nonrenewed after a hearing, for failure to submit to the principal choir program goals for the 1981-82 school year. The teacher discouraged students from taking choir, disagreed with her teaching assignment, sent students to the office for disciplinary purposes while a test was being given in the class, was late to duty assignments and class, disciplined students that failed to complete work assigned by a substitute teacher, smoked in the classroom, and exhibited poor teaching mannerisms, among other things. In the hearing Ms. Black had explanations for the allegations.

This case had a single issue. That being whether the nonrenewal decision was based on substantial evidence. This case was not finally decided until January 6, 1984. However, the proposal for decision was entered on January 6, 1983. In that proposal the hearing officer found that upon consideration of all evidence and matters officially noticed that there was not substantial evidence presented to the Board of Trustees of the deficiencies alleged as the reasons for nonrenewal.

Byron Roberts, a classroom teacher was nonrenewed due to an incident between him and another teacher. He did have a positive evaluation and the board considered that
in their decision for nonrenewal.

Mr. Roberts raised the issue whether the evaluation was entered into evidence and considered by the board. In the proposal for decision it was stated that the board's decision was not arbitrary, capricious or not supported by substantial evidence as a result of the district's alleged failure to consider Mr. Roberts' evaluation because these were admitted into evidence. This proposal was entered on January 24, 1983 with a final decision being made on March 21, 1983.

Davis vs. Calallen ISD, Dkt. No. 179-R1a-782 (1983)

James Davis, a chemistry and physics teacher in his fifth year, was nonrenewed for deficiencies pointed out in evaluations and memoranda, failure to fulfill duties or responsibilities of the job description, insubordination and failure to comply with official directives, failure to comply with administrative regulations, and neglect of duties. He also failed to timely turn in lesson plans about one-third of the time, frequently forgot about his hall duty, did not devote 40 percent of class time to lab work, as he had been instructed to do, and failed to follow administrative instructions several times.

Two issues raised in this case were whether any alleged hostility from the principal is material in determining
whether there is substantial evidence to support nonrenewal, and whether the behavior of other teachers is relevant in determining whether the decision is supported by substantial evidence. In denying this appeal, the Commissioner ruled that any alleged hostility on the part of the principal toward the teacher is immaterial in determining whether the Board's decision is supported by substantial evidence. Also he further ruled that the behavior of other teachers is irrelevant in determining whether the Board's decision to nonrenew a teacher is supported by substantial evidence.

Strauh vs. Aquilla ISD, Dkt. No. 189-Rla-782 (1983)

Peggy Strauch was notified of proposed nonrenewal of her contract after twelve years of employment with the district. The reason given was the phasing out of a migrant program "due to the fact that it is not benefiting the Aquilla Independent School District". At the hearing, the board showed that it's nonrenewal policies included as a reason for nonrenewal "reduction in personnel through loss of enrollment or loss of funding", and "change in programs requiring alterations in staffing". The district did not include these reasons in the notice. Also, the anticipated need for reduction had been accomplished through normal attrition.

The issue raised in this case was whether the board's decision was supported by substantial evidence. A proposal
for decision was entered on March 1, 1983 with a final decision coming on August 11, 1983. The teacher was granted this appeal because proof at the hearing did not establish either of the necessary elements cited in the policies.

**Burke vs. Plano ISD, Dkt. No. 196-Rlb-882 (1983)**

John Burke was given proposed notice of contract nonrenewal based on "incompetency as a teacher". There was evidence that he had little or no knowledge of the subject matter he was assigned, he often asked students to wait until he read the lesson and then he would explain it to them the next day, and he would often tell the student that they could find their answers in the chapters. He appeared ill-prepared to teach the day's subject matter.

There were four issues raised in this case. They were:

1. Whether the TCNA applied to a teacher whose contract was signed before the effective date of the Act.
2. Whether incompetency is a valid reason for nonrenewal.
3. Whether the Board's decision was arbitrary or unsupported by substantial evidence.
4. Whether the Board violated the teacher's due process rights by acting as both prosecutor and tribunal.

Appeal in this case was denied by the Commissioner. He ruled that the TCNA was applicable in this contract and that incompetence was a valid reason for nonrenewal. He further ruled that the Board's decision was not arbitrary and was supported by substantial evidence. Additionally, he ruled that there was no violation of the teacher's due process rights.
Stevens vs. Ralls ISD, Dkt. No. 210-R1b-882 (1983)

Alvah Stevens received timely notice of proposed nonrenewal for several reasons, including low evaluation ratings, repeated neglect of duties, and neglect of duties to keep daily lesson plans. The reasons in the notice did not follow the nonrenewal policy verbatim. Her evaluation showed problems in personal appearance, daily preparation and class control.

Issues in this case were whether the Board's decision was based on substantial evidence, whether the reasons in the notice were valid, and whether the Board's decision was based on age discrimination. It was decided by the Commissioner that the reasons stated in the notice to the teacher were valid and that the decision was supported by substantial evidence. He further decided that Ms. Stevens had not alleged sufficient facts to support a finding of age discrimination on the part of the district. This appeal was denied.

Shelton vs. Aquilla ISD, Dkt. No. 133-R1-482 (1983)

Burl Shelton, a vocational agriculture teacher, had his contract renewed in the spring of 1980 with the proviso that he upgrade the agriculture program and clean up the shop. During the 1981-82 school year he was absent a great deal because of illness and was granted sick leave. His performance as reflected in his evaluation was unacceptable
required considerable improvement, and generally showed lack of supervision of his classes. Several times the agriculture classes went unsupervised without proper notice to the principal. Mr. Shelton refused to prepare lesson plans, failed to prepare for classes, permitted the vocational agriculture program to progressively deteriorate, and failed to improve the appearance of the agriculture shop.

Six issues were raised in this case. They were:

1. Whether the teacher was on temporary disability leave, during which time he could not legally be nonrenewed.
2. Whether the board could nonrenew without a recommendation for nonrenewal from this administration.
3. Whether the board was biased, since some trustees discussed facts of the case with community members.
4. Whether the board was required to provide, before the hearing, information relating to the charges, copies of official directives, dates on which deficiencies occurred, list of witnesses, nature of witnesses' testimony, among others.
5. Whether Mr. Shelton waived his right to a hearing within fifteen days where no objection was made at the local level.
6. Whether the board's decision was based on substantial evidence.

In denying this appeal Commissioner Bynum ruled that Senate Bill 341 does not require the recommendation of a superintendent for nonrenewal as a condition precedent to notice of proposed nonrenewal. Furthermore, Mr. Shelton was not entitled to any relief in connection with the date of his leaving, and that the board's decision to nonrenew Mr. Shelton's contract was based on substantial evidence and was not arbitrary nor capricious.
Claudio Garcia, a teacher/coach was employed on a
term contract for the 1981-82 school year. The probationary
policy was adopted December 16, 1981. The Board voted on
March 10, 1982, not to renew his contract. He was offered
a hearing on March 30, 1982.

At issue in this case was whether the board's adoption
of the two-year probationary period applied to the teacher
and whether the Term Contract Nonrenewal Act applied to
Mr. Garcia, who was in his second year of employment.
Commissioner Bynum granted the district's motion to dismiss
the appeal because Mr. Garcia was a probationary teacher
and therefore was not entitled to the protection afforded
by the Term Contract Nonrenewal Act.

Linda Everton, was employed by the Belton ISD as a
teacher for the 1981-82 school year. The district adopted
a probation policy on March 22, 1982.

The issue in consideration was whether the district
had effectively adopted probation, making it applicable
to Ms. Everton since she was employed during the 1981-82
school year. Her appeal was denied because she was de-
cclared a probationary teacher.

Terri Watson was nonrenewed for a bad professional attitude and inappropriate appearance. She claimed the nonrenewal was based on sex discrimination and was in reprisal for her husband's unsuccessful school board candidacy.

Two issues evolved in this case. First, was there any evidence of sex discrimination or retaliation for her husband's candidacy. Secondly, whethere the mere allegation of sex discrimination or retaliation for First Amendment activities is sufficient to prove these claims. Commissioner Bynum concluded that the district policies established reasons for nonrenewal and that Ms. Watson's claims of sex discrimination and the First Amendment activities of her husband should be denied. Therefore he denied her appeals.

Barich vs. San Felipe Del Rio ISD
Dkt. No. 086-Rla-483 (1983)

On March 31, 1983, Samuel Barich procured an injunction which stopped the giving of a notice of proposed non-renewal of his contract. The injunction was lifted on April 8, 1983.

Two issues arose in this case. They were, whether the Commissioner can grant declaratory relief, and whether the district should have delivered the notice right after the injunction was lifted. In granting this appeal the
Commissioner ruled that he had the authority to grant declaratory relief pursuant to the TCAA and it was appropriate to grant such relief in this instance.

_McLean vs. Quanah ISD, Dkt. No. 178-Rla-782 (1983)_

Sarah McLean, a science teacher, was nonrenewed for lack of student progress, failure to keep accurate records, failure to maintain rapport with students and loss of professional effectiveness in the community. The teacher failed a large number of students during the first two six weeks of school.

There were three issues in this case. First, whether there was substantial evidence of lack of student progress, failure to keep accurate records, or inadequate rapport with parents. Secondly, whether there was substantial evidence of a loss of professional effectiveness in the community. Finally, whether a parent's disapproval of a teaching method or grade recording procedure is evidence of a lack of rapport with parents. A proposal for decision was entered for the teacher to be granted this appeal on June 2, 1983. As of February, 1984 a final decision had not yet been rendered.

_Leggett vs. Jarrell ISD, Dkt. No. 004-Rla-982 (1983)_

This case was another example of the District's adoption of a probation policy during the year that it was used on

**Nance vs. Graford ISD, Dkt. No. 119-R1-683 (1983)**

In this case the administration recommended renewal, but the Board proposed nonrenewal for lack of discipline, failure to communicate instructions at the student level, and other reasons. All evaluations and the principal's testimony indicated satisfactory performance.

At issue was whether the Board's decision was supported by substantial evidence. The Commissioner ruled in favor of the teacher.

**Wen-Ping Won vs. Pearsall ISD, Dkt. No. 162-R16-682 (1983)**

Mr. Won, a librarian for Pearsall ISD, was notified of proposed nonrenewal for eight reasons, including inability to control students, inability to communicate clearly with students, faculty, salesmen, and the general public.

Issues raised in this case were whether the Board's decision was based on substantial evidence, whether the decision was based on Mr. Won's national origin, and whether the decision was based only on evidence presented at the local hearing. Commissioner Bynum ruled that "Inasmuch as Petitioner either (1) could not perform his duties adequately because of enunciation problems, or
(2) by his own conduct prevented the Board of Trustees from fairly assessing his capacity to communicate clearly, the decision of the Board to nonrenew Petitioner's employment should not be disturbed".


Carmen Amaro was notified of the proposed nonrenewal of her contract and was granted a hearing at her request. However, she failed to appear, but the Board held the hearing in spite of this.

Two issues raised were whether the teacher received adequate notice of proposed nonrenewal and whether she waived her right to any issue concerning the local hearing by failing to appear. A proposal for decision was entered on July 22, 1983. In the proposal it was stated that "A teacher who requests a hearing and who, without good cause, fails to appear, should ordinarily be deemed to have waived his or her right to a hearing and to any issue related to the hearing if one is nevertheless staged in his or her absence". A final decision for the district was entered on September 19, 1983.

Table 1 presents a summary of the above Senate Bill 341 appeals decided by the Texas Education Agency. As indicated in the table, seven of the cases have been decided in favor of the employee.
Dear

I am nearing the final approval of my dissertation at North Texas State University. Once again I want to thank you for your help by granting me an interview last February.

You may recall that I sent you a transcribed copy of the interview at that time. Additionally, I am now sending you a copy of the context where I used your quotes in my dissertation. Even though the dissertation is a public document your quotes are for use in the dissertation only. In the event that these would be published in any other form by me, you would again be contacted for permission to use them.

I understand that you are busy and I appreciate your help. After you have received the material, please sign and return the enclosed form as soon as possible.

Again, thank you so much for your kind assistance.

Sincerely,

Don W. Hooper

DWH/ib
APPENDIX F

PERMISSION FORM

I have read the material as requested and give permission for Don Hooper to use my statements as presented and as requested in his letter of October 16, 1984.

____________________  ______________
signature            date

____  ____
yes    no

Please send me a copy of the complete dissertation.
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