

IN THE SUPREME COURT OF TEXAS

No. 99-0859

THE MONTGOMERY INDEPENDENT SCHOOL DISTRICT, PETITIONER

v.

JOANNE DAVIS, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS

Argued on April 5, 2000

JUSTICE HANKINSON delivered the opinion of the Court, in which CHIEF JUSTICE PHILLIPS, JUSTICE ENOCH, JUSTICE BAKER, JUSTICE O'NEILL, and JUSTICE GONZALES joined.

JUSTICE OWEN filed a dissenting opinion, in which JUSTICE HECHT and JUSTICE ABBOTT joined.

This teacher term-contract nonrenewal case presents us with our first opportunity to interpret Education Code chapter 21, subchapter F, specifically, section 21.259. The Montgomery Independent School District Board of Trustees declined to renew Joanne Davis' contract. The Commissioner of Education affirmed the Board's decision. The trial court reversed the commissioner's decision, and the court of appeals affirmed the trial court's judgment. 994 S.W.2d 435. We hold that, when reviewing a hearing examiner's recommendation under Education Code § 21.259, a school board cannot make additional findings of fact, but that subject to certain other statutory restrictions, the board retains the authority to make the ultimate policy decision of whether to renew a teacher's contract. In this case, however, because the school board's actions exceeded

its statutory authority and its decision is not supported by substantial evidence, we affirm the judgment of the court of appeals.

Joanne Davis taught science at Montgomery Junior High School under four one-year term contracts. Toward the end of her last one-year term, the Montgomery Independent School District's Board of Trustees accepted the district superintendent's proposal to not renew Davis' contract. The Board gave several reasons for proposing to not renew the contract, each of which was included in the district's employment policy as grounds for nonrenewal. *See* TEX. EDUC. CODE § 21.203(b) (employment policies must contain reasons for not renewing teacher's contract at the end of a school year). Only one of the reasons, "failure to maintain an effective working relationship, or maintain good rapport with parents, the community, or colleagues," is at issue here.

After being notified of the proposed nonrenewal, Davis requested a hearing under Education Code § 21.207(a). When a teacher requests a hearing after receiving notice of proposed nonrenewal, the Legislature has given school boards a choice between two procedures: the board may conduct a hearing itself or opt to have a hearing examiner conduct the hearing. The procedure the board chooses determines the board's role in the hearing process. If the board chooses the first procedure, it conducts its own hearing under section 21.207(b), and renders a decision under section 21.208(b). A teacher aggrieved by the board's decision may appeal to the Commissioner of Education. TEX. EDUC. CODE § 21.209. The commissioner reviews the board's decision, and may not substitute his or her judgment for that of the board "unless the board's decision was arbitrary, capricious, unlawful, or not supported by substantial evidence." *Id.* § 21.209. Either party may then appeal the commissioner's decision to district court. *Id.* § 21.307.

Alternatively, instead of conducting a hearing on its own, under section 21.207(b) “[t]he board may use the process established under Subchapter F,” thereby requesting the Commissioner of Education to appoint an independent hearing examiner to conduct an evidentiary hearing and make findings of fact, conclusions of law, and a recommendation on the proposed nonrenewal to the board. *See* TEX. EDUC. CODE § 21.257. If a school board chooses the hearing-examiner process, the board’s role is then more like that of the commissioner’s when the board conducts the hearing under section 21.207; the board sits in effect as a reviewing tribunal and acts on the examiner’s recommendation subject to the limitations set out in section 21.259, which we discuss below. A party aggrieved by the board’s decision may then appeal to the commissioner, with the board’s decision subject to the same standard described above, and a party aggrieved by the commissioner’s decision may appeal to district court. *Id.* §§ 21.303(a), 21.307.

In this case, the Board chose the hearing-examiner process. After a five-day hearing, the hearing examiner concluded that the school district failed to prove by a preponderance of the evidence any of the reasons for nonrenewal, *see* TEX. EDUC. CODE § 21.256(h), and recommended that Davis’ contract be renewed. The hearing examiner specifically determined in finding of fact number 17 that “Joanne Davis did not fail to maintain an effective working relationship or maintain good rapport with parents, the community, or colleagues,” and made a corresponding conclusion of law. After considering the hearing examiner’s recommendation and the parties’ oral argument, the Board voted to not renew Davis’ contract. *See* TEX. EDUC. CODE § 21.258.

Davis then appealed the Board’s decision to the Commissioner of Education. *See* TEX. EDUC. CODE § 21.301(a). The commissioner did not issue a written decision, thereby affirming the Board’s decision by operation of law. *See id.* § 21.304(b). Davis next appealed to district court

under Education Code § 21.307. The district court reversed the commissioner's decision and ordered Davis reinstated. The court of appeals affirmed. 994 S.W.2d 435. The Board then petitioned this Court for review.

We first focus on whose decision is properly before us. We note that the decision subject to review by the judicial system is that of the Commissioner of Education. TEX. EDUC. CODE § 21.307(a). A court can reverse the commissioner's decision on a teacher's contract if the decision is not supported by substantial evidence or if the commissioner's conclusions of law are erroneous. *Id.* § 21.307(f). In this case, however, because the commissioner affirmed the Board's decision without a written decision, our focus remains on the Board's decision. Also, apart from reviewing the Board's decision under section 21.307, we are presented with questions of statutory interpretation concerning certain challenged actions taken by the Board, and whether those actions are authorized under subchapter F.

To support its decision to not renew Davis' contract, the Board first deemed the hearing examiner's finding of fact number 17, that Davis did not fail to maintain an effective working relationship or good rapport with parents, the community, or colleagues, to be a conclusion of law. It rejected the hearing examiner's corresponding conclusion of law and adopted its own contrary conclusion of law, that the administration proved by a preponderance of the evidence that Davis failed to maintain an effective working relationship or good rapport. The Board then made three additional findings of fact, based on what it stated was undisputed evidence: (1) that Davis had referred to students by a derogatory name in the presence of other educators; (2) that she had more requests for transfer from her classes than did any other teacher; and (3) that more complaints were made about her classes than any other classes. Based solely on these additional facts in support of

its legal conclusion that the administration proved that Davis failed to maintain effective working relationships or good rapport, the Board decided to not renew Davis' contract.

The district court and court of appeals both agreed with Davis that these actions by the Board were not authorized under subchapter F, specifically, section 21.259. *See* 994 S.W.2d at 438. We must decide: (1) whether the Board was authorized under subchapter F to act as it did with respect to the hearing examiner's findings of fact and conclusions of law when it decided to reject the examiner's recommendation and not renew Davis' contract; and (2) whether the Board's decision was supported by substantial evidence. We first review the hearing-examiner process established by the Legislature.

Subchapter F sets out the procedure for using independent certified hearing examiners to conduct hearings and make recommendations on certain teacher-employment decisions. When a school board terminates a teacher's contract (other than at the end of a probationary contract) or suspends a teacher without pay, the teacher may request a hearing under this subchapter. But when a board proposes to not renew a teacher's contract, only the board may opt to use the subchapter F process. TEX. EDUC. CODE § 21.251. If the board chooses subchapter F, the parties may agree on a particular person to serve as their hearing examiner or have the Commissioner of Education assign one. *Id.* § 21.254. Hearing examiners must meet stringent requirements to be certified by the Commissioner of Education. *Id.* § 21.252(a). They must be licensed to practice law, but they and their associated law firms may not be the agent of or represent a school district, a teacher in a dispute with a school district, or an organization of school employees, administrators, or boards. *Id.* § 21.252(b). By regulation hearing examiners must apply for certification every year, and must participate in continuing education in school law and civil-trial advocacy, in addition to having

significant experience in civil litigation, administrative law, school law, or labor law. 19 TEX. ADMIN. CODE § 157.41. The commissioner keeps a list of certified examiners to which examiners are added chronologically, and when a hearing examiner is requested, the commissioner assigns the next examiner on the list who lives within reasonable proximity to the school district. TEX. EDUC. CODE § 21.254.

Subchapter F charges the hearing examiner with conducting the hearing “in the same manner as a trial without a jury in a district court”; the Texas Rules of Evidence apply, the proceedings are recorded, the school district has the burden of proof by a preponderance of the evidence, and the teacher has the right to be represented by counsel, hear the evidence supporting the charges, cross-examine adverse witnesses, and present evidence of his or her own. TEX. EDUC. CODE § 21.256. Following the hearing, the examiner must make a written recommendation that includes findings of fact and conclusions of law, and may include a proposal for granting relief. *Id.* § 21.257. The hearing examiner then sends a copy of the recommendation to each party, the president of the school board of trustees, and the commissioner. *Id.*

Once the school board receives the recommendation, it “shall consider the recommendation and record of the hearing examiner” and allow each party to present oral argument. TEX. EDUC. CODE § 21.258(b). Section 21.259 then mandates that the board take several specific actions with regard to the hearing examiner’s recommendation, and permits it to reject or change certain parts of the recommendation only if certain conditions are met:

- (a) . . . the board of trustees . . . shall announce a decision that:
 - (1) includes findings of fact and conclusions of law; and
 - (2) may include a grant of relief.

- (b) The board . . . may adopt, reject, or change the hearing examiner’s:

- (1) conclusions of law; or
- (2) proposal for granting relief.

(c) The board . . . may reject or change a finding of fact made by the hearing examiner only after reviewing the record of the proceedings before the hearing examiner and only if the finding of fact is not supported by substantial evidence.

(d) The board . . . shall state in writing the reason and legal basis for a change or rejection made under this section.

Id. § 21.259. Whether the Board’s actions comport with this section is the focus of the parties’ arguments in this case.

The Board makes essentially one argument – that its actions were authorized because school districts must have the power to interpret their own policies, and that only the Board can ultimately determine what “failure to maintain an effective working relationship, or maintain good rapport, with parents, the community, or colleagues” means in that school district. If by applying or interpreting this policy the hearing examiner is permitted to determine the ultimate question of whether a teacher’s contract should be renewed, then the Board claims that the examiner has improperly usurped the Board’s authority to apply and interpret its own nonrenewal policy. The Board emphasizes that such a result would have the consequence of defeating one of the Legislature’s goals in the 1995 Education Code revisions, preserving local control and management of the public schools. *See* TEX. EDUC. CODE §§ 7.003, 11.151(b); *Ysleta Indep. Sch. Dist. v. Meno*, 933 S.W.2d 748, 752 (Tex. App. – Austin 1996, writ denied). Because the Board views the hearing examiner’s finding of fact number 17 as a legal conclusion that Davis did not violate district policy, it argues that the finding was actually an ultimate policy determination only the Board could make. The Board further claims that it could make its own additional factfindings based on the general

reservation of power to school boards in Education Code §§ 7.003, 11.151(b), and in the absence of a prohibition on such additional factfinding in section 21.259.

Davis responds that the hearing examiner was entitled to find as a matter of fact that she did not fail to maintain effective working relationships or good rapport because that determination is an ultimate fact that turns on the resolution of many underlying evidentiary facts. Moreover, Davis adds, while section 21.259 permits the Board to reject or change a finding of fact, it can do so only if the finding is not supported by substantial evidence, which finding of fact 17 clearly was. *See* TEX. EDUC. CODE § 21.259(c). She further argues that section 21.259 does not permit the Board to add findings of fact precisely because the Board's review of findings under that section is limited to a substantial evidence review. Finally, even if the Board were authorized to add findings, Davis argues that the findings the Board added do not support its purported conclusion of law that Davis failed to maintain effective working relationships or good rapport.

We cannot accept either party's interpretation of the statute. The Board's reading is too expansive, while Davis' is too restrictive. The plain language of section 21.259 delineates the Board's role once it chooses to have a hearing examiner serve as the factfinder. Subpart (a) requires a school board to "announce" a decision including findings of fact and conclusions of law, and subparts (b), (c), and (d) then clearly limit what the board may do when reviewing the hearing examiner's findings of fact and conclusions of law. TEX. EDUC. CODE § 21.259. A board may adopt, reject, or change the hearing examiner's conclusions of law or proposal for granting relief. *Id.* § 21.259(b). A board may reject or change a finding of fact only if the fact is not supported by substantial evidence. *Id.* § 21.259(c). Section 21.259(d) then requires the board to "state in writing the reason and legal basis for a change or rejection made under this section." *Id.* § 21.259(d).

Nowhere in the specific provisions of section 21.259 has the Legislature provided for a school board to find facts in addition to those found by the hearing examiner. We cannot read into subchapter F's detailed administrative scheme permission for a board to find additional facts when the Legislature did not include that authority. *See Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex. 1994) (emphasizing that a court may not enlarge the unambiguous language of a statute beyond its ordinary meaning). Moreover, the limits this scheme sets on a board's authority do not defeat the local control or management preserved in Education Code §§ 7.003 or 11.151(b) because the school board itself chooses to have an independent hearing examiner act as factfinder. Having chosen to delegate the factfinding role to the hearing examiner, a board cannot then ignore those findings with which it disagrees and substitute its own additional findings. In its review of a hearing examiner's recommendation, a board can reject or change the hearing examiner's findings only when those findings are not supported by substantial evidence. TEX. EDUC. CODE § 21.259(c).

If a board could find additional facts, resolving conflicts in the evidence and credibility disputes, it would then be serving as its own factfinder despite delegating the factfinding role to a hearing examiner, and the process of using an independent factfinder would be meaningless. An independent factfinder is integral to the structure of the hearing-examiner process; permitting a school board to select an independent factfinder avoids having the board, a party to the employment contract and a party to the dispute, act as its own factfinder when reviewing the employment decision of its own administration. The Legislature has further protected the independent nature of the hearing-examiner process by requiring the board to state in writing the reason, including the legal basis, for any change or rejection it makes under section 21.259. TEX. EDUC. CODE § 21.259(d).

We do not suggest that a school board must simply accept an examiner’s recommendation; under section 21.259(b)(1), the board may reject or change conclusions of law or the proposal for relief. The ability to reject or change conclusions of law preserves a school board’s authority and responsibility to interpret its policies. The board has the power to apply those policies to the examiners’ findings and the undisputed evidence by rejecting or changing the examiner’s conclusions of law or proposal for relief. But when a board reviews the facts of a case, the Legislature has clearly limited it to conducting a substantial evidence review. TEX. EDUC. CODE § 21.259(c). This limitation means that once a board has chosen to delegate the factfinding role to a hearing examiner, it cannot then sit in effect as a second factfinder, reweighing evidence and judging witnesses’ credibility in support of finding additional facts. *See Ysleta Indep. Sch. Dist. v. Meno*, 933 S.W.2d 748, 751 n.5 (Tex. App. – Austin 1996, writ denied) (noting that, under substantial evidence review, “[t]he reviewing tribunal is restricted to [the] record, save in extraordinary circumstances, and it may not re-weigh the evidence, find facts or substitute its judgment for that of the original tribunal”).

We emphasize, however, that while an independent factfinder decides the facts under subchapter F, the Board retains the authority to make the ultimate decision of whether the facts demonstrate that board policy was violated. Section 11.163 charges school boards with adopting employment policies for their districts, and section 21.203(b) requires that those policies include reasons for nonrenewal. TEX. EDUC. CODE §§ 11.163, 21.203(b). Because school boards have “the exclusive power and duty to govern and oversee the management of the public schools of the district,” TEX. EDUC. CODE § 11.151(b), under the statutory scheme a school board must be the

ultimate interpreter of its policy, subject to the limits established by the Legislature in its provisions for administrative and judicial review.

This is in some ways similar to the statutory standards or agency policies at issue in other administrative settings. In those settings, ultimate decisions about whether a standard or policy has been met or breached can have the same effect as a conclusion of law or a mixed question of law and fact. *See, e.g., Texas Health Facilities Comm'n v. Charter Medical-Dallas, Inc.*, 665 S.W.2d 446, 453 (Tex. 1984) (discussing “ultimate findings” in relation to statutorily required criteria when reviewing a commission order granting certificates of need to two hospitals); *Hunter Indus. Facilities, Inc. v. Texas Natural Resource Conservation Comm'n*, 910 S.W.2d 96, 104 (Tex. App. – Austin 1995, writ denied) (explaining that “ultimate findings” concerning compliance with statutory standards under the Solid Waste Disposal Act have the same legal effect as conclusion of law or mixed question of law or fact).

We also note that while in some ways similar to procedures under the Administrative Procedure Act, the provisions governing the hearing-examiner process in the Education Code impose greater restrictions on a school board than the APA does on state agencies. For example, under the APA, an agency may reject a proposal for decision without reviewing the record. *See* TEX. GOV'T CODE § 2001.062. By contrast, under the Education Code the Legislature directs that a school board “shall consider the recommendation and record of the hearing examiner,” and may reject or change a finding of fact “only after reviewing the record of the proceedings before the hearings examiner.” TEX. EDUC. CODE §§ 21.258(a), 21.259(c). A state agency must give written reasons for changes it makes to a proposal only if the State Office of Administrative Hearings conducts the hearing, but not if an agency hearing officer conducts the hearing. *See* TEX. GOV'T CODE § 2001.058(e). A

school board, on the other hand, must provide a written explanation in all termination, nonrenewal, and suspension cases for any change or rejection made under section 21.259. TEX. EDUC. CODE § 21.259(d). While the administrative scheme we review today is different from that of the APA, and specifically not subject to the APA, TEX. EDUC. CODE § 21.256(b), a school board is entitled to adopt, reject, or change a hearing examiner's conclusions of law, and make the ultimate decision of whether to renew a particular contract, so long as the school board's decision is supported by substantial evidence and free from legal error. *See id.* §§ 21.259(b), 21.307(f). Thus, the label attached, "finding of fact" or "conclusion of law," is not determinative; the focus is on whether the issue determined is ultimately one of policy, and if so, whether a school board's decision is supported by substantial evidence and free of erroneous legal conclusions. *See id.* § 21.307(f).

In this case, the Board was entitled to determine that Davis' contract should not be renewed based on the facts that were found by the hearing examiner, so long as the Board's determination, in the commissioner's view, was not arbitrary, capricious, or unlawful, and was supported by substantial evidence. The commissioner did not issue a written decision, thereby affirming the Board's decision as a matter of law. Section 21.307(f) requires us to affirm the commissioner's decision unless that decision is not supported by substantial evidence or contains erroneous conclusions of law. Substantial evidence review is a limited standard of review, requiring "only more than a mere scintilla," to support an agency's determination. *Railroad Comm'n v. Torch Operating Co.*, 912 S.W.2d 790, 792-93 (Tex. 1995). The question whether an agency's determination meets that standard is one of law. *Firemen's & Policemen's Civil Serv. Comm'n v. Brinkmeyer*, 662 S.W.2d 953, 956 (Tex. 1984); *Board of Firemen's Relief & Ret. Fund Trs. v. Marks*, 242 S.W.2d 181, 183 (Tex. 1951). The commissioner's affirmance of the Board's ultimate

decision to not renew must be based on facts amounting to substantial evidence. *See* TEX. EDUC. CODE § 21.307(f).

The facts properly adopted by the Board do not amount to substantial evidence in support of its decision to not renew Davis' contract. The sole legal conclusion made in support of the decision to not renew was that Davis failed to maintain an effective working relationship, or good rapport, with parents, the community, or colleagues. In its written decision, the Board first adopted twelve of the hearing examiner's findings concerning the history of the case. It then adopted twenty-one of the findings on Davis' failure rates and TAAS test results that related to the issue of whether Davis failed to maintain satisfactory student progress. The Board concluded, based on those facts, that the administration did not prove by a preponderance of the evidence that Davis failed to maintain satisfactory student progress. The Board then made three additional factfindings, which it now claims support its conclusion that Davis failed to maintain effective working relationships or good rapport. The Board argues that its additional findings are proper because they are based on undisputed evidence the hearing examiner did not address in his recommendation.

We disagree with the Board that the hearing examiner's failure to make a specific finding on any particular fact means that the Board is then authorized to make an additional finding. Nothing in the statute requires the hearing examiner to make findings on specific matters of which he remains unconvinced by a preponderance of the evidence. The Legislature has placed the burden on the school district to prove the basis for its reasons for nonrenewal by a preponderance of the evidence. *See* TEX. EDUC. CODE § 21.256(h). Of the Board's additional findings in this case – that (1) Davis referred to students by a derogatory term, (2) had more requests for transfer out of her classes, and

(3) had more complaints about her than other teachers did – the hearing examiner may have considered the particular testimony offered not credible or material to the issue of rapport.

With regard to the first additional finding, Principal Paul Hatch testified that he had heard Davis refer to students by a derogatory term, while the assistant principal testified that Davis used the term once in his office when referring to “a student or some students” after a particular incident. Davis admitted to referring to one student by that term in the assistant principal’s office, but denied referring to students by that term at any other time or ever using that term in front of Hatch. Thus the only undisputed evidence, that is, evidence both parties agree is true, is that Davis used the term one time in the assistant principal’s office. The Board may rely on that undisputed evidence in the record to support its legal conclusion. But even looking solely to that undisputed evidence, the record does not show how that isolated incident, while demonstrating clearly unprofessional and inappropriate conduct, in the absence of evidence that anyone else heard, knew about, or reacted to the comment, demonstrates that Davis violated the policy concerning rapport with parents, the community, or colleagues. The lack of a material connection between that undisputed incident and the Board’s grounds for nonrenewal may have been precisely why the hearing examiner did not make a finding on this point. While the Board could consider the undisputed evidence that the incident occurred, it could not use that incident as a basis for nonrenewal without some material connection to the grounds given to Davis as a basis for nonrenewal. *See* TEX. EDUC. CODE § 21.203(b); *Seifert v. Lingleville Indep. Sch. Dist.*, 692 S.W.2d 461, 463 (Tex. 1985).

With regard to the second and third additional findings, although the school counselor, Joan Boswell, and Principal Hatch, did testify about the requests for transfer and the complaints, the record reveals inconsistencies and conflicts in the evidence that may have led the hearing examiner

to discount their testimony. For example, with regard to requests for transfer, the assistant principal testified that some twenty students requested transfer forms following Davis' presentation at one open house, while Boswell had said the number was approximately six to eight. With regard to the complaints, the hearing examiner, in his written recommendation to the Board, did discuss a number of the complaints individually and explained why they did not demonstrate lack of rapport. More importantly, the hearing examiner made a specific determination, which the record supports, that the testimony of three other people, including Boswell, contradicted Hatch's testimony, and that other actions Hatch took with respect to Davis created doubts about his credibility. As the factfinder, the hearing examiner is the sole judge of the witnesses' credibility and the weight to be given their testimony, and is free to resolve any inconsistencies. *See Webb v. Jorns*, 488 S.W.2d 407, 411 (Tex. 1972) ("It is an old and familiar rule that the fact finder may resolve conflicts and inconsistencies in the testimony of any one witness as well as in the testimony of different witnesses."); *Transmission Exch. Inc. v. Long*, 821 S.W.2d 265, 271 (Tex. App. – Houston [1st Dist.] 1991, writ denied); *Blackmon v. Piggly Wiggly Corp.*, 485 S.W.2d 381, 384 (Tex. Civ. App. – Waco 1972, writ ref'd n.r.e.).

The dissenting opinion misconceives the hearing examiner's role in the subchapter F process by stating that the hearing examiner "refused" to make findings on the evidence the Board relies on to support its additional findings. As we explained above, nothing in the statute requires the hearing examiner to make findings on matters of which he is unpersuaded by a preponderance of the evidence or which are immaterial, especially when the evidence is conflicting and credibility is in issue. Moreover, in this case the hearing examiner issued a seventeen-page recommendation. Far from refusing or failing to address the evidence concerning lack of rapport, the hearing examiner

included three pages discussing in detail the complaints and transfer requests. He pointed out that Davis and Hatch signed a professional growth plan that sought a reduction in the number of complaints and requests for transfer, and that she accomplished that goal. He found that there was no evidence of any parent complaints during the second semester of Davis' last term, and that "[t]he evidence is overwhelming that [Davis] maintained constant contact with the parents and students to an even greater degree than was required by the district." The hearing examiner further noted that in the two previous years, Hatch had evaluated Davis as meeting expectations or exceeding expectations in the category of maintaining a professional relationship with colleagues, students, parents, and the community. He also explained in detail the basis for his "significant questions concerning the credibility of Principal Hatch." Thus contrary to the dissent's view, the hearing examiner did not refuse to make findings or fail to address evidence regarding Davis' rapport. Moreover, we must assume, consistent with the hearing examiner's findings, that he did not find the testimony that the Board cited in support of its additional facts to be persuasive or material. *See Golden Eagle Archery, Inc. v. Jackson*, 24 S.W.3d 362, 373 (Tex. 2000).

The dissenting opinion's misconception of the hearing examiner's role stems from its disregard of the procedural elements the Legislature established in subchapter F to ensure that the hearing-examiner process is fair and efficient for both teachers and school boards. The Legislature maintained local control by giving school boards alone the option to choose the hearing-examiner process in nonrenewal proceedings. Once a school board chooses that process, however, under the statute the board has delegated the factfinding role to the hearing examiner. Hearing examiners are not advocates for either side, but neutral and independent. By resolving conflicts in disputed evidence, ignoring credibility issues, and essentially stepping into the shoes of the factfinder to reach

a specific result, the dissenting opinion not only disregards the procedural limitations in the statute but takes a position even more extreme than that argued for by the Board. Even the Board admits that the hearing examiner’s factfindings in this case are supported by substantial evidence. And the Legislature has made plain that when substantial evidence supports those findings, the Board is not free to reject or change those findings to reach a different result. As the Texas Commissioner of Education submits in his amicus curiae brief, “If these limitations [in section 21.259] are ignored, the statutes [in subchapter F] are rendered meaningless.”

Thus we conclude that the Board did not have authority within the statutory scheme of subchapter F to make the additional findings, and while the Board could rely on the undisputed evidence in the record to reach its conclusion of law, that evidence – concerning the incident in the assistant principal’s office – does not support the only basis for the nonrenewal, that Davis failed to maintain effective working relationships or good rapport. Without those impermissible additional findings or undisputed evidence to support its conclusion of law, the Board’s ultimate determination cannot stand.

Because the only basis for not renewing Davis’ contract is not supported by substantial evidence, the court of appeals properly affirmed the trial court’s judgment reversing the commissioner’s decision. Accordingly, we affirm the judgment of the court of appeals.

Deborah G. Hankinson
Justice

OPINION DELIVERED: December 7, 2000