

Nancy Bolden,	:	In the Office of the
Appellant	:	Secretary of Education,
	:	Commonwealth of
v.	:	Pennsylvania, at
	:	Harrisburg,
Board of Education	:	Pennsylvania
of the School District of the	:	
City of Pittsburgh, Allegheny	:	No. 309
County Pennsylvania	:	

OPINION

Nancy Bolden, Appellant herein, has appealed from the decision of the Board of Education of the School District of Pittsburgh demoting her from the position of Administrator-in-Charge, Educational Medical School, Level IV, to the position of Program Specialist, Level V, Educational Medical School, which action she contends was an improper demotion in position and salary.

1. The Appellant is a professional employe. She has been employed by the School District of the City of Pittsburgh (hereinafter referred to as School District) since July 19, 1961.

2. The Appellant was appointed to the position of Administrator-in-Charge, Educational Medical School, Level IV, effective March 24, 1972 at a salary of \$1949.00 per month.

3. In September, 1976, the Appellant was reassigned to the position of Program Specialist, Level V, at a salary of \$1949.00 per month.

4. The Educational Medical School has been located at the Letsche School Building, 1530 Cliff Street, Pittsburgh, Pa. 15219, since September, 1973.

5. On April 22, 1975, the Board of Education (hereinafter referred to as the Board) approved the relocation of the afternoon alternative school from the Peabody High School Building to the Letsche School Building, which was to be known as the Letsche Alternative Education Center, administered by a building principal with direct administrative responsibility for the operation of the daytime and afternoon sessions of the alternative school program.

6. On April 22, 1975, the Board directed that the Educational Medical School be housed in the Letsche Alternative Education Center as a separate program under the guidance of a separate program specialist, who was to report to the building principal.

7. On July 20, 1976, the Board reclassified the Appellant's position and assigned her to the position of Program Specialist of the Educational Medical School on the condition that ESEA Title I funding, which previously funded the program, was received.

8. Shortly before the beginning of the 1976-77 school year the School District was notified that the federal funding referred to in finding of fact no. 7 was approved and the School District staff opened the Educational Medical Program.

9. On or before September 20, 1976, the Appellant received a signed copy of a position description delineating the duties for the position of Program Specialist, Educational Medical School.

10. By letter dated September 20, 1976, the Appellant informed the President of the Board that she believed the position description for Program Specialist represented a demotion from her prior position description of Administrator-in-Charge, Educational Medical School, and requested a hearing on the matter.

11. A hearing regarding the Appellant's alleged demotion was held before the Board on October 18, 1976 to determine whether or not the Appellant had been demoted in type of position or salary, and, in the event the Appellant had been demoted, to set forth the reasons for the demotion.

12. Copies of the transcript of the hearing were forwarded to all Board members on November 4, 1976. On November 23, 1976, the Board concluded, in the resolution it issued, that the reclassification of the Appellant to the position of Program Specialist, Educational Medical School, constituted a demotion from her prior position of Administrator-in-Charge, Educational Medical School. In addition, the Board ratified the reclassification of the Appellant to the position of Program Specialist and officially approved the position description for Program Specialist, Educational Medical School, dated August 2, 1976 and revised September 3, 1976.

13. The Appellant filed a Petition of Appeal in the Office of the Secretary of Education on December 13, 1976. In her Petition she states, inter alia, that the decision of the Board was "incorrect, unlawful, and invalid . . . is not supported by the evidence, is against the weight of the evidence, is not found in law or supported by law and the evidence shows that the demotion was arbitrary, capricious, discriminatory and founded upon improper considerations."

14. A hearing on this Appeal was held before the Secretary of Education on February 1, 1977.

DISCUSSION

The Appellant contends that the action taken by the Board constitutes an improper demotion in salary and position. She does not question the Board's authority to demote her. She questions the legitimacy of the Board's reasons for doing so. The Appellant contends there was insufficient evidence presented at the hearing before the Board to justify the Board's action in reclassifying her from the position of Administrator-in-Charge, Educational Medical School, to the position of Program Specialist, Educational Medical School.

In order to sustain a challenge that the action taken by the Board was arbitrary or discriminatory, the Appellant, not the School Board, has the burden of showing the action was improper. The Supreme Court of Pennsylvania has established that the actions of school boards are presumptively valid.

Executive officers of municipal and school districts have many discretionary powers in performing their functions; ordinarily courts will not interfere with this exercise, but if it appears their action is based on a misconception of law, ignorance through lack of inquiry into facts necessary to form intelligent judgment, or the result of arbitrary will or caprice, courts will intervene to prevent an abuse of power adverse to public welfare. Executive officers are clothed with the responsibility of originating and executing plans for the public good; the presumption is that their acts are on such considerations and their decisions reached in a legal way after investigation. When their actions are challenged, the burden of

showing to the contrary rests on those asserting it, and it is a heavy burden; courts can and will interfere only when it is made apparent this discretion has been abused. Abuse of discretion does not, as a rule, come from unwise acts or mistaken judgment, but generally springs from improper influences, a disregard of duty, or a violation of law." Hibbs et. al., v. Arensburg et. al., 276 Pa. 24, 25, 119 A. 727, 728 (1923)

It is well settled law in Pennsylvania that the School Code does not prohibit a school board from demoting a professional employe or reassigning a professional employe to another class or school in accordance with its judgment and discretion. Smith v. Darby, 388 Pa. 301, 130 A.2d 661 (1957). School boards clearly have the power to assign their personnel to other positions and a professional employe has no vested right in any particular position. Smith, Id.; Appeal of Santee, 307 Pa. 601, 156 A.2d 30 (1959); Wesenberg Case, 346 Pa. 438, 31 A.2d 151 (1943); Commonwealth ex. rel. Wesenberg v. Bethlehem School District, 148 Pa. Super 250, 24 A.2d 673 (1942). Also, the courts have consistently upheld the right of a school board to abolish a position or office and transfer and/or assign an employe to a new position. Smith v. Darby, 399 Pa. 301, 130 A.2d 661 (1957); Lakeland Joint School District v. Gilvary, 3 Pa. Cwlth. Ct. 415, 283 A.2d 500 (1971); Bilotta v. Secretary of Education, 8 Pa. Cmwlt. Ct. 631, 304 A.2d 190 (1973); Lucostic v. Brownsville Area School District, 6 Pa. Cwlth. Ct. 587, 297 A.2d 516 (1972); Tassone v. School District of Redstone Township, 408 Pa. 290, 183 A.2d 536 (1962).

Therefore, the Board, in the instant case, clearly had the authority to reclassify the Appellant's position as Administrator-in-Charge, Educational Medical School to the position of Program Specialist.

Since the Appellant did not consent to this reclassification and considered this action to be a demotion, she was entitled to a hearing. A hearing was granted. The responsibility of the Board at the hearing was to determine whether or not a demotion had occurred and to make clear and apparent the reason(s) for the demotion. Smith v. Darby, supra; Tassone v. School District of Redstone Township, supra.

The Appellant contends there was insufficient evidence presented at the hearing which would justify the Board's action. We disagree. We find that the Board met its initial burden under Smith, supra, and Tassone, supra, by having made its reasons for demoting the Appellant clear and apparent. The Appellant has the burden of proving the Board acted in an arbitrary or capricious manner or abused its discretion with regard to the demotion. Smith v. Darby, supra; Lakeland Joint School District v. Gilvary, supra; Lucostic v. Brownsville School District, supra. The Appellant simply has not met this burden in a manner sufficient to justify invalidating the Board's action. Therefore, the action of the Board must be sustained.

The facts developed at the hearing indicate the Board made apparent the reasons for its decision to reassign the Appellant to the position of Program Specialist. In the statement of charges issued to the Appellant prior to the demotion hearing, the Board listed three reasons for reassigning the Appellant to the position of Program Specialist:

1. To comply with an earlier Board directive that the Educational Medical School be housed in the Letsche Alternative Education Center as a separate program under the guidance of a separate program specialist who was to report to the building principal.
2. To obtain a more efficient administration of the Letsche Alternative Education Center following the refunding of the Educational Medical School program.
3. To enable the School District to have its professional employes at the Educational Medical School rated by an employe fully certified by the Department of Education as an Administrator.

Testimony offered by the School District at the hearing before the Board supported the reasons enumerated above for reassigning the Appellant to the position of Program Specialist. The District called two witnesses: Dr. Helen Faison, Assistant Superintendent for Secondary Schools and responsible for the operation of the Educational Medical School and, Dr. Vernon Phillips, Building Principal of the Letsche Alternative Education Center.

The first of the three reasons the Board gave for demoting the Appellant is a rather self-serving statement and will not be considered

as a reason for demoting the Appellant. Item number one only tells us that the Board simply followed an earlier decision which established that the Program Specialist (i.e., the Appellant) would report to the Building Principal rather than report directly to the Assistant Superintendent for Secondary Schools.

We find the District's strongest reason for demoting the Appellant was because it wanted to have the professional employees at the Educational Medical School rated by a person fully certified as an administrator. The Appellant was not certified to rate teachers. Were she to remain in her position as Administrator-in-Charge, she would be required to perform tasks beyond the scope of her certification. On the other hand, as a Program Specialist, her lack of certification was not a problem since this position did not require her to be responsible for rating teachers.

The Appellant contends that the Board's action in demoting her because she lacked proper certification for the position of Administrator-in-Charge was arbitrary and discriminatory. She argued that other people in the district were functioning in positions for which they were not fully certified yet, unlike her, they were not demoted. She testified that "it was her understanding" that certain employees in the district were occupying positions for which they were not fully certified. These declarations are obviously self-serving. We are reluctant to reach any conclusions adverse to the School District without having concrete proof that this was, in fact, a common practice in the District. The Appellant might have asked those persons she referred to in her testimony to take

the stand and establish under oath that they were occupying positions for which they were not certified. Unfortunately, the record only provides us with the Appellant's secondhand knowledge of this practice.

Dr. Faison testified that she did not know of any supervisors rating teachers in the district who were not fully certified to do so. Dr. Phillips testified that prior to the summer of 1974 he was rating teachers while in the position of Administrator-in-Charge of the Peabody Afternoon/ Evening School and he had not been fully certified at that time. This one isolated example that refers back to 1974 is not convincing evidence that it is common practice in the School District to have professional employes in positions for which they are not adequately certified. The Appellant's argument that she was discriminated against because other people in the district were functioning in positions for which they were not fully certified and were not demoted must fail because she has not given us enough proof to adequately support it.

Even if the Appellant had clearly established that employes in the District are occupying positions for which they are not certified, we find it difficult to fault the District for making an effort to correct an imprudent, if not illegal practice. It certainly appears reasonable for the Board to want an Administrator-in-Charge of the Alternative School program who was fully certified.

With regard to the administrative efficiency argument (item #2, p. 8) Dr. Faison testified that a Board resolution dated April 22,

1975 (Employee Exhibit #1) established that the Educational Medical School was to be housed in the Letsche Alternative Education Center as a separate program under the direction of a program specialist who would report to the Building Principal, Dr. Vernon Phillips. The record indicates that prior to September, 1975 the afternoon alternative school for secondary students was located in Peabody High School. On April 22, 1975, at its regularly scheduled meeting, the Board took action that the Alternative School was to be moved into the Letsche School Building where the Educational Medical School was already located. After the relocation of the alternative programs into the Letsche School Building, it became known as the Letsche Alternative Education Center. The Board also resolved that the Center would be administered by a building principal with direct administrative responsibility for the operation of the daytime and afternoon sessions of the Alternative School Program. The result of the relocation was that four different types of programs were located in the Letsche Alternative Education Center: The Alternative High School, the Day Care Program, the Educational Medical Program and the Infant Care Program. Dr. Phillips had the supervisory responsibility for all four programs.

The Educational Medical School, housed in the same building, was to be treated as a separate program under the guidance of a Program Specialist (i.e., the Appellant) who would then report to Dr. Phillips, the Building Principal. Prior to the relocation of the programs in the Letsche Building, the Appellant functioned as Administrator-in-Charge of the Educational Medical Program and reported directly to Dr. Helen

Faison, the Assistant Superintendent for the Department of Secondary Schools. After the Appellant's reclassification to the position of Program Specialist, for the Educational Medical School, she no longer reported directly to Dr. Faison, but instead was to report to Dr. Phillips.

Dr. Faison testified that one of the reasons for the change in the reporting requirements was that "it was rather unusual to have two administrators within a single building, with both programs reporting to the same office." (T. 26) Before the Appellant's job was reclassified both she and Dr. Phillips were reporting to Dr. Faison's office. The record indicates that it was the District's predilection to make Dr. Phillips the Building Principal for the Letsche Alternative Education Center and have all the program heads within the building report directly to him rather than have all the program heads reporting directly to Dr. Faison. Thus, for purposes of efficiency, the Appellant was asked to report to Dr. Phillips instead of Dr. Faison. Dr. Phillips testified that this change in reporting requirements would have an improved effect on the operation of the education program at the school.

In order for the Appellant to convince us that the Board's actions were arbitrary or discriminatory she should have rebutted these reasons with evidence showing the reasons were arbitrary or capricious. For example, she might have offered evidence that there was no reasonable bases for the "administrative efficiency" argument because administrative efficiency was not achieved by having her reclassified or the new plan

was even less efficient than under the previous scheme. But, she did not do so. Instead, she argued that she was being discriminated against since there were other buildings in the School District that had more than one Administrator-in-Charge. This argument by itself is not relevant as to whether the Board's decision was reasonable and, therefore, not arbitrary. Having more than one person in charge of other buildings in the District does not preclude the possibility that it may have been more efficient to have only one person in charge of the Letsche Alternative Education Center.

Similarly, the mere recital by the Appellant that other buildings in the School District have more than one Administrator-in-Charge is simply not enough to sustain her challenge that the Board discriminated against her either on the basis of her sex or for personal reasons. At a minimum, to show sex discrimination, the Appellant should have presented evidence that the School District engages in a pattern of conduct in selecting administrators that discriminates against women and that her demotion falls within the pattern. Witnesses would have to be called to establish that such a pattern exists. To show that Appellant was singled out by the Board because of a personal bias, and not for the reasons stated by the Board, Appellant would have to present witnesses to show the improper influences that motivated the Board's action. Conclusory statements by the Appellant stating that she was discriminated against either because of her sex or bias against her as an individual are simply not enough to carry her burden of proof.

Our review of the record indicates that the School District carried out its prime function at the hearing which was to explain its actions to the Appellant and afford her the opportunity to present her position in light of the explanation or reasons it gave. The burden of showing the demotion was not arbitrary or discriminatory does not rest with the Board. Rather, the Appellant has the burden of showing that action taken by the Board was arbitrary or discriminatory. On this point the law is clear:

While there is a presumption that the Board has acted in a valid and proper manner, yet the appellant should have an opportunity to be heard before the board and at such hearing to present any evidence which he may have indicating that the board's action resulted from arbitrary or discriminatory reasons. The burden will be on the appellant to prove the impropriety of the board's action. Smith v. Darby, 399 Pa. 301, 320, 130 A.2d 661, 672 (1957) (Emphasis Supplied)

There have been several court opinions rendered subsequent to the Smith decision which further establish the fact that the burden is on the employe to prove the action of the board to be arbitrary or discriminatory. Lakeland Joint School District v. Gilvary, supra; Lucostic v. Brownsville Area School District, supra. We believe the Appellant has not met this burden. She simply has not offered evidence sufficient to warrant a finding that the Board's action was arbitrary, capricious or discriminatory. Accordingly, we make the following:

ORDER

AND NOW, this 7th day of October , 1977, it is hereby
Ordered and Decreed that the Appeal of Nancy Bolden is dismissed.



Robert N. Hendershot
Deputy Secretary of Education