

Appeal of Thomas F. Bair, from the decision of the Board of School Directors of the New Castle Area School District, Lawrence County, Pennsylvania

In the Office of the Secretary of Education,
Commonwealth of Pennsylvania, at
Harrisburg, Pennsylvania

No. 264

OPINION

John C. Pittenger
Secretary of Education

Thomas F. Bair, Appellant herein, has appealed from the decision of the Board of Directors of the New Castle Area School District terminating his contract and dismissing him as a professional employee on the grounds of incompetency and persistent negligence.

FINDINGS OF FACT

1. The Appellant is a professional employee. He began his services in the New Castle Area School District in 1960 as a teacher of special education students at the Lincoln-Garfield Elementary School.
2. Beginning with the 1968-69 school year, the Appellant taught educable mentally retarded students at the Benjamin Franklin Junior High School.
3. The Appellant continued in this position until January 26, 1974, at which time he took a one year sabbatical leave of absence for health reasons.
4. Immediately prior to his sabbatical leave, the Appellant was rated unsatisfactory on January 11, 1974 by Mr. Conrad J. Palumbo, principal of the Benjamin Franklin Junior High School. This rating was approved later that same day by Mr. Russell L. Horchler, district superintendent. This was the only unsatisfactory rating received by the Appellant during his fourteen years of service.
5. On January 18, 1974, Appellant was notified by the superintendent of the New Castle Area School District that a hearing would be held on January 26, 1974 on the charges of incompetency and persistent negligence.
6. On January 26, 1974, the New Castle Area School District instituted proceedings for the dismissal of the Appellant on the above-stated charges.
7. At this hearing, Appellant requested a sabbatical leave for health reasons beginning January 27, 1974 and ending one year later. The Board of the New Castle Area School District voted to approve the sabbatical leave. Consequently, the hearing for the discharge of the Appellant was continued indefinitely.
8. On February 13, 1974, the New Castle Area School Board formally approved Appellant's request for a sabbatical leave for reasons of health.
9. On December 18, 1974, Appellant received notice that the continued hearing on his dismissal was set for January 2, 1975.
10. Hearings were held before the school board on the following dates: January 2, 1975; March 6, 1975; May 3, 1975; June 13, 1975; and June 14, 1975.
11. On June 23, 1975, the Board of School Directors of the New Castle Area School District dismissed Appellant and terminated his contract.
12. The Appellant filed his appeal with the Secretary of Education on July 2, 1975.
13. Pursuant to notice, a hearing on the appeal was held on August 28, 1975.

DISCUSSION

This appeal involves the discharge of a professional employee on the charges of incompetency and persistent negligence in violation of the School Laws of the Commonwealth of Pennsylvania.

The New Castle Area School District made findings of fact to support the dismissal of the Appellant. Appellant contends that the charges are not supported by substantial evidence.

The Appellant received only one formal unsatisfactory rating prior to his dismissal on form DEBE-333 (the standardized Department of Education form). The anecdotal records required to be attached to the unsatisfactory rating were missing. Form DEBE-333 under General Rating requires:

"3. Ratings should have the support of anecdotal records. In the case of UNSATISFACTORY ratings, such records must be maintained in the office of the superintendent of schools and a copy supplied to the employees immediately after it has been completed."
(Emphasis in the original.)

This lack of anecdotal records in and of itself would make the rating defective.

Moreover, before a professional employee can be dismissed on the charge of incompetency, there must be two unsatisfactory ratings -- the first serving as a warning that improvement is essential, *Thall v. Sullivan County Joint School Board*, 410 Pa. 222, 189 A.2d 249 (1963). That first unsatisfactory rating can be an annual rating from the preceding school year, or it can be a preliminary rating made within the current school year. The purpose of this rating system is designed to formulate concrete standards to judge competence and to improve the general level of teaching by drawing attention to existing deficiencies (See *Mulhollen Appeal*, 155 Pa. Super. 587, 39 A.2d 283 (1949)).

The Appellant received only one unsatisfactory rating during his last year. Since at least two unsatisfactory ratings are required, the charge of incompetency must be dismissed. Thus, there is no need to delve into the merits of the charge of incompetency and, accordingly, we dismiss this charge.

The school board has also charged the Appellant with persistent negligence. The basis of this charge stems from Appellant's alleged inability to consistently maintain discipline in his classroom. The school board cited fifteen incidents from September 18, 1973 through January 4, 1974 in support of this charge. These incidents ranged from supervisors hearing loud noises emanating from the Appellant's classroom (for example, on September 25, 1973; October 10, 1973; and November 20, 1973) to students fighting in the Appellant's classroom (for example, on October 16, 1973; October 19, 1973; November 1, 1973; December 12, 1973). The testimony reveals that the Appellant was counseled continually over this period of time by his supervisors to improve his methods of classroom control. In conjunction with this counseling and, because of Appellant's physical disability of arthrogroposis (a congenital anomaly which limits the movement in his arms and legs), the supervisory staff decided to have the Appellant send all disruptive students to the principal for him to mete out the proper discipline. This course of action the Appellant followed faithfully. Now, the school board retorts that Appellant was negligent in maintaining discipline when the Appellant, in fact, was following his supervisors' directives by sending disruptive students to the principal's office for the proper punishment. This is patently unfair to the Appellant and casts a pejorative light on the subsequent actions of the supervisory staff to dismiss the Appellant.

While there are indeed extraordinary problems with special education students, (not only with their learning capabilities but with their behavior), we find it incomprehensible to dismiss a teacher who is following, to the best of his ability, the directions from his supervisors in maintaining discipline.

The school board did not make a finding that the Appellant was physically incompetent to perform his duties. Appellant did admit he was slower getting to his classroom than other teachers, but in other phases of teaching (using a blackboard, holding books and, in some instances, administering corporal punishment) he was able to perform his duties in a competent fashion.

Thus, we find that the school board's charge of persistent negligence must fall because it

is unsupported by the evidence. The Appellant followed his supervisors' orders to send these students to the principal's office. The Appellant was disciplining students and, furthermore, he was disciplining them in accordance with the school directives. There is no evidence that the Appellant refused to follow these directives, nor was it contended that the Appellant willfully refused to carry out suggestions to improve his classroom teacher-student rapport.

Appellant's counsel raises the procedural issue that Appellant's due process rights were violated by the alleged dual role of the school board's solicitors as advisors to and prosecutors of the school board. We find this contention to be without merit. The solicitors for the school board did, in fact, act as prosecutors throughout the hearings, but we find no evidence that they advised the school board on their rulings on the admission of evidence (this job was performed by Mr. Lawrence DeBlasio, vice-president of the school board).

Therefore, it is our opinion that the decision of the school board to dismiss the Appellant on the charges of incompetency and persistent negligence is not supported by substantial evidence in the record.

Accordingly, we make the following:

ORDER

AND NOW, this 23rd day of February, 1976, it is Ordered and Decreed that the Appeal of Thomas F. Bair from his dismissal by the Board of School Directors of the New Castle Area School District be and is hereby sustained and the Board of School Directors is directed to reinstate Thomas F. Bair forthwith without loss of pay.

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UMBERTO TUCCI, Appellant

v.

The Board of School Directors
of the Oley Valley School District

Teacher Tenure Appeal No. 265

OPINION

John C. Pittenger
Secretary of Education

Umberto Tucci, Appellant herein, has appealed from the decision of the board of school directors of the Oley Valley School District dismissing him as a professional employe on the grounds of persistent negligence and persistent and willful violation of the School Laws.

FINDINGS OF FACT

1. Umberto Tucci, Appellant, is a professional employe. He has worked as a teacher since 1962. He began his employment in the Oley Valley School District in September 1968, teaching chemistry, physics and general science at the secondary level. During the 1974-75 school year he taught one seventh grade class, one eighth grade class, and four ninth grade classes of general science.

2. At its meeting of May 21, 1975, the school board approved a statement of charges against Mr. Tucci proposing his dismissal on the grounds of cruelty, persistent negligence, and persistent and willful violation of the School Laws. A hearing was scheduled for June 4, 1975. The statement of charges listed eight incidents in which Mr. Tucci was alleged to have used physical force on students in violation of the school district's policy on corporal punishment. These incidents are as follows: