

It is to be noted that said resolution makes reference to "consideration of the evidence." In view of the notes of testimony not having been transcribed prior to said meeting date, there could be no "consideration of the evidence" by those directors absent from the hearing. Seven directors voted in favor of the resolution of discharge. The seven voting represented the vote of four members who had attended the hearing and three who had been absent from the hearing and who were unable to read and examine the notes of testimony of the witnesses. The vote of the latter three cannot be deemed to represent a "full, impartial and unbiased consideration" as required by Section 1129 of the School Code. Further there was noncompliance with the provisions of this Section of the Code wherein it states "determine whether such charges or complaints have been sustained and whether the evidence substantiates such charges or complaints." Not having heard or read the evidence, they could not make a determination.

The Courts have held that a school board must follow the Code procedures in discharge cases, and no material deviation is permissible.

Jacobs vs. School District of Wilkes-Barre, 355 Pa. 449
Appeal of Bd. of Sch. Directors of Cass Township, 151 Sup. 543
Appeal re Swink, 132 Sup. 107

Because of the failure of certain Board members to fully understand their responsibilities and the requirement of compliance with the School Code, we are compelled to reverse their decision of discharge in a case where the testimony of both parties fully substantiated the final Board decision.

Accordingly, we make the following

ORDER

AND NOW, to wit, this 24th day of May, 1971, the Appeal of C. Alan Rowe from the discharge by the Board of School Directors of the Rose Tree Media School District is sustained. The validation of this Appeal is not to be construed as a reinstatement of the Appellant to a teaching program other than assigned to him by the Superintendent in a subject matter in which he is certificated as a professional employee.

* * *

Appeal of Virginia Dudas, a Professional
Employee, from a decision of the Board of
School Directors of the Monessen City School
District, Westmoreland County, Pennsylvania

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

No. 197

OPINION

Virginia Dudas, Appellant herein, has appealed from a decision of the Monessen City School Board holding that the said Appellant was not demoted.

FINDINGS OF FACT

1. On June 30, 1965, the Monessen City School Board entered into a contract of employment with the Appellant as a professional employee at a salary of \$5,300.00.
2. Prior to the beginning of the 1965-66 school year, by reason of the resignation of another teacher, the Appellant's salary was increased to \$5,800.00 and extra duty assignments of vocal music and coordinator of the elementary music program were assigned to her with additional payments of \$250.00 for each of the two additional assignments, payable at the end of the school year.

3. Her basic salary plus annual increments plus negotiated increases totaled \$7,200.00 in 1966-67; \$7,500.00 in 1967-68; \$9,000.00 in 1968-69; \$10,300.00 in 1969-70; and \$11,200.00 in 1970-71.
4. Beginning in 1968-69, the salary increase did not include the \$500.00 which had annually been given to her prior thereto, by reason of having attained her maximum step.
5. From the inception of her employment until the end of the 1969-70 school year, the Appellant has received the \$500.00 payment for the extra duty assignments.
6. For the 1970-71 school year, the Appellant was reassigned as a full time elementary music teacher and her extra duty assignments were reduced to serving as coordinator of the elementary music program for which she will receive a payment of \$250.00 at the end of the term.
7. On February 9, 1971, the Monessen School Board, after hearing, held that Virginia Dudas was not demoted either in position or salary.
8. On March 2, 1971, the Appellant filed an appeal with the Secretary of Education.
9. Pursuant to notice, a hearing on said appeal was held on March 30, 1971.

TESTIMONY

Testimony was taken at the hearings on December 1, 1970, December 4, 1970 and December 8, 1970 by the Monessen School District on the alleged demotion of the Appellant. Said testimony was substantially as follows:

Dr. Joseph J. Pallone, Superintendent of the District, stated that Virginia Dudas was first employed in 1949-50 and reemployed in 1965-66 as an elementary music teacher, plus extra duties as director of vocal music, including director of the Glee Club, and music coordinator of elementary education. She spent half her time in the high school and one-half time in the elementary school, where she taught and developed the elementary program. In 1969-70 she was paid \$10,300.00 plus \$500.00 for the extra assignments, to wit, \$250.00 as director of vocal music and \$250.00 as elementary education coordinator of music. For the year 1970/71 the extra duty as director of vocal music was withdrawn and the time spent thereon was to be transferred to elementary teaching.

Thomas C. Wilkinson, Curriculum Coordinator, K to 12, testified that in January 1970, in a conference with Mrs. Dudas, he mentioned that she would be excellent as a full time elementary music teacher. She did not prepare lesson plans; her efforts could be classified as lesson outlines.

Marilyn S. Pivarnik, Director of Elementary Education, stated that the Appellant was under her supervision. It was her opinion that Mrs. Dudas had more free time now than in prior years.

Sherman A. Brizzi, Principal of the High School, testified that Mrs. Dudas developed a Christmas and a spring program. Her duties in the high school involved teaching chorus and singing.

Virginia Dudas, the Appellant, testified that she is certificated in Music and English; that she has a Bachelor's and a Master's degree; that she prepared lesson plans. She detailed her annual salary for the years of her employment plus the extra assignment payments that she received.

Testimony was also given by Dr. Joseph M. Dudas, Sr., a former member of the Board, and Dr. Henry Furio, a former high school principal in the district.

DISCUSSION

This appeal avers that the Appellant was demoted by the School Board, both in position and salary. The contract between the school district and the Appellant indicates that she was hired as a professional employe, and the minutes of the Board meeting of October 12, 1965 state that she replaced the vacancy caused by the resignation of a Mrs. Charlene Vukela, who had been the director of vocal music and coordinator of the elementary music program. The testimony establishes that the Appellant was primarily a music teacher and received her salary for this effort. The assignments as director of vocal music (involving the glee club in the high school) and as coordinator of the elementary music program were in addition to her work as a teacher, and for this she was paid an additional \$250.00 per assignment, or a total of \$500.00.

This sum was paid in a lump sum at the end of the school year. It was not included in her regular salary payments, and was not stated in the contract between the parties.

The question of a demotion arose after the Superintendent reassigned her to a full teaching position in elementary music, and terminated the extra curricular assignment of director of vocal music. As a result thereof, the district only paid her \$250.00 for the one extra assignment of elementary music program coordinator, being the amount paid her in prior years for the same additional duties. The exhibits indicate that the lesson plans prepared by the Appellant were not specific lesson plans for each individual teacher, but a program for the elementary teachers to follow.

The Appellant contends that her work as the coordinator of the elementary music program was supervisory and the reassignment as a full time teacher and the elimination of her supervisory capacity was a demotion. Dr. Pallone, the District Superintendent, testified that during the first three years of her employment the coordinator assignment involved supervisory duties, but at this time such supervision is not necessary. It is to be noted that this phase of the averment of demotion involves the duties in the coordinator assignment. This area of the Appellant's work was not involved in the contract executed by the parties, and any change in the particular extra assignment cannot be chargeable as a demotion.

Although the Appellant has contended that her reassignment to full time elementary music teacher duties constituted a demotion, this was not argued at the hearing on the appeal. Of course, there can be no question as to the discretionary power of the school authorities to reassign any teacher.

In *Jones v. Holes, et al.*, 334 Pa. 538, it was held that:

"It is the administrative function of the school directors and superintendents to meet changing educational conditions through the creation of new courses, reassignment of teachers, and rearrangement of curriculum."

The Appellant also contends that the freezing of her salary for the year 1968-69 and thereafter, on the basis that she had reached her maximum salary, deprived her of the \$500.00 above the regular scale that she had received annually beginning with the date of her employment. In view of the annual increases paid to the teaching staff, evidently as a result of negotiations we are unable to determine the exact annual salary to which the Appellant would have been entitled. No evidence was presented in the testimony relative to the salary paid other teachers, excepting a Mr. D'Alfonso, who received \$500.00 more than Mrs. Dudas. He had the title of "Head of the Music Department". The testimony fails to indicate the job specifications for his position, and whether there was any difference in his duties and those of the Appellant. The record in this case fails to disclose any information as to teacher salary, annual increases, or any breakdown indicating steps or increments. As a result, any conclusion on our part as to whether or not the \$500.00 deduction alleged by the Appellant actually was made would be guesswork. We can only find that the Appellant received an increased salary during each year of her employment. Section 1142 of the Public School Code, as amended, provides a schedule of minimum increments for professional employes which must be paid by the school board as they accrue. These increments are an integral part of the salary, vested contractually.

The extent of the increases paid the Appellant were not mandated by legislative fiat, but were under the control of the local board. As such, they did not become a vested part of her salary and could be withdrawn under Section 1152 of the Public School Code. The record is silent in this respect. The testimony does establish that the increases were the result of teacher negotiations, but the evidence, as submitted, fails to substantiate a specific reduction in the Appellant's salary. Accordingly, we cannot find that the salary, as paid to the Appellant, constituted a demotion.

If the Appellant is convinced of her claim for the additional \$500.00 salary beginning in 1968-69 and can substantiate the same by evidence not offered in the record of this present case, she would have the right to pursue her claim in an assumpsit action in the Courts.

At the appeal hearing, counsel for the Appellant argued that the decision of the school board was improper because of the absence of some Board members at the hearings; that the Board has prejudged the case and had discussed the matter with the administrators prior to the hearings.

Section 1129 of the School Code empowers the Board to render a decision by a two-thirds vote, after the hearing of the matter, and after full, impartial and unbiased consideration thereof.

The record in this case does indicate that not all of the directors were in full attendance during every session of the hearings. However at least a majority were always present. Further, it was established that the testimony and record was transcribed and reviewed by the Board prior to the meeting at which the decision was rendered. We find no merit in Appellant's claim of impropriety. The hearings were fair and unbiased and no evidence of prejudice is apparent. There is nothing in the record to indicate prejudgment. The Board had the entire record before it when they deliberated, and a decision was finally made on a 7 to 2 vote.

Accordingly, we make the following

ORDER

AND NOW, to wit, this 28th day of July, 1971, the Appeal of Virginia Dudas from the decision of the Board of School Directors of the Monessen City School District be and is hereby dismissed.

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Appeal of Bernice I. Hamburg, a Professional
Employee, from a decision of the Board of
School Directors of the North Penn School
District, Montgomery County, Pennsylvania

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

No. 198

OPINION

John C. Pittenger
Secretary of Education

Bernice I. Hamburg, a professional employe of the North Penn School District, filed an appeal to the Secretary of Education from a decision of the School Board refusing her a hearing on an alleged demotion in position, pursuant to Section 1151 of the Public School Code.

Following the School Board's refusal to grant her a hearing, the Appellant filed a complaint in mandamus in the Common Pleas Court of Montgomery County. The Court dismissed the complaint.

Following dismissal of that complaint, an informal preliminary hearing was arranged in March, 1971. At that time a series of alleged grievances were raised. The Appellant was advised to pursue the grievance claims in accordance with procedures set up by the local district for that purpose, and the preliminary hearing was terminated.

A formal hearing on Appellant's appeal from the School Board's refusal to grant her a hearing was held on June 22, 1971. The Appellant argued that under Section 1151 of the Public School Code the School Board was required to grant her a hearing. The School Board argued that it had determined that Appellant had not been demoted and, therefore, they were not required to grant the hearing. During the course of argument, Appellant's counsel sought to introduce again the question of the alleged grievances. It was agreed that the Appellant would pursue her grievance claims as originally suggested at the informal preliminary hearing in March. The Secretary retained jurisdiction pending the outcome of the grievance process. The differences between Appellant and Appellee remain. It is appropriate, therefore, that this Opinion issue.

There is but one question before the Secretary. Must the School Board grant a professional