

We interpret this provision to mean the following: A professional employee cannot be demoted from full-time to part-time employment, with a corresponding reduction in salary, if there is additional work of any nature available which would enable that employee to continue full-time employment. If a professional position becomes available within the district, the School Board must first offer that position to any properly certificated professional employee who has been suspended, (Section 1125(c)); if the position remains unfilled, the School Board must then offer it to any qualified professional employee who has had his salary reduced because of a demotion to less than full-time employment. Professional employees without work because of suspension deserve consideration over those currently working; professional employees earning less than a full-time salary are entitled to preferential treatment over new applicants. The purposes of the Teacher Tenure Act are not satisfied if professional employees of long service are forced to accept part-time positions with a reduced salary while full-time positions which they could fill are given to persons of little or no experience. In Section 1147, the General Assembly authorized salary reductions made necessary by a lack of work; it did not authorize unnecessary salary reductions. A salary reduction can have a severe effect on the professional employee's ability to support his or her family and, accordingly, should not be made or continued unless absolutely necessary.

We are satisfied that the Austin Area School Board did not have any other work available to which it could have assigned Mrs. Wallace when it was confronted with the decision to demote her to half-time status as a school nurse.

Accordingly, we make the following:

#### ORDER

AND NOW, this 20th day of October, 1976, it is hereby Ordered and Decreed that the appeal of Barbara Wallace be and hereby is dismissed; and that the decision of the Board of School Directors of the Austin Area School District demoting Mrs. Wallace in salary and in position to half-time employment as a school nurse be and hereby is sustained.

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Appeal of Anthony E. Fiorenza, from the decision of the Board of School Directors of the Chichester School District, Delaware County, Pennsylvania

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

No. 277

#### OPINION

John C. Pittenger  
*Secretary of Education*

Anthony E. Fiorenza, Appellant herein, has appealed the termination of his employment as administrative assistant for personnel and special services for the Chichester School District.

#### FINDINGS OF FACT

1. On August 22, 1966, Appellant was appointed Principal of Linwood and Trainer Elementary Schools.
2. On or about November 15, 1970, Appellant was reassigned and transferred to serve as Principal of Hilltop Elementary School.
3. The Appellant was hired by the Board of School Directors of the Chichester School District at its September 19, 1972 meeting to serve as acting administrative assistant for special services. The minutes of the September 19, 1972 meeting read as follows:

"On a motion made by Mr. Gamble and seconded by Mrs. Green, the Board appointed Mr. Anthony E. Fiorenza as Acting Administrative Assistant for Special Services, effective October 1, 1972 at a salary of \$19,000.00. Mr. Evans is to be on vacation during the first week of October and return for the last three weeks of October to assist Mr. Fiorenza. Mr. Fiorenza is to continue in both capacities as Principal at Hilltop School and Administrative Assistant until a replacement for the Hilltop Principalship is found."

The motion was carried unanimously. Appellant served in this position until June 28, 1973.  
4. The Board of School Directors of the Chichester School District at its June 28, 1973 meeting appointed Appellant as administrative assistant for personnel and special services. The minutes of the June 28, 1973 meeting read as follows:

"On a motion made by Mrs. Gamble and seconded by Mrs. Plummer, the Board appointed Anthony E. Fiorenza as Administrative Assistant for Personnel and Special Services."

The motion was carried unanimously.

5. Appellant requested a sabbatical leave for the 1974-75 school year. The Chichester Board of Education gave approval on January 15, 1974.

6. On June 2, 1975, while Appellant was on sabbatical leave, the Board of School Directors eliminated the position of administrative assistant for personnel and special services held by the Appellant. The minutes of the June 2, 1975 Board meeting are as follows:

"After a thorough discussion, Mrs. Plummer made a motion, seconded by Mr. Fries, that the following budget revisions be approved:

The elimination of the position of Administrative Assistant for Personnel and Special Services, held by Mr. Anthony E. Fiorenza at a salary of \$22,160.00.

7. The Appellant was informed of the Board's action by a letter dated June 3, 1975, which was sent to him by Chris T. Jelep, Superintendent of the Chichester School District. The letter read as follows:

"At a public meeting of the Chichester Board of Education held last night, the position of administrative assistant for personnel and special services was eliminated. Because of this action, your employment at the Chichester School District will be terminated at the end of your sabbatical year on June 30, 1975."

8. By letter dated June 12, 1975, the Appellant, by his attorney, inquired to the legal basis for his termination.

9. By letter dated June 8, 1975, the Appellant, by his attorney, requested that a School Board hearing be set to determine the propriety of terminating Appellant's employment.

10. By letter dated August 26, 1975, the Chichester School District, by its solicitor, stated that the School Board had determined the Appellant was not entitled to a hearing.

11. The Appellant's duties were as follows: He spent the majority of his time working with the transportation program. He also was involved with collective bargaining negotiations for the school district, health services, budgeting, and public relations.

12. The Appellant is certified in the following areas: elementary teacher; teacher for mentally retarded; elementary principal; secondary principal; supervisor of special education.

13. On October 30, 1975, the Appellant's Petition of Appeal was received in the Office of the Secretary of Education. An Answer to that Petition was filed on behalf of the school district in the Office of the Secretary of Education on November 21, 1975.

14. A hearing in the Office of the Secretary of Education was held on November 25, 1975. Testimony was offered at that hearing.

15. The Appellant and Dr. Chris T. Jelep, Superintendent of the school district, testified at that hearing.

## DISCUSSION

The Appellant contends that his employment with the Chichester School District was improperly terminated. Appellant claims that he was not given proper notice of termination or a hearing. Appellant requests reinstatement to his former position as administrative assistant for personnel and special services.

The threshold question on this appeal is jurisdiction. Before the Secretary of Education can review the merits of what the Appellant contends was improper termination of his employment, it is essential that the Secretary's jurisdiction be established. The Public School Code, 24 P.S. Section 11-1131, gives the Secretary of Education the power to hear appeals from professional employees. (Act of March 10, 1949, P.L. 30, Article XI, Section 1131). There is no similar grant of authority to the Secretary of Education to hear appeals from any other class of employees.

A professional employee is defined in Section 1101 of the School Code as being an individual who is:

"(1) The term 'professional employe' shall include those who are certificated as teachers, supervisors, principals, assistant principals, vice principals, directors of vocational education dental hygienists, visiting teachers, home and school visitors, school counselors, child nutrition program specialists, school librarians, school secretaries, the selection of whom is on the basis of merit as determined by eligibility lists and school nurses." 24 P.S. Section 11-1101(1).

If the Appellant is to prevail in his contention that he is a professional employee, he must show that he is within one of these classes. *Appeal of Spano*, 439 Pa. 256, 267 A.2d 848 (1970), *Rhee v. Allegheny Intermediate Unit No. 3*, 11 Pa. Cmwlth. Ct. 394 (1974), *Elias v. Board of School Directors*, 421 Pa. 260, 218 A.2d 738 (1966).

"Section 1101(1) of the Code defines the term professional employee, and if an individual desires that designation, he must show that he fits within one of the categories created by the legislature." *Appeal of Spano*, 267 A.2d at 850, 439 Pa. at 259.

The Appellant is clearly not a teacher under the School Code. Section 11-1141 defines teacher as:

"All professional employees and temporary professional employees who devote fifty percentum (50%) of their time, or more, to teaching or other direct educational activities...."

In *Spano*, supra, the Pennsylvania Supreme Court held that one who qualified as a teacher under Section 1141 automatically qualifies as a professional employee under Section 1101(1).

The Appellant did not spend any of his time in "direct educational activities". Appellant testified that he was responsible to the superintendent for: the transportation program; recruiting

certified and noncertified personnel; collective negotiations for the school district, health services, budgeting; and public relations. Dr. Chris T. Jelepis, Superintendent of the Chichester School District testified that Appellant spent approximately seventy to seventy-five percent of his time in the transportation area. Of the remaining twenty-five to thirty percent, Dr. Jelepis testified that Appellant was involved in the recruitment of noncertificated personnel. This consisted of writing job descriptions and dealing with nonprofessional grievances. In the area of public relations he had the responsibility of turning out monthly newsletters and calendars that were sent home for parents and children. Both the Appellant and opposing counsel's witness, Dr. Chris T. Jelepis, concurred in their statements that Appellant's job responsibilities did not include instructional activities or staff evaluation. The Appellant did state that while he was serving as administrative assistant for personnel and special services he was called to teach for three days while the school district was on strike. Three days of substitute teaching does not qualify the Appellant as a "teacher" under Section 1141 of the School Code. In summary, Appellant's job responsibilities do not have any relationship to teaching or educational activities.

Appellant is not a supervisor under 24 P.S. Section 1101(1). Again, his job responsibilities did not place him in a supervisory capacity. Rather, he was a coordinate line and staff administrator directly responsible to the superintendent.

Appellant's job responsibilities suggest that he was a business manager, not a professional employee under Section 1101(1). As he does not fall within one of the categories created by the legislature, his claim to be a professional employee must fail.

The Appellant's status as a tenured professional employee while principal of the Hilltop Elementary School does not automatically carry over into his subsequent nonprofessional position as administrative assistant for personnel and special services. *Sakal v. School District of Sto-Rox*, Pa. Cmwlth. \_\_\_\_\_, 339 A2d 896 (2975), *Narducci v. School District of the City of Erie*, 4 Pa. Cmwlth. 202, (1971).

In *Narducci*, the appellant was employed by the Erie School District as a teacher. A few years later he became principal at one of the schools in said school district. He had the status of professional employee in both positions. He then was appointed to the position of acting secretary and business manager of the school district. Two years later, the school board elected appellant secretary to the school board and appointed him assistant to the superintendent in charge of business affairs. About two years after the appointment, *Narducci* was terminated from his duties without notice or a hearing. The issue before the Court was whether appellant's appointment to be acting secretary, business manager of the school district and assistant to the superintendent in charge of business affairs "acted to sever appellant's membership and participation in the category of 'professional employee.'" *Narducci*, supra, p. 889. The Court affirmed the lower court's dismissal of *Narducci*'s mandamus action for reinstatement. The Court held that by accepting these appointments, appellant abandoned "his previous status and the rights and guarantees attached thereto." *Narducci*, supra, at 890. Thus, even though *Narducci* was a professional employee at one time, he lost that status by accepting positions which required he give up his former title. Appellant, Anthony Fiorenza, lost his professional employee status by accepting a position which did not have professional employee status.

The case of *Sakal*, Pa. Cmwlth. \_\_\_\_\_, 339 A.2d 896 (1975), also stands for the proposition that a tenured professional employee does not carry over that status into a position that does not have professional employee status. In *Sakal*, the appellant was a tenured professional employee and an elementary principal. Appellant later became superintendent, an untenured position. Two years later he became an elementary principal again. The issue was whether appellant was a tenured employee. The Court said, "The determination of the status of this position which he occupied for two years [i.e., elementary principal] controls this case." At 897, a footnote appears after this statement. The Court referred to *Narducci* for a fuller discussion of this issue. Since the position of elementary principal had professional employee status, *Sakal* was found to be a professional employee. Unfortunately, Appellant Anthony Fiorenza took a job which did not have professional status.

Under *Narducci and Sakal*, he is not a professional employee. Once Appellant accepted the appointment to the position of administrative assistant for personnel and special services, he voluntarily relinquished his status as a professional employee and all rights pertaining thereto.

Whether or not Appellant's position is "mandated" or "nonmandated" is irrelevant to the issue at hand. Even persons serving in nonmandated positions can be professional employees. *Striebert v. Board of Directors of the School District of the City of York*, 14 A.2d 303 (1940). The Supreme Court of Pennsylvania held in *Striebert* that a person serving as "dean of girls" was a professional employee. The Court emphasized that "dean of girls" was a nonmandated position. Also, in the *Appeal of Spano*, *supra*, the Court held that the person serving in the nonmandated position of curriculum coordinator was a professional employee within the meaning of the School Code. The Court's concern was with Ms. Spano's job responsibilities, and not with whether or not the position was mandated or nonmandated. The Appellant, in this case, clearly was not a professional employee while serving in the position of administrative assistant for personnel and special services.

The Chichester Area School Board asked that the appeal be quashed because the Appellant failed to file his petition of appeal within the Secretary of Education's Office within the statutorily mandated thirty day period as provided in Section 1131 of the Public School Code, 24 P.S. Section 11-1131. We find that it is unnecessary to rule on the motion since the Secretary of Education does not have jurisdiction over this case.

An employee of a school district who is not a professional employee has the right to challenge his dismissal by recourse to the provisions of the Local Agency Law. (53 P.S. Section 11301 et seq.) The Local Agency Law gives a person the right to a hearing before the school board and an appeal to the Common Pleas Court to have the Board's action reviewed.

As the Appellant is not a professional employee, the Secretary of Education lacks jurisdiction to accept this appeal. Accordingly, we make the following:

#### ORDER

AND NOW, this 27th day of January, 1976, it is Ordered and Decreed that the Appeal of Anthony E. Fiorenza be dismissed for lack of jurisdiction.

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Appeal of Elizabeth Parsons from a decision of the Board of School Directors of the Avon Grove School District, Chester County, Pennsylvania

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

No. 278

#### OPINION

John C. Pittenger  
*Secretary of Education*

Elizabeth Parsons, Appellant herein, has appealed the termination of her employment as teacher of perceptual development for the Avon-Grove School District.

#### FINDINGS OF FACT

1. The Appellant was employed by the Avon-Grove School District in September 1956 as a full-time health and physical education teacher and was issued a temporary professional employee's contract.
2. In January 1958 the Appellant resigned her position to take a maternity leave.