

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION

RALOY E. BROWN, :  
Appellant :  
 :  
v. : Teacher Tenure Appeal  
 : No. 36-77  
SCHOOL DISTRICT OF CHELTENHAM :  
TOWNSHIP, BOARD OF DIRECTORS, :  
Appellee :

OPINION

Raloy E. Brown, Appellant herein, has appealed the decision of the Board of the School District of Cheltenham Township demoting him from his position as elementary principal to fifth grade teacher which action he contends is an improper demotion in position and salary.

FINDINGS OF FACT

1. Appellant is a professional employee of the Board of School Directors of the School District of Cheltenham Township (Board).
2. Appellant was employed by the Board as an elementary school principal for six years.
3. Prior to his reassignment, Appellant was principal of the Cheltenham Elementary School.
4. Appellant is certified in the following areas: elementary school principal, history, English.
5. A resolution was adopted by the Board on November 25, 1974 setting forth a school reorganization plan which was to become effective the school term beginning September 1, 1977. (S.D. Ex. 1)

6. The plan changed elementary schools from kindergarten through sixth grade to kindergarten through fifth grade; changed three three-year junior high schools to two middle schools for grades six through eight; and changed the high school to a four year high school. (S.D. Ex. 1)

7. The plan ordered the reduction in the elementary schools in the District from six to four, replaced the three junior high schools with two middle schools, and retained one senior high school. (S.D. Ex. 1)

8. Cheltenham Elementary School was not one of the two elementary schools which were closed.

9. The reorganization plan was adopted to improve education, to save money, and because of a decline in student enrollment. (S.D. Ex. 1)

10. As a result of the closing of buildings, the number of building principals required was reduced from ten to seven. (S.D. Ex. 3) One principal retired at the end of the 1976-1977 school year. Accordingly, the District needed to reassign only two principals instead of three.

11. At the Board meeting on November 11, 1975, the Board approved a recommendation by Superintendent John R. Thorson (Superintendent) on the method to determine which of the principals should be transferred, reassigned, or demoted. (S.D. Ex. 3)

12. The Superintendent's plan called for: (1) rating each principal on an amended version of the Professional Employee's Rating Form

(DEBE-333); (2) subjective evaluations by the Superintendent as to the potential performance of the respective principals in selected positions; and (3) evaluation of each principal's certification for the positions. (S.D. Ex. 3)

13. By memorandum dated November 25, 1975, the Superintendent notified principals and administrators of his evaluation plan. (S.D. Ex. 6)

14. The Superintendent explained in the November 25 memorandum how he had amended the DEBE-333 form for use in evaluating the principals.

15. The four major categories on the DEBE-333 were considered: "Preparation," "Technique," "Pupil Reaction," and "Personality." Several subcategories were deleted from the form as inappropriate to evaluation of principals. (S.D. Ex. 6)

16. The Superintendent received no authorization from the Department of Education to alter the standard DEBE-333 form.

17. The Superintendent added two performance measures upon which to base his overall ratings of the principals: a current job description drafted by each principal and each principal's success in "management-by-objectives." (June 28, 1977, N.T. 18; S.D. Ex. 6)

18. The November 25 memorandum advised principals that seniority points would not be a factor in the evaluation process. (S.D. Ex. 6)

19. Appellant was rated on June 28, 1976. This rating covered the period of July 1974 through June 1976.

20. Appellant received a score of 74 points out of a possible 80 points, which included 18 out of 20 under personality, 19 out of 20

under preparation, 18 out of 20 under technique, and 19 out of 20 under pupil reaction. (S.D. Ex. 7)

21. Appellant and another principal received the lowest scores out of the nine principals that were rated.

22. A narrative evaluation accompanied the amended DEBE-333 which explained the rating and also supplemented it.

23. The Superintendent stated Appellant was well acquainted with educational theory; basically up on educational literature; had good communication with the school district and the community; had good supervisory techniques; was creative, innovative and very talented; and believed in "open education." (June 28, 1977, N.T. 53)

24. The Superintendent's criticism of the Appellant was primarily that he did not do a particularly good job where social amenities were required as with parents' groups who did not understand the school's "open education" philosophy. However, the Superintendent stated that Appellant recognized this and was trying to improve. The Superintendent also stated that the Appellant was well respected but not necessarily well accepted by the other principals.

25. The Superintendent finally stated that the Appellant was best equipped for a position as Assistant Superintendent in a larger district and that the Superintendent hoped to help Appellant find such a job.

26. In the narrative evaluation attached to Appellant's amended DEBE-333 form, the Superintendent noted that the Appellant was actively seeking a job in another school district.

27. At the Board meeting on June 29, 1976, the Board adopted a resolution reassigning principals under the reorganization plan. Appellant was not retained as a principal for the 1977-78 school year. (S.D. Ex. 14)

28. The resolution of the Board on June 29, 1976 directed the Superintendent to make recommendations no later than April 30, 1977 as to the reassignments he recommended for the principals who were not retained as principals. (S.D. Ex. 14)

29. The Superintendent resigned effective September 1976.

30. Philip R. Butler began serving as Acting Superintendent of the District in October 1976.

31. The Acting Superintendent did not change any of Superintendent Thorson's recommendations as to which principals should be retained as principals.

32. By letter dated April 19, 1977, the Acting Superintendent notified Appellant that by resolution adopted by the Board, Appellant would be reassigned from his position as principal to the position of fifth grade teacher at the Wyncote School at a salary reflected in level 14 Doctorate of the 1977-78 Teacher's Salary Guide for the District.

33. The reassignment for the Appellant constituted a demotion in type of position and salary.

34. By letter dated April 25, 1977, Appellant's counsel notified the District that the Appellant did not consent to his demotion or to the salary set forth in the letter dated April 19, 1977.

35. The Appellant requested a hearing. The hearing was granted by the school board and took place on June 1, 1977, June 28, 1977, July 26, 1977 and August 16, 1977.

36. After the hearings were concluded, the Cheltenham Township Board of School Directors prepared a written opinion ratifying the demotion of the Appellant. This opinion was issued September 20, 1977 and the Appellant received a copy of the opinion on or about September 23, 1977.

37. Appellant filed a Petition of Appeal in the office of the Secretary of Education on September 30, 1977.

38. A hearing on the Appeal was held on December 14, 1977.

#### DISCUSSION

In this case, Appellant Brown and Appellee agree that the reassignment of Appellant constituted a demotion in both position and salary. However, Appellant argues that the demotion was arbitrary and therefore illegal because the Board, in its demotion process, made improper use of an amended DEBE-333 rating form, failed to consider seniority, and claimed to rely on written job descriptions which it could not produce. Appellant also argues that he was denied due process of law in the hearings held before the Board.

The Board in its reorganization plan determined that none of the district principals affected would be suspended (S.D. Ex. 1 and 3). It was decided that those principals who were not retained in their position as principal of a particular school would be transferred to other

schools or assigned to other positions. The reassignments to new positions are controlled by the law on demotions. Section 1151 of the Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §11-1151.

There is no question that a board of school directors has the authority to abolish positions and, as a result therefore, transfer or demote professional employees. Nor is there question that the board's demotion action is presumptively valid. Lucostic v. Brownsville Area School District, 6 Pa. Commw. Ct. 487, 297 A.2d 516 (1972). However, when a professional employee is demoted in position or salary without the consent of that employee, Section 1151 of the School Code requires that the demotion occur only after the employee is given a hearing before the board of school directors. At the hearing the Board must give clear and apparent reasons for the demotion; those reasons cannot be arbitrary, capricious or discriminatory. Smith v. Darby School District, 388 Pa. 301, 130 A.2d 661 (1957). The law imposes no other restrictions on the Board's authority to demote.

In the instant case the Board's reorganization plan resulted in the closing of three school buildings; the number of building principals required was reduced from ten to seven. The district superintendent recommended, and the Board approved, a plan to be used in determining which principals would be retained as principals and which principals would be reassigned to positions other than principal. There are no legal requirements that a school board specify any evaluation plan for

deciding demotions. Nor are there legal prohibitions against use of such a plan. In this case, the school board voluntarily designed and adopted an evaluation process by which it would make its decisions regarding demotions. Appellant argues that even if the Board could properly adopt such a plan that the Board in this case did not follow all of its plan and that those elements which the Board did follow are arbitrary. Appellant contends that therefore the Board's actions are illegal.

The crucial questions are then as follows: Can a board of school directors, having voluntarily imposed upon itself a plan not mandated by law, to be used in deciding demotions, be required to follow that plan? The answer, discussed below, is no. Does failure to adhere to the plan make the Board's actions arbitrary as a matter of law? Again, the answer is no as long as the Board has other clear reasons supporting its decision to demote a professional employee.

Sections 1123 and 1125 of the School Code specifically require the use of approved ratings and the weighting of seniority in determining suspensions. However, these sections are not applicable to a demotion. Patchel v. Wilkensburg School District, \_\_\_\_\_ Pa. Commw. Ct. \_\_\_\_\_ (No. 157 C.D. 1978, April 17, 1979). In the case of a demotion the only limitation on the board's authority to demote, as stated above, is that the reasons for the demotion must not be arbitrary or based on improper considerations. Smith v. Darby, supra. Although the Board may voluntarily design a "demotion method," the law does not mandate that it be used. Similarly, if rating is a part of that method, this does not

convert the Board's action to a suspension. We find that the Board did not act improperly in adopting a plan by which to decide demotions nor in altering the DEBE-333 for use in its plan.

Appellant next argues that assuming the Board can devise an evaluation plan to decide demotions, that the content of the Board's altered DEBE rating form and their other evaluation material was so nonsensical as to be per se arbitrary. There is no evidence on the record to show that any of the deletions from or additions to the DEBE rating form are arbitrary. We therefore reject the contention that use of the altered form was arbitrary. We find the weight of the evidence given in support of Appellant's ratings on the altered form far from impressive. However, this does not make the demotion arbitrary if other clear reasons support the decision.

Appellant also contends that failure to consider seniority points in a demotion process is per se arbitrary. However, Appellant cites no authority or case law in support of this contention. The logic of Smith, supra, thus controls. The only limitation on demotion is that the board must act reasonably.

Other than the altered rating form, the Board used evaluation material described by the Superintendent as additional "performance measures." These consisted of a job description and a management-by-objectives form. It is clear from the record that at Appellant's hearing the Board was unable to produce Appellant's job description which was to serve as one of the performance measures of his work. It

is also clear that the Superintendent did not in fact evaluate the job descriptions or the management-by-objectives forms in writing or in oral testimony before the Board. Nor did the Superintendent submit a subjective evaluation regarding the potential performance of the respective principals in the available positions. We must therefore conclude that although the Superintendent described the above materials as part of the evaluation plan, they were in fact never used. Thus, their arbitrariness is irrelevant if other reasons were given to support Appellant's demotion.

There is evidence in the record that five of the principals were retained as principals in the schools to which they had previously been assigned. The Acting Superintendent testified that this retention would benefit the district because of the retained principals' experience and familiarity with the faculties, students, parents and communities of their respective schools.

In the two instances where principals were reassigned as principals to other schools, the district received similar benefits. In both instances, the elementary school principals were reassigned from school buildings which were closing to schools to which their former students were also being reassigned. These reassignments therefore would also give the school district the benefit of their experience and would provide a continuity and stability with respect to the educational program and relationship between school and its community.

There is also evidence that in Appellant's case the reassignment of pupils from one of the closed elementary schools to the Cheltenham Elementary School meant a change in educational format for Cheltenham.

The Cheltenham program had been an "open framework" concept during Appellant's years as principal. The district felt that in view of the addition of a student population from a more structured school, the Cheltenham Elementary School should offer both open framework and more traditional, structured programs. The district felt the principal who was reassigned as Cheltenham's principal would be better suited to supporting both types of programs than would Appellant.

The record also shows that Appellant was not demoted to a position as assistant principal or to a position in the central administrative staff because the professional employees in those positions were all highly rated, had substantial experience and performed duties significantly different than that of principal. The Board felt it was particularly important to retain the employees for consistency and to benefit the new Superintendent during the reorganization.

The Commonwealth Court in the Board of Public Education of the School District of Pittsburgh v. Eleanor Thomas \_\_\_\_\_ Pa. Commw. Ct. \_\_\_\_\_ (No. 119 C.D. 1978 April 1979), has defined the substantial evidence standards as it relates to demotions:

An arbitrary action is one 'based on random or convenient selection rather than on reason.' Moreover, an action is not arbitrary merely because it does not effectuate a policy in the most effective or efficient manner, so long as it has some rational basis.

Applying this standard, the Secretary feels compelled to conclude that the School Board's decision to demote Appellant was not arbitrary. A reasonable man acting reasonably could have reached the same decision as the School Board.

We do, however, also feel compelled to comment that although it may not have been illegal for the Board to deviate from its announced evaluation plan or illegal for the Board to inefficiently substantiate Appellant's rating because other reasons for demotion existed, it was nevertheless unfair to the affected principals to inform them of an evaluation plan and then fail to adhere to it.

Having determined that the record contains substantial evidence supporting Appellant's demotion, we must turn to Appellant's last argument: that he was denied due process of law in the School Board hearings regarding his demotion and that therefore the Board's decision must be reversed. Appellant contends that it was improper for the school district solicitor to act as prosecutor of the district's case and to have an attorney member of the Board act as the Board's legal advisor. We find Appellant's arguments to be without merit. The Board separated prosecutorial and adjudicative functions as it is deemed necessary under law. Horn v. Township of Hilltown, 461 Pa. 745, 337 A.2d 858 (1975). Steffen v. Board of Directors of South Middletown Township School District, \_\_\_\_\_ Pa. Commw. Ct. \_\_\_\_\_, 377 A.2d 1381 (1977). We note Appellant did not object to the role of the solicitor or the Board's legal advisor at the time of the hearing. Nor does Appellant cite any authority supporting his claim that it was a conflict of interest for an attorney-Board member to act as the Board's legal advisor and that such conflict renders the hearings arbitrary.

Appellant's final argument is that he was denied due process because he did not receive a salary similar to that of other principals

prior to the demotion. The record indicates that Appellant received his salary as principal until the day the Board issued its demotion decision (June 1, 1977, N.T. 31-32). We reject Appellant's argument as being without merit.

Accordingly, we make the following:

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ORDER  
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AND NOW, this 8th day of May, 1979 it is hereby ordered and decreed that the Appeal of Raloy Brown is dismissed.

  
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Robert G. Scanlon  
Secretary of Education