

Dr. Lynn H. Kitzmiller, Superintendent of Schools, testified that the Appellant was very competent as far as teaching the mechanics of English and the interpretation of literature are concerned. However, he also testified he received more complaints about the Appellant than the total for the rest of the district's teaching staff combined. These complaints, as the record shows, concerned the Appellant's behavior, not his teaching ability. How the teacher behaves is just as important as the teacher's ability to present a subject; children can develop improper or antisocial behavior from their teacher just as easily as they can learn a subject. This is a point the Appellant apparently fails to understand; because he is competent in presenting his subject, he thinks he is a good teacher. In our opinion, a person who makes children afraid to attend school, who teaches them to be bullies, to be cruel to one another, is not a good teacher. From the record, there is ample evidence that the Appellant has had these effects on his students.

Accordingly, we make the following

### ORDER

AND NOW, this 25th day of June, 1975, it is hereby Ordered and Decreed that the decision of the Board of School Directors of the Upper Dauphin Area School District dismissing John L. Caffas as a professional employee be sustained on the grounds of cruelty and persistent and wilful violation of the school laws. The charge against him of intemperance is hereby dismissed.

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Appeal of Byron Bakewell, a Professional Employee, from a 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. 240

### OPINION

John C. Pittenger  
*Secretary of Education*

Byron Bakewell, Appellant herein, has appealed from the decision of the Board of School Directors of New Castle Area School District assigning him to the duties of a teacher of mechanical drawing, which action he feels constitutes an improper demotion.

### FINDINGS OF FACT

1. The Appellant is currently a professional employee. He began his employment in the New Castle Area School District in 1963 as a social studies teacher. He served in that capacity until August, 1966, when he assumed the duties of assistant principal of George Washington Junior High School.
2. In April, 1969, the Appellant was appointed to the position of Administrative Assistant to the Superintendent. The job description for this position provides that the Administrative Assistant would collect data and do research on certain projects assigned by the superintendent, (such as hot lunch programs, development of the administrative policy booklet, and the twelve month school year); supervise the cafeteria program; supervise all operations related to custodial and maintenance departments; be in charge of all security measures related to school property; supervise and direct the pupil transportation program of the district; participate in negotiations with certain employee groups; develop, direct and preside at in-service programs for cafeteria, custodial, maintenance and transportation employees; and perform any other duties, where time permits, required by the superintendent for which the Administrative Assistant is qualified.
3. By January, 1971, the position in which the Appellant served became known as Administrative

Assistant to the Superintendent in Charge of Programs Related to the Educational Process.

4. In January, 1971, the principal of the George Washington Junior High School, Mr. Charles James, was having difficulty performing his duties due to illness. The superintendent recommended to the school board at its January 13, 1971 meeting that the Appellant be reassigned as Principal of the George Washington Junior High School and that Mr. James be reassigned as Administrative Assistant in Charge of Programs Related to the Educational Process. At that meeting the board approved this reassignment.

5. Mr. James objected to the reassignment because it would mean a \$1,000 decrease in his salary. Because of that objection no action was taken to implement the board's January 13, 1971 resolution. Mr. James continued in his role as principal and the Appellant continued in his role as Administrative Assistant.

6. Mr. James' condition continued to deteriorate. By the end of February it was necessary for him to take a leave of absence for health for the rest of that school year. On February 25, 1971 the District Superintendent, Dr. Russell L. Horchler, met with the Appellant and informed him that in accordance with the other duties provision of the Administrative Assistant's job description, the superintendent was assigning him to perform the duties of principal of the George Washington Junior High School from March 1, 1971 until July 1, 1971 while Mr. James was on a leave of absence for health. Dr. Horchler confirmed his conversation by letter of the same date in which he stated "I wish you success in this assignment. If I can be of any assistance during the time as you are serving as Acting Principal, do not hesitate to call me." Mr. James subsequently resigned from the principal's position, effective July 1, 1971.

7. In May, 1971, Dr. Horchler met with the Appellant and asked him if he would be interested in serving as permanent principal of the George Washington Junior High School. The Appellant expressed interest, but pointed out that he intended to sue the school district for back salary that he felt was owed him from his service as an assistant principal at the junior high school. Dr. Horchler said he would convey the Appellant's comments to the school board.

8. On June 18, 1971, Dr. Horchler distributed a memo announcing that the school board would be filling the position of Principal of George Washington Junior High School. The memo stated that applications could be obtained from the superintendent's office and that the deadline for filing an application would be July 5, 1971.

9. At a special session of the New Castle Area School Board held on June 23, 1971, the board, acting on the superintendent's recommendation, abolished the position of Administrative Assistant to the Superintendent in Charge of Programs Related to the Educational Process, effective as of July 1, 1971.

10. The Appellant was notified of the board's action with respect to the administrative assistant position by letter dated June 24, 1971, from Dr. Horchler. In the letter, Superintendent Horchler informed the Appellant that the board's action could result in a classroom teaching assignment for the 1971-72 school term, but that a determination would be made at a later date. In addition, Dr. Horchler stated the following:

"In any event, your status after July 1st will be that of a teacher."

11. By letter dated June 30, 1971, the Appellant submitted his application for the position of principal of George Washington Junior High School. In his letter the Appellant stated:

"Since March 1, 1971 I have been serving as the acting principal of George Washington Junior High School and have enjoyed serving you and the school board."

The Appellant concluded his letter as follows:

"I sincerely request that you give me your deepest consideration for the position of principal of George Washington Junior High School."

12. At the July 14, 1971 meeting of the school board, Mr. Amen Hassen was elected principal of George Washington Junior High School.

13. In a handwritten letter dated July 22, 1971 to Mr. Albert Russo, President of the New Castle Area School Board, the Appellant requested a hearing. The body of that letter is as follows:

"This letter is my request for a hearing to discuss the reason or reasons for my demotion as principal of George Washington Junior High School".

14. By letter dated July 23, 1971 from Superintendent Horchler, the Appellant was informed that his assignment for 1971-72 school term would be teaching mechanical drawing at the junior high school.

15. By letter dated August 11, 1971, from Mr. Albert Russo, President of the New Castle Area School Board, the Appellant was informed that his request for a hearing could not be granted because the position of principal of George Washington Junior High School was not filled by the board until the election of Mr. Amen Hassen on July 14, 1971.

16. The Appellant was issued a teacher's contract for the 1971-72 school year, but he refused to sign it. Faced with the threat of dismissal action, the Appellant signed the contract in early November, 1971. The contract was submitted to Superintendent Horchler via a letter from the Appellant's attorney in which the attorney pointed out that the Appellant had made a request for a hearing on his demotion and that if the board did not take action within the next ten days to schedule the hearing, the Appellant would take a mandamus action to compel a hearing.

17. A summons was served upon the New Castle Area School District on June 16, 1972. In October, 1972, a complaint in mandamus on behalf of the Appellant against the New Castle Area School District was filed in the Court of Common Pleas of Lawrence County, Pennsylvania. The Appellant requested a hearing on his alleged demotion from the position of principal of George Washington Junior High School to that of a classroom teacher. In November of 1973, the school district filed a motion for judgment on the pleadings, requesting that the Court deny the Appellant's petition because the Appellant had never served as principal of the George Washington Junior High School.

18. On November 14, 1973, the Appellant filed a new complaint in mandamus against the New Castle Area School District in which he claimed he was demoted without his consent to a classroom teacher from the position of administrative assistant to the superintendent. The Appellant requested a hearing before the school board as his remedy.

19. The New Castle Area School District notified the Appellant's attorney that it would provide the hearing the Appellant requested. The hearing was held February 9, 1974. After the hearing, the school board met on April 2, 1974 to review its decision and findings of fact submitted by the school district solicitor. By letter dated April 3, 1974, the school board informed the Appellant that it had decided to sustain its original action assigning him to the position of teacher of mechanical drawing. In its findings of fact the Board found that the abolition of the position of administrative assistant to the superintendent in charge of programs related to the educational process was arrived at after consideration of the needs of the school district rather than on a personal or arbitrary basis. The board further found that no persuasive evidence was presented to warrant a finding that the board capriciously or arbitrarily abolished the position held by the Appellant from March, 1969 through June, 1971.

20. On April 19, 1974 the Appellant's petition of appeal was received in the Office of the Secretary of Education. The Appellant contended that he was demoted from administrative assistant to the superintendent to classroom teacher without his consent. The Appellant complained that the board's action was arbitrary, capricious and in violation of the School Code, and that the demotion was unconstitutional since the demotion preceded the hearing and ratification of it by the New Castle Area School District.

21. A hearing on the Appellant's petition of appeal was scheduled for May 2, 1974, but was continued. The hearing was held on June 5, 1974 at which time the hearing examiner requested

additional testimony and questioned the Appellant and Mr. Calvin DeCarlo, Assistant Superintendent of the New Castle Area School District. At the hearing the Appellant requested that he be reinstated to either the position of administrative assistant or that of principal.

### DISCUSSION

The Appellant complains that he was improperly demoted and asks that he be reinstated as administrative assistant to the superintendent or as principal of the George Washington Junior High School. In addition, the Appellant contends that his demotion could not become effective until after the hearing, which was not completed until April, 1974, nearly three years after the school board assigned the Appellant to teaching duties.

Demotions are governed by Section 1151 of the School Code which provides in part:

"The salary of any district superintendent, assistant district superintendent or other professional employe in any school district may be increased at any time during the term for which such person is employed, whenever the board of school directors of the district deems it necessary or advisable to do so, but there shall be no demotion of any professional employe either in salary or in type of position, except as otherwise provided in this act, without the consent of the employe, or, if such consent is not received, then such demotion shall be subject to the right to a hearing before the board of school directors and an appeal in the same manner as hereinbefore provided the case of the dismissal of a professional employe." 24 P.S. §11-1151.

This provision raises two important issues which neither the school board nor the Appellant considered. The first is whether or not the Appellant is before us as a professional employee. Prior to his teaching assignment, the Appellant's duties were administrative in nature. Not all administrative positions are covered by professional employee status. In the case of *Rhee v. Allegheny Intermediate Unit Number 3*, 315 A. 2d 644, 11 Pa. Cmwlth. 394 (1974), it was held that the Assistant Director, E.S.E.A. Title VI, performing library functions, purchasing, controlling inventory, guiding tours and doing other office work was not a professional employee because he did not devote fifty per centum (50%) or more of his time to teaching or other direct educational activities.

The job description for the Appellant's position of administrative assistant shows that the duties do not, as a rule, involve teaching or other direct educational activities. As administrative assistant, the Appellant's responsibilities primarily concerned the non-instructional staff, such as cafeteria, custodial, maintenance, transportation and security personnel. We conclude that the Appellant was not a professional employee while serving as Administrative Assistant to the Superintendent in Charge of Programs Related to the Educational Process.

Accordingly, we must dismiss the appeal for lack of jurisdiction. Although the Appellant is currently a professional employee because of his teaching duties, for the purpose of this appeal, he is before us as the former administrative assistant. For this Office to review an appeal taken in accordance with the provisions of Section 1151 of the School Code, the Appellant must be a professional employee *before* the demotion occurred. A person removed from a non-professional position has no standing to come before this Office and request reinstatement to such a position; professional employee status does not give a person retroactive rights under Section 1151 to challenge school board actions occurring prior to the attainment of such status.

We are aware that during his last months as administrative assistant, the Appellant was engaged in direct educational activities; this was due to the assignment by the Superintendent to serve as acting principal of the junior high school. This assignment, however, was not a regular part of the administrative assistant's duties; thus, even if we were to hold that the Appellant achieved

professional employee status with this assignment, we would still be faced with his request to be reinstated to what is essentially a non-professional position. However, it is our conclusion that the superintendent exceeded his authority when he assigned the Appellant to serve as acting principal. The "other duties" clause of the job description for the administrative assistant is clearly intended to mean duties additional to, not in lieu of, the regular duties of the administrative assistant. As acting principal, the Appellant did not perform the regular duties of the administrative assistant. Further, the district superintendent cannot confer professional employee status by temporarily assigning educational work to one whose position is non-educational in nature.

We conclude that the Appellant's service as acting principal did not give him professional employee rights while employed as Administrative Assistant to the Superintendent in Charge of Programs Related to the Educational Process. It appears to us that the Appellant, in effect, was given a leave of absence from his administrative assistant duties and served as acting principal in the capacity of a substitute.

The Appellant contends that he was the "principal" of the junior high school, not the "acting principal". He relies on the action taken by the Board of School Directors of the New Castle Area School District at its January 18, 1971 meeting where it was moved and approved that he be assigned as principal of the junior high school. The Appellant's contention would have considerable weight were it not for the fact that an integral part of that motion was the reassignment of Mr. James, the principal, to the Appellant's administrative assistant's position. Mr. James objected to the reassignment because his salary would decrease by approximately \$1,000.00. A decrease in salary is a demotion; Section 1151 provides that a demotion which is not consented to shall not become effective until after a hearing. After receiving Mr. James's objection, the school board failed to take the necessary steps to make its January 18, 1971 resolution effective. Accordingly, that resolution did not make the Appellant principal of the junior high school.

Even if we were to find that the Appellant is before us as a professional employee, we would still have to dismiss his appeal. Section 1151 gives a professional employee the right to a hearing before the school board and, if necessary, an appeal to the Secretary of Education only if the employee is demoted without his consent. The Appellant's contention that he was demoted without his consent is without merit.

In our opinion, the Appellant has used rights granted under Section 1151 not to challenge his removal from the position of principal or administrative assistant, but to challenge the school board's decision to hire someone other than himself for the principal's position. The record clearly shows the Appellant understood his service as principal of the junior high school was temporary. The February 25, 1971 letter from Superintendent Horchler made that clear. When the school district announced that applications for the principal's position were being solicited, the Appellant did not object and inform the district that he already held that position; instead, he submitted an application. In the letter accompanying the application, the Appellant emphasized that one of his qualifications was his service as "acting" principal at the junior high school.

The Appellant never objected to the abolishment of the administrative assistant position until two years after the board's action became effective. The Appellant should have objected shortly after receiving the superintendent's June 24, 1971 letter informing him that his status as of July 1, 1971 would be that of a teacher. By failing to object in a timely manner, it is presumed the Appellant consented to that action. The record shows that the Appellant's concern lay not with the administrative assistant's position, but with the principal's position and the school board's decision to appoint another applicant. The failure to be appointed to a position with higher status is not a demotion.

Accordingly, we make the following

#### ORDER

AND NOW, this 16th day of July, 1975, it is hereby Ordered and Decreed that the Appeal of Byron Bakewell be dismissed for lack of jurisdiction.