Commonwealth of Pennsylvania
DEPARTMENT OF EDUCATION
Harrisburg

ESTHER KLINE	:	
	:	
v.	:	Teacher Tenure Appeal No. 311
	:	
MIDDLE BUCKS AREA VOCATIONAL-TECHNICAL SCHOOL	:	

OPINION

Esther Kline, appellant herein, has appealed from a decision of the Executive Council of the Middle Bucks Area Vocational-Technical School refusing her a hearing on her alleged demotion. This appeal is taken in accordance with Section 1151 of the Public School Code, Act of March 10, 1949, P.L. 30, §101 et seq., §1151, as amended, 24 P.S. §11-1151 (hereinafter School Code).

FINDINGS OF FACT

1. Esther Kline is a professional employe. She has been employed by the Middle Bucks Area Vocational-Technical School (hereinafter referred to as Vocational-Technical School) in the capacity of a dental assistant instructor from August, 1971 to June, 1976.

2. Middle Bucks Area Vocational-Technical School is a joint vocational-technical school created pursuant to Sections 1701 to 1708 of the Public School Code of 1949, P.L. 30, as amended, 24 P.S. §1701 to §1708. The school's governing body is called the "Executive Council."

3. In a letter dated May 11, 1976, Esther Kline was notified by Vincent P. Fosbre, Director of the Vocational-Technical School, that because of insufficient enrollment in her course she would be required to work only one session or one half of the school day during the 1976-1977 school term.

4. At the hearing before the Secretary, Fosbre testified that he received no direction from the Executive Council to send out the letter dated May 11, 1976. (n.t. 34)

5. In a letter dated October 11, 1976 to Secretary of Education John Pittenger, Robert Jacoby, Secretary of the Middle Bucks Area Vocational-Technical, stated:

> "There is no official Board minute notation of the reduction of the Dental Assistant program for the year 1976-77. Mrs. Kline's status is the result of administrative action of which Mrs. Kline was notified on May 11, 1976 to the effect that there would be only sufficient enrollment for her to work a half day schedule."

6. Prior to the 1976-1977 school year, Mrs. Kline had worked a full day's schedule.

7. By letter dated June 8, 1976 Mrs. Kline, through her attorney, referred to the May 11, 1976 letter from Mr. Fosbre and requested a hearing before the Executive Council.

8. By letter dated June 14, 1976, John Diefenderfer, Solicitor for the Executive Council, asked Mrs. Kline to state the authority under which she requested a hearing and what type of hearing she demanded.

9. By letter dated July 29, 1976, Mrs. Kline's attorney requested a hearing on the grounds that she was entitled to a hearing regardless

of whether the reduction action was a suspension or a demotion.

10. By letter dated August 16, 1976, the Executive Council, through its solicitor, denied Mrs. Kline's request for a hearing. The solicitor stated that the action taken did not constitute a demotion so that a demotion hearing was not required. He further stated that because the action related to a decline in course enrollment and because no charges had been brought against Mrs. Kline nor had her personal or property rights been affected, Local Agency Law was not applicable.

11. As a full-time employe, Mrs. Kline would be entitled to a gross base salary of $13,606 for the school year 1976-1977.

12. As a half-time employe, Mrs. Kline receives a gross base salary of $6,803 which represents exactly fifty per cent (50%) of the full-time base salary.

13. As a half-time employe Mrs. Kline is required to pay fifty per cent (50%) of any charges related to fringe benefits if she is to participate in these benefits. As a full-time employe, the school district paid one hundred per cent (100%) of the charges related to fringe benefits. Mrs. Kline has not participated in the benefits because she is not willing to pay her one-half share.

14. Under the terms of the current Agreement between the Executive Council of Middle Bucks Area Vocational-Technical School and the Middle Bucks Area Vocational-Technical School Education Association, teachers must teach two sessions to be considered full-time employes.

DISCUSSION

Appellant, Esther Kline, initially contends that her change in status from full-time to half-time and the proportionate reduction in salary constitutes a demotion and as such falls within the requirements of Section 1151 of the School Code. The Appellee, Executive Council, contends that the change in assignment constitutes a suspension under Sections 1124 and 1125 of the School Code. Appellant Kline clearly must prevail.

Section 1151 of the School Code provides in pertinent part:

> ". . . there shall be no demotion of any professional employe either in salary or in type of position . . . without the consent of the employe, or, if such consent is not received, then such demotion shall be subject to the right to a hearing before the board of school directors and an appeal in the same manner as hereinbefore provided in the case of the dismissal of a professional employe." [emphasis added]

The record contains no dispute that Kline's reduction to half-time status resulted in a reduction in salary.

A reduction in salary of an individual professional employe is a demotion as explicitly defined in Section 1151 and as defined in case law. See Smith v. School District of Philadelphia, 334 Pa 197, 5 A.2d 535 (1939), followed in Drasin v. School District of Philadelphia, 334 Pa. 210, 5 A.2d 540 (1939), Wolf v. Gettysburg Borough School District, 52 D&C. 520 (1945), Appeal of School District of Borough of Jermyn, 43 Lack. Jour. 161 (1942). It is obvious that a reduction in salary of fifty per cent (50%) is a demotion.

The term "demotion" as it relates to change in "type of position" has been defined by the Supreme Court of Pennsylvania in Smith v. Darby School District, 388 Pa. 301, 130 A.2d 661, (1957):

> "A demotion of a professional employee is a removal from one position and an appointment to a lower position; it is a reduction in type of position as compared with other professional employees having the same status."
>
> * * *
>
> " . . . a demotion in type of position means something more than a reduction in salary. To demote is to reduce to a lower rank or class and there may be a demotion in type of position even though the salary remains the same."

Using this definition, it is also clear from the record that Kline was demoted in type of position. Kline testified that as a half-time employe she is required to pay fifty per cent (50%) of any charges related to fringe benefits in order to participate in those benefits. As a full-time employe the school district paid one hundred per cent of similar charges. Because of the change, Mrs. Kline did not participate in the benefits. This testimony was uncontroverted.

The loss of a right to fringe benefits guaranteed to full-time teachers results in Mrs. Kline being in a lower position when compared to full-time teachers. Thus, Mrs. Kline was demoted in both salary and type of position.

Demotion is defined in Section 1151 of the School Code in terms of the effect of the school board's action, i.e., reduction in salary or lowering in position. However, counsel for the school board argues

that the cause for the change is determinative of whether a demotion has occurred. We found no merit in the school board contention that because Section 1124 of the School Code specifically enumerates the causes for suspensions, such causes cannot constitute justifications for demotions. This position is not supported by the case law.

In Smith v. Darby, supra, the Supreme Court of Pennsylvania held that any reasonable justification will sustain a demotion so long as the demotion is not arbitrary or discriminatory. The Court specifically stated that Section 1151 is restricted to providing "only how an employe may be demoted." Thus the Court interpreted Section 1151 as granting school boards broad discretion to demote for any reason that would result in a more efficient administration of the school district.

The Commonwealth Court has defined a board's action as a demotion when the reason for the action fell within Section 1124 of the School Code, "Cause for Suspensions." In Lakeland Joint School District v. Gilvary, 3 Pa. Commw. Ct. 415, 283 A.2d 500 (1971), the demotion occurred because of a reorganization of Lakeland Joint School District pursuant to the School Reorganization Act, Act of August 8, 1963, P.L. 564, 24 P.S. §2-290. The establishment of new school districts pursuant to the School Reorganization Act when such reorganization makes it unnecessary to retain the full staff of professional employes is an enumerated cause for suspension. Regardless of this cause for the transfer of a professional employe from principal to classroom teacher, the action was treated as a demotion.

The school board cites no case authority to support its contention

that if the reason for a transfer is a cause for suspension under Section 1124 it cannot constitute a demotion. We reject this contention in light of Smith, supra and Gilvary, supra. Therefore, we find that a demotion has occurred and the Secretary has jurisdiction to hear the appeal.[1]

The school board further argues that the change in Appellant Kline's status takes place automatically under the collective bargaining agreement. The Extension and Modification Agreement between the Executive Council of Middle Bucks Area Vocational-Technical School and the Middle Bucks Area Vocational-Technical School Education Association, 1973-1975, p. 3, Appendix D (4) reads, "Teachers must teach two sessions to be considered full-time employees." The board argues that this definition of a full-time schedule authorizes the administration to reduce a teacher's schedule from full-time to half-time without board action or a hearing. We cannot agree.

Clearly, a demotion must be acted upon by the board before the demotion becomes effective, and the board must grant a hearing when a professional employe does not consent to the demotion. Abington School Board v. Pittenger, 9 Pa. Commw. Ct. 62, 305 A.2d 661 (1957)

These basic principles are not altered by a definition in a collective bargaining agreement, which merely describes a full-time schedule. The definition is not self executing; someone must act before the employe is changed to a half-time schedule. As stated above, it is mandated by Section 1151 of the School Code and case law interpreting that section

---

[1]In the Answer to the Appeal of Esther Kline the school board raised the issue that the Secretary lacked jurisdiction because of pending litigation in the same matter under Local Agency Law. However, this argument was abandoned at the hearing before the Secretary. (n.t. 54)

that the action must be taken by the board. See Abington, supra.

Mrs. Kline's demotion was effected by the Director of the Vocational-Technical School. No hearing was held.

The School Code does not permit the administrative staff to demote without board action. Such action is void. Abington School Board v. Pittenger, 9 Pa. Commw. Ct. 62, 305 A.2d 382 (1975). The remedy in Abington was reinstatement.

Section 1151 of the School Code voids a demotion until a hearing is conducted by the board. Black v. Wyalusing Area School District, ___ Pa. Commw. Ct.___, 365 A.2d 1352 (1976). The proper remedy when there is no hearing and no doubt that a demotion has occurred is reinstatement. Black, supra. Here the facts clearly indicate a demotion has occurred.

Accordingly, we make the following

ORDER

AND NOW, this 22ndday of August , 1977, it is hereby ordered that the Appeal of Esther Kline is sustained. The Executive Council of Middle Bucks Area Vocational-Technical School is hereby ordered to reinstate Mrs. Kline as a full-time dental assistant instructor without loss of pay.

Caryl M. Kline

Caryl M. Kline
Secretary of Education