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.

* * * *

Appeal of Bernice I. Hamburg, a Professional Employe, 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

employe a hearing pursuant to Section 1151 of the Public School Code where, as in the instant situation, the employe alleges that she has been demoted? The answer is clear. Section 1151 of the Public School Code provides that if the consent of the professional employe is not received when a demotion is at issue, the employe has a right to a hearing before the Board of Directors.

In **Smith v. Darby School District, 388 Pa. 301**, at page 318, Justice Jones said:

> "Appellee acknowledges that a professional employee, if demoted in type of position or salary, is entitled to a hearing under the School Code, but argues that if, however, before a hearing is held, the School Board is of the opinion that the professional employee has not been demoted in type of position or salary then he is not entitled to a hearing. Under this view, a board could arbitrarily conclude the employee had not been demoted and, in the absence of a demotion, a fortiori no right to a hearing under the statute would exist. We do not read the statute in this light nor do we conceive that the legislature ever intended such an anomalous result. When a professional employee claims he has been demoted in type of position and/or salary he is entitled to a board hearing just as a professional employee claiming an unlawful dismissal is entitled to a hearing. After hearing, the right of Appellate review by the Superintendent of Public Instruction and by the various courts would naturally follow."
>
> And at page 319:
>
> "When a professional employee claims he has been demoted, it is the school board's duty to grant him a hearing. At that hearing two questions are before the school board: (1) whether or not the professional employee has been demoted either in type of position or salary, and (2) in the event the professional employee has been demoted, the reason for such demotion must be made clear and apparent."
>
> And at page 320:
>
> "While there is a presumption that the board has acted in a valid and proper manner, yet the Appellant should have an opportunity to be heard before the board and at such hearing to present any evidence which he may have that the board's action resulted from arbitrary or discriminatory reasons. The burden will be on the Appellant to prove the impropriety of the board's action."

In view of the aforesaid Court interpretation of Section 1151, it is our opinion that we are bound to order a hearing before the local board where an averment of demotion is made by the professional employe. The hearing is compulsory when requested, even though the board construes the assignment and resulting change in the nature of the employment as no demotion.

In view of the foregoing, we make the following

ORDER

AND NOW, this 28th day of January, 1972, the appeal of Bernice I. Hamburg from the School Board's failure to grant her a hearing on her demotion is hereby sustained, and the said Board of School Directors of the North Penn School District is hereby ordered to set a date for a hearing before it on the alleged demotion of Bernice I. Hamburg.