

1970-71 school year. Although the School Board permitted testimony as to the Appellant's service in years prior thereto, when satisfactory ratings were given, we are not basing our conclusions on such testimony.

The Appellant has argued that his appearance, wearing a beard in September 1970, gave rise to a reaction by the administration that caused his eventual discharge. Counsel for the Appellant, in his cross-examination at the School Board hearings, raised this issue, but was unable to get answers that could pinpoint the existence of the beard as the reason and cause of dismissal. At the appeal hearing, counsel stated that it could not be proven one hundred percent, but circumstantially it could be inferred. We did not have the benefit of any of Appellant's testimony that might have indicated such a reaction, either by direct proof or even by circumstantial evidence.

The counsel for Appellant further raised the question of the vote by the Board on the discharge. The record indicates that on August 25, 1971, after the conclusion of the hearing, the Board met and, on roll call vote of the entire Board, they unanimously voted in favor of dismissal. This was in compliance with the provisions of Section 1149 of the Public School Code of 1949.

The School Board sustained the charge of incompetency on the basis of the evidence presented. They are the trier of facts, and it is within their province to determine the question of credibility of the witnesses and the competency and weight to be accorded their testimony. On appeal we are bound by their conclusions unless we find them to be manifestly erroneous, arbitrary or capricious.

Comm. ex rel. Harvey vs. Eastridge, 374 Pa. 172

Wilbert vs. Pittsburgh Con. Coal Co., 385 Pa. 149

We have reviewed the notes of testimony, and heard oral argument of counsel at the hearing on appeal, and it is our opinion that the decision of the School Board of dismissal on the charge of incompetency as a basis for discharge indicates no abuse of discretion.

Accordingly, we make the following

ORDER

AND NOW, to wit, this 30th day of March, 1972, the Appeal of James Morandini from the decision of the Board of School Directors of the Kiski Area School District is hereby dismissed, and the action of the Board of School Directors dismissing him as a professional employe on the ground of incompetency is hereby sustained.

* * *

Appeal of Eva Gregart, a Professional
Employe, from a decision of the Board of
School Directors of the Center Area School
District, Beaver County, Pennsylvania

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

No. 204

OPINION

John C. Pittenger
Secretary of Education

Eva Gregart, Appellant herein, has appealed from a decision of the Board of School Directors of the Center Area School District, Beaver County, Pennsylvania, terminating her contract and dismissing her as a professional employe.

FINDINGS OF FACT

1. Appellant has been employed by the Center Area School District (formerly Center Township) as a professional employe since July 28, 1967.

2. On June 11, 1971, the Appellant was notified of charges preferred against her by the School Board.
3. Due and proper notice thereof was given to the Appellant.
4. Pursuant to notice, a hearing thereon was scheduled for June 24, 1971.
5. Additional hearings were held on July 6, 1971 and September 10, 1971.
6. On September 15, 1971, the School Board adopted a resolution of discharge of the Appellant, on the charge of incompetency.
7. The Appellant filed notice of appeal with the Secretary of Education on September 21, 1971, and the same was confirmed upon the receipt of additional required information on October 4, 1971.
8. Pursuant to notice, a hearing on said appeal was held on November 3, 1971.

TESTIMONY

Mr. Edward T. Elder, elementary school principal, testified substantially as follows:

In October, 1970, Mrs. Gregart told a Miss Cunningham, a teacher, to get out of her room, in the presence and hearing of students. On October 12, 1970, he questioned her about her failure to comply with instructions to have her pupils follow specific assigned trails while on a field trip. On December 21, 1970, she took her pupils outside while it was snowing, until he noticed it and requested her to bring the children inside. On January 14, 1971, he checked out the mistreatment of a student. On February 2, 1971, there was a conference between him, the Appellant and Mr. and Mrs. Zobrak concerning her pinching and grabbing their son by the neck. She denied it and then returned to her classroom where she publicly called the father a liar and a bum. Instances of abuse of students were cited by the witness during 1971. The Appellant ignored Board regulations requiring a teacher to escort her pupils to the cafeteria. On March 22, 1971, she assigned two pupils to clean out all the desks, without supervision, causing a loss of personal belongings, reports, homework, etc. As a result, a delegation of parents met with him. Other incidents created by the Appellant were mentioned. In his opinion, she was an unsatisfactory teacher and he rated her unsatisfactory in February 1971 and June 1971, and advised her accordingly.

John Zobrak, Kali C. Stamaton, Edith Cutright, Marjeanne Wentz and Margaret Cumberledge testified to incidents of abuse and mistreatment affecting their children who were students of the Appellant. Donald Bradshaw, Director of Elementary Education, testified that he observed the Appellant's teaching since February 13, 1968. During her first year he was not satisfied with her performance and he tried to improve her method of operation.

Tanya Lee Heron, a fourth grade teacher, stated that she had seen one of the Appellant's pupils in the hallway, during class hours, on several occasions, and he told her that his teacher had ordered him out. On the field trip on October 12, 1970, she noticed that Mrs. Gregart was lying in the sun, while her class was unsupervised, climbing trees, and she had to scold them. She also made reference to the children outside during the snow storm on December 21, 1970, as mentioned by Mr. Elder.

Linda Lee Roddy, a fourth grade teacher of reading and social studies, noted that Mrs. Gregart didn't supervise her students when going to lunch. She also saw some pupils of Mrs. Gregart in the hallway, because they had been ordered out. She also corroborated the field trip inaction of Mrs. Gregart in controlling her class.

Mary Ann Montini, school nurse, testified about three incidents. Danny Sprankle crying and upset because Mrs. Gregart called him stupid, he had no brains and her dog was smarter than him. Debby Coulter crying because Mrs. Gregart called her stupid and an idiot. Cathy Cumberledge hit on back causing a reddened area in the middle of the back.

Josephine Groff, reading coordinator, had loaned Mrs. Gregart a pilot library and when it was finally returned, 18 books and 9 answer keys were missing.

Dr. Harry Fink, Superintendent of Schools, testified that the performance of Mrs. Gregart as a teacher was called to his attention on many occasions. She was causing problems with the children's parents and other teachers. He advised her that she would have to learn to work with

people and, at that time, she got up and walked out of his office. He rated her unsatisfactory in February and June of 1971.

At the hearing on July 6, 1971, Debby Coulter, a student, and her mother, Delores Coulter, testified. The child stated her teacher called her stupid, had no brains and wasn't a nice girl. When her mother called Mrs. Gregart, she was told her daughter bothered her all the time, that she can't be bothered with children.

Linda Hileman, a elementary science teacher, testified that Mrs. Gregart had told her, in a voice heard by the pupils, to get out of her room. Later the Appellant told her that she was mentally unbalanced.

John Zobrak, a fourth grade student in Mrs. Gregart's class, heard her call his father a bum and a liar, and that she would put him in jail. This was said in the presence of the entire class.

Debra Cutright, also one of Mrs. Gregart's students, had her homework thrown away, when the teacher told the two boys to clean out the desks. She heard Mrs. Gregart's remarks about Mr. Zobrak and also heard her call all complaining parents rotten.

Richard Allen Wentz stated that his homework and reading book were thrown away when the desks were cleaned out. Mrs. Gregart called his parents dumb hillbillies. On the field trip, he saw some of Mrs. Gregart's class go into the water, climb rocks, and they didn't finish their trail.

William Stamaton, a fourth grade student, had been told by Mrs. Gregart to do a certain paper, and that she would get a prize. When he handed it in, she tore it up.

Danny Sprankle heard Mrs. Gregart tell the other boys in her class to jump on him and she liked to see him get beat up.

The meeting scheduled for August 30, 1971 was continued until September 10, 1971, at the Appellant's request, and at the said hearing in September Dr. Harry Fink was recalled and testified that Mrs. Gregart had sent letters to him and other officials. Eight such letters were offered in evidence.

DISCUSSION

During the course of the proceedings in this matter several incidents of note occurred of which mention must be made. At the first two hearings before the School Board, the Appellant was represented by counsel. Subsequent thereto, she discharged her attorney, and refused to either participate or attend the hearings thereafter. She also failed to attend the hearing on the appeal, although due and sufficient notice thereof had been sent to her, as indicated by a letter dated October 16, 1971 written by her acknowledging receipt of the notice of the appeal hearing scheduled for November 3, 1971. It is also to be noted that the Appellant did not testify nor offer any defense to the charges against her at any hearing before the local Board. She did, however, write numerous letters to school officials during the proceedings and thereafter to the Secretary of Education none of which can be acceptable as any defense. Accordingly, we must base our decision on the charges presented by the local Board and the evidence thereof as contained in the notes of testimony.

Our examination of the record discloses that the Appellant was first assigned to a first grade class during 1967-68 and, because of her superior's dissatisfaction with her performance, she was assigned to a fourth grade class for the year 1970-71. On February 5, 1971, she was given an unsatisfactory rating wherein adverse check marks were noted in "judgement", "habits of conduct", "dependability", "classroom generalship", and "attitudes". A second unsatisfactory rating was issued on June 11, 1971, wherein, in addition to the adverse check marks aforementioned in the prior rating, adverse check marks were also noted in "manipulation of materials" and "habits of conduct".

The testimony of the local Board hearings substantiated the charge for dismissal, to wit, incompetence.

In *Smith vs. Philadelphia School District*, 334 Pa. 197, the Court stated that the bylaws and regulations, as well as all the provisions of the School Code, became a part of the contract between the parties.

Disobedience of reasonable orders of the School Board is an act of negligence and such conduct may also be classed as persistent and wilful violation of the School Laws.

Ambridge Borough School District vs. Snyder, 346 Pa.103

Ganaposki's Appeal, 332 Pa. 550

The issuance of two unsatisfactory ratings complies with the requirement of establishing incompetence as a basis of discharge.

Thall Appeal, 410 Pa. 22

We are bound by the School Board's conclusions unless we find them to be manifestly erroneous, arbitrary or capricious.

Com. ex rel. Harvey vs. Eastridge, 374 Pa. 172

Wilbert vs. Pittsburgh Con. Coal Co., 385 Pa. 149

When the actions of a school board are challenged, the burden of showing to the contrary rests on the Appellant, and it is a heavy burden, and we can only interfere when it is made apparent that this discretion has been abused.

Hibbs vs. Arensberg, 276 Pa. 24

This burden has not been met by the Appellant.

Our analysis of the testimony leads us to sustain the Board's decision of discharge.

Accordingly, we make the following

ORDER

AND NOW, to wit, this 28th day of December, 1971, it is ordered and decreed that the Appeal of Eva Gregart from the decision of the Board of School Directors of the Center Area School District be and is hereby dismissed, and the action of the Board dismissing her as a professional employe on the charge of incompetence is sustained.

* * * *

Appeal of Ervin E. Johnson, a Professional Employe, from a decision of the Board of Education of the Philadelphia City School District, Philadelphia County, Pennsylvania

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

No. 205

OPINION

John C. Pittenger
Secretary of Education

Ervin E. Johnson, Appellant herein, has appealed from a decision of discharge by the Board of Education of the School District of Philadelphia.

FINDINGS OF FACT

1. The Appellant has been a professional employe of the Philadelphia Board of Education since November 25, 1968.
2. The Appellant continued in said employment in said School District as a teacher of common learning, until his suspension from Overbrook High School on September 4, 1970.
3. On September 21, 1970, notice by certified mail, return receipt requested, was mailed by the Philadelphia Board of Education to the Appellant, setting a date of October 5, 1970 for a hearing on the recommendation of dismissal as a professional employe on the charges of incompetency, persistent negligence and persistent and wilful violation of the School Laws of the Commonwealth.
4. Pursuant to notice, hearing on said charges began on October 5, 1970, and then continued until November 16, 1970.