

Appeal of Burnell E. Ehrhart from a decision of the Board of School Directors in and for the Central York School District, York County, Pennsylvania

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

No. 303

OPINION

John C. Pittenger
Secretary of Education

Burnell E. Ehrhart, appellant herein, has appealed from the decision of the Board of School Directors in and for the Central York School District, which decision dismissed him as a professional employee on the grounds of immorality.

FINDINGS OF FACT

1. The appellant, Burnell E. Ehrhart, is a professional employee who has served as a teacher within the Central York School District for a period of 18 years and has attained the status of permanent tenure.
2. On January 15, 1976, the appellant was assigned teaching duties as a sixth grade classroom teacher at North Hills Elementary School, 1330 North Hills Road, York, Pennsylvania.
3. On January 15, 1976, in the course of his playground duties of the fifth and sixth graders, the appellant heard students in his class using the following words: "faggot," "pimp", "bitch," "whore," and "blows."
4. During classtime later that day, more particularly during the last period of the day, the appellant told his class of sixth graders that he had heard five words on the playground that concerned him and that he wanted to know if the students understood what was meant by the words. The appellant explained to the children that they should not use words that they do not know, or of which they do not know the meanings. He asked the students to number from one to five on a piece of paper and write down the five words. He instructed them that they need not write the words down if they did not wish, nor need they put their names on the papers. The children were instructed to write what the words meant to them or to write that they did not know, if they did not know. The students were not given an option to leave the classroom during this exercise.
5. Some of the students in the class had not heard the words when they were used on the playground.
6. After the presentation of the five words, students in the class raised their hands, asking about other words, as follows: "pervert," "dilch," "nerd," "mother fucker," "dork," "sucked," "prostitute," "hooker," "ass hole," "peckerhead," "fart face," and "pussy." The appellant instructed the children to add these words to their list, writing what they thought to be the definitions thereof, if they knew.
7. The end of the day bell rang, the appellant collected the children's papers and placed them in his file cabinet to go through them the next day. This he was unable to do because the papers were confiscated.
8. Two months thereafter the Board of School Directors submitted to the appellant a written statement of charges seeking his dismissal on the grounds of immorality. The school board thereafter held five evidentiary hearings on the following dates: March 30, 1976; March 31, 1976; April 22, 23, and 24, 1976. On June 22, 1976, the Board of School Directors, by a vote of six affirmative, one abstaining and one negative, held that the charge of immorality had been sustained and dismissed the appellant. The appellant was duly notified of this decision.

9. At the hearing there was testimony presented by both the school district and the appellant. There was expert testimony to the effect that the appellant's conduct had no educational value whatsoever. Similarly, there was expert testimony that the appellant's conduct did have educational value. There was testimony from members of the community that the appellant's conduct was "immoral." Similarly there was testimony from members of the community that appellant's conduct was not "immoral." There was evidence that many of the children had been exposed (in conversation, by observing graffiti on the school bathroom walls, in dictionaries within the school library) to many of the words on the list. It was not established that all the children had been previously exposed to all the words and, in fact, some of the children had never been exposed to any of the words. There was no evidence that any of the children had been upset by the exercise. Several parents testified that had they heard their children using the words on the list, they would have discussed the words with their children, advising them that their use was inappropriate.

10. On July 12, 1976, the appellant filed his Petition for Appeal with the Pennsylvania Department of Education. After Motion to Dismiss the Appeal, an amended Petition for Review was filed on August 20, 1976. A hearing on the appeal was heard on September 27, 1976. Briefs were filed by both parties in accordance with instructions by the hearing examiner.

DISCUSSION

The appellant herein was dismissed from his position as a professional employee of permanent tenure status on the grounds of "immorality" pursuant to Section 1122 of the Pennsylvania School Code (24 P.S. Section 11-1122). As noted in the appellee's brief "immorality can mean different things to different people and could be applied so broadly that every teacher in the state could be subject to discipline." (Page 4 of appellee's brief.) Indeed, this observation is the basis of the appellant's argument raised herein that the statute is so vague as to not provide notice, to the teacher, of a sufficiently specific standard of conduct.

The Pennsylvania courts have had several opportunities in which to discuss the meaning of "immorality" under the statute. See, for example, *Gilmer v. Stover*, 46 Dauphin 257 (1938); *Appeal of Batrus*, 148 Pa. Super. 587, 26 A.2d 121 (1941); *Appeal of Flannery*, 406 Pa. 515, 178 A.2d 751, (1962); and *Appeal of Edwards*, 57 Luz. L. Reg. 105 (1967). In discussing the meaning of "immorality," the courts have evidently recognized that the term is subjective, susceptible to multiple interpretations. The courts, therefore, have arrived at a general definition of "immorality" which can be extracted from the cases to be in the nature of "any course of conduct which is offensive to the morals of the community." The requirement that the community find the conduct to be offensive thereby interjects the notion of a community agreement, or consensus, as to the propriety of the conduct. The Pennsylvania courts have further clarified the definition of "immorality" by observing that the alleged conduct be viewed with regard to the legislative intent, as well as an assessment of whether the teacher's conduct affects his or her fitness to teach. See, for example, *In Horosko v. School District of Mount Pleasant Twp.*, 335 Pa. 369, 6 A.2d 866 (1939) cert. denied 308 US 553 (1940), and *Appeal of Thomas*, 39 Lack. Jur. 41, (1938).

Despite this clarification by the Pennsylvania courts, the appellant herein urges us to hold the statute to be unconstitutionally vague. In response to this argument, the appellee school district has called our attention to a number of cases from other jurisdictions in which similar statutes were construed. Construction of the term "immorality" found in these cases includes the requirement that the alleged "immoral" conduct indicate an "unfitness to teach" or be "hostile to the welfare of the school community." *Morrison v. State Board of Education*, 1 Cal 3d 214, 461 P 2d 375 (1969) and *Jarvella v. Willoughby - Eastlake City School District*, 12 Ohio Misc. 288, 233 N E 2d 143 (1967). While it is the appellant's position that these interpretations do not save the Pennsylvania statute, he has suggested that, should we fail to find the Pennsylvania statute unconstitutionally vague, we should add to the test of "immorality" a determination of whether the conduct adversely affected the students, a determination of the motives for the teacher's conduct, and a determination of the likelihood that the conduct would continue if the teacher were not dismissed.

We find that we need not address ourselves to the question of unconstitutional vagueness in the case at hand, for it is our opinion that the appellant teacher's conduct does not constitute "immorality" under the Pennsylvania statute and Pennsylvania court interpretation thereof. In the case at hand, the evidence established that the appellant was concerned by the fact that he had heard some of his students using certain words on the playground and he expressed to the class his opinion that such words should not be used. In the testimony adduced, there was disagreement among the experts as to whether the appellant's conduct had an educational value. Similarly there was disagreement among members of the community who testified as to whether appellant's conduct was "immoral." The parents who testified indicated that, had they heard their own children using the words, they would have discussed the words with their children, advising them that their use was inappropriate. Such disagreement among members of the community as to the propriety of the appellant's conduct mandates the conclusion that the appellant's conduct was not "immoral" as defined by the community and, consequently, by the Pennsylvania courts.

There are no Pennsylvania cases with factual situations similar to those presented in the case at hand, however, the Massachusetts District Court case of *Mailloux v. Kiley*, 323 F. Supp 1381 (D.C. Mass 1971), does present an analogous situation. In that case, a teacher wrote a taboo sexual word on the board during a discussion on taboo words in literature, and was dismissed. The court held that this was not the kind of conduct "which all good men of good will would, once their attention is called to it, immediately perceive to be forbidden." (323 F. Supp at p. 1393) There being no consensus in the case at hand regarding the propriety or impropriety of the appellant's conduct, we conclude that his dismissal cannot be upheld.

The appellee school district has argued that the appellant's conduct was "immoral" because the words on the list have "immoral" meanings.¹ The argument is that by exposing the students to the words the appellant conducted himself in an "immoral" manner. It is further argued that the crucial difference between the parents' discussing the inappropriateness of these words with their children and what the appellant did is that the appellant chose not to discuss the words privately with only those students who had used them, but rather chose to discuss the words with the entire class, some members of which had not been previously exposed to them.²

We are unable to join the school district in making the theoretical jump from "immoral" words to "immoral" conduct by the teacher. The difference between discussing these words solely with those students who had used them, rather than with the entire class may have been poor judgment by the teacher. However, this procedure chosen by the teacher cannot be the determinative factor in judging whether his conduct was "moral" or "immoral". It is our opinion that the legislature, when enacting the statute under consideration, did not intend for a teacher to be dismissed on the basis of such narrow differentiations. The appellant's choice of method may or may not be deemed to have been an error in judgment, but no more.

¹It is interesting to note that at oral argument the hearing examiner inquired of the solicitor for the school district whether a teacher's discussion in class of the word "genocide" would be similarly objectionable. The solicitor responded that he did not believe so because the word "genocide" is not immoral like many of the words under consideration herein because the meaning of the word "genocide" does not denote sexual activity. This strikes us as a test of "immorality" with which it is inconceivable to us that the community would agree.

²The main thrust of the appellee school district's objection to the appellant's conduct is to the effect that the appellant was exposing naive 6th grade students to words connoting an immoral state of affairs. An examination of the papers submitted by the students reveals that they may not be as naive as the school district would hope, and that the 6th grade milieu has problems of morality which, in our opinion, are much more disturbing than the word usage complained of. We call your attention to the paper submitted by a student named Mike who defined the word "hooker" as "someone who takes drugs."

ACCORDINGLY, we make the following order:

ORDER

AND NOW, this 27th day of December, 1976, it is ordered and decreed that the decision of the Board of School Directors in and for the Central York School District is reversed and the appellant, Burnell E. Ehrhart, is reinstated.

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Appeal of Anthony P. Giangiacomo, from the Decision of the Board of School Directors of the Pottsgrove School District, Montgomery County, Pennsylvania

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

No. 304

OPINION

Robert N. Hendershot
Acting Secretary of Education

Anthony P. Giangiacomo, the Appellant herein, has appealed the termination of his employment as a professional employee for the Pottsgrove School District on the grounds of immorality, intemperance and persistent and willful violation of the school laws.

FINDINGS OF FACT

1. The Appellant is a professional employee. The Pottsgrove School District employed him as an English and reading teacher from September 12, 1960, until June of 1966 and as a guidance counselor from June of 1966 until June 16, 1975. On that date, Richard J. Radel, D. Ed., Principal of Pottsgrove High School, reassigned the Appellant as an English teacher for 10th and 11th grades. The Appellant, consenting to that reassignment, served in that capacity until the Board of School Directors of Pottsgrove School District suspended him from teaching duties on January 13, 1976, pending dismissal proceedings.
2. In his directive, "Duties of Guidance Counselor," dated October 11, 1966, Dr. Radel asked that the Appellant advise 8th grade pupils on employment and vocational matters. During the course of his counseling, the Appellant advised pupils on working requirements.
3. Pursuant to a citation and after a hearing, the Pennsylvania Liquor Control Board on September 15, 1975, fined Geeco, Inc. \$300.00 for selling bulk meat and milk and for employing Richard Dice, a minor under the age of sixteen years, on a liquor licensed premises in violation of the Liquor Code, Act of April 12, 1951, P.L. 90, as amended, 47 P.S. Section 101 *et seq.* The premises was the Washington House Hotel, 29 North Washington Street, Pottstown. The liquor license for the establishment was owned by Geeco, Inc., a corporation in which the Appellant and his brother owned all of the stock and which the Appellant and his brother managed. The violations occurred between July of 1974 and February 26, 1975.
4. During the period from July of 1974 through February of 1975, the Appellant also employed Dean Mathias, Donald Shupp, both fourteen years of age, and Bobby Mathias, eight or nine years of age, at the Washington House Hotel without having obtained promises of vacation employment certificates or filing reports for employers forms (DEBE-163) with the Pennsylvania Department of Education.
5. On the first day of school for the 1974-1975 school term, all high school professional employees at the Pottsgrove High School received the principal's opening bulletin and additional rules and regulations supplementing the faculty manual or a new faculty manual. Dr. Radel called the attention of the employees to both publications.