

Appeal of Leonard J. Kobeski, a Professional
Employee, from a decision of the Board of
School Directors of the Lackawanna Trail
School District, Wyoming County,
Pennsylvania

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

No. 200

OPINION

John C. Pittenger
Secretary of Education

Leonard J. Kobeski, Appellant herein, has appealed from a decision of the Board of School Directors of the Lackawanna Trail School District rejecting his claim that he was demoted.

FINDINGS OF FACT

1. Leonard J. Kobeski was employed as a sixth grade elementary teacher in the fall of 1951 in the Factoryville Borough and Clinton Township School District, later a part of the Lackawanna Trail School District.
2. Mr. Kobeski has been in the employ of the Lackawanna Trail School District and its predecessor districts from 1951 to the present.
3. Mr. Kobeski is a professional employe who is certified as an elementary teacher, Intermediate Specialization. He has a Master's Degree and seventeen additional credits beyond that degree.
4. In the 1965-66 school year he served as a sixth grade teacher in the Factoryville Elementary School at an approximate salary of \$6,100.00.
5. On May 16, 1966 Mr. Kobeski was hired by the Lackawanna Trail School Board as the School District's only Elementary Supervisor with a salary of \$8,600.00 for the 1966-67 school year.
6. The Elementary School Supervisor is employed for a 210 day school year, while teachers are employed for 185 days.
7. In executive session on March 13, 1967 the Board adopted the proposed salary schedule for the 1967-68 school year. This schedule was included in the minutes of the Board's April 10, 1967 meeting. The salary schedule made no distinction between teachers and supervisors. A person's salary under the schedule was determined according to years of service and educational degrees and credits obtained. Mr. Kobeski, under this schedule, was in the Master's plus 12 additional credits category, at the maximum step, and was entitled to a salary of \$9,100.00 for the 1967-68 school year.
8. Mr. Kobeski was paid a salary of \$9,600.00 for the 1967-68 school year. There is no evidence in the record of any Board action setting that salary.
9. On April 15, 1968, the Board adopted a salary schedule for nonprofessional employes. Included in the minutes were "Ratios to apply to faculty salary schedule" which provided for a ratio for 1.35 for the Elementary Supervisor. The minutes do not reflect whether or not the Board considered or adopted this ratio schedule.
10. On May 13, 1968 at the regular Board meeting, the April 15, 1968 minutes were adopted.
11. At a special meeting of the Board on May 20, 1968 the Board unanimously adopted its proposed budget for the 1968-69 school year. In the proposed budget the salaries of the district's employes were listed by categories. Under the section on Instruction, the first four categories are 211 Salaries, Principals. \$26,050.00; 212 Salaries, Supervisor \$10,400.00; 213 Salaries, Teachers \$517,430.00; 214 Salaries, Librarian \$13,500.00.
12. Under the ratio formula, Mr. Kobeski would have earned \$12,960.00 for the 1968-69 school year. He was actually paid \$10,800.00 for that period.
13. At the June 10, 1968 Board meeting, the teacher's salary schedule was adopted. The Board found it had budgeted \$1,500 more than needed for the teacher's salaries, and decided to spread that amount between the principals, among whom Mr. Kobeski was apparently included.

14. At the April 28, 1969 special meeting of the Board, the district's salary schedules were discussed in light of the state statutory salary schedules. It was mentioned that the state schedule for supervisors was for 180 days, and that it was within the Board's discretion to set the salary for school terms that exceeded 180 days. At the bottom of the minutes was an addition which stated: "Due to abolishing the formula for paying administrative personnel, the four administrators were asked to meet with the Board in executive session at 7:30 p.m. May 12th."
15. At the May 5, 1969 special meeting, the formula for paying all administrative personnel was discontinued. The salary schedule for teachers was adopted. Under this schedule, a teacher with Mr. Kobeski's experience and degrees would have earned \$11,200.00 during the 1969-70 school year. The District's salary schedule exceeded the statutory minimums for teachers.
16. At the May 26, 1969 special meeting, salaries for administrative personnel were set for the 1969-70 school year. The Elementary Supervisor's salary was set at \$11,000.00. However, only four members of the Board voted in favor of the proposed salaries.
17. At the June 9, 1969 regular meeting the minutes of the special meeting of May 26, 1969 were unanimously adopted. Attached to the minutes of the June 9, 1969 meeting was the summary of the proposed budget for the 1969-70 school year. In that budget, under "Instruction" the salary for "Supervisors" was set at \$10,800.00.
18. At the July 14, 1969 meeting of the Board, Mr. Kobeski requested a hearing before the Board on his reduction in salary.
19. The minutes of the October 13, 1969 Board meeting include a salary schedule for all employes. Mr. Kobeski's salary is listed at \$11,000.00.
20. On November 18, 1969 a hearing was held before the Lackawanna Trail School Board. Mr. Kobeski was the only witness. The Board rendered its decision on June 14, 1971, rejecting Mr. Kobeski's claim.
21. On July 2, 1971 an appeal from the Board's decision was received in the Secretary of Education's Office.
22. A hearing was held at the Department of Education on September 15, 1971. The appeal was remanded to the School District for additional testimony on whether or not the Lackawanna Trail School Board had formally adopted the ratio formula.
23. On March 23, 1972 a hearing was held before the School Board for the purpose of providing the requested additional evidence.
24. On December 12, 1972 a hearing was held at Harrisburg in the Department of Education.
25. At the hearing in Harrisburg, it was shown that the salaries for some administrators had been paid according to the ratio formula; but that there were other administrators who were not paid according to the formula.

DISCUSSION

When this appeal was originally heard in this office in 1971, Mr. Kobeski alleged that he had been demoted by the Lackawanna Trail School Board when it set his salary for the 1969-70 school year at \$11,000.00. This action, he stated, constituted a demotion because the salary was less than what he was entitled to receive for the 1968-69 school year according to a ratio formula for paying administrators. The ratio formula for one in Mr. Kobeski's position as elementary supervisor would set the salary at 1.35 times as much as that person would earn as a teacher, taking into account the extra time worked and the duties of a supervisor. According to this formula, Mr. Kobeski should have been paid \$12,960.00 for the 1968-69 school year. He was actually paid \$10,800.00.

The case was remanded to the School District for additional testimony on whether or not the ratio formula had been adopted by the School Board. At the second hearing in this office, the Appellant rephrased the nature of his appeal, taking the position that he was demoted during the 1968-69 school year when he was entitled to receive \$12,960.00 under the ratio formula, but received instead only \$10,800.00.

Whichever approach the Appellant pursues, his appeal must be dismissed. His argument that he was demoted during the 1968-69 school year must fail for two reasons. First, assuming that

he was entitled to receive the \$12,960.00 salary according to the ratio formula, and, in the absence of any Board action received the lesser sum, he would have an action to recover the salary differential; an action in assumpsit to compel the school district's officers to pay the salary the school board had designated for him to receive. A demotion in salary can only occur as the result of official board action to reduce a professional employe's salary. Therefore, in the absence of such action, there would not be a demotion and there would not be a right of appeal to the Secretary of Education. See *Sweeney v. Lakeland School District*, 71 Lackawanna Jurist 108 (1970).

On the other hand, assuming that the ratio formula did apply to the Appellant, and assuming that he was paid \$10,800.00 as the result of official school board action, the appeal would have to be dismissed because the Appellant in effect consented to the demotion. Section 1151 of the Public School Code of 1949 provides in part:

"...but there shall be no demotion of any professional employe either in salary or type of position, except as otherwise provided in this act, 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..." 24 P.S. §11-1151.

At the first hearing before the School Board, Mr. Kobeski testified that he did not consent to the reduction of salary for the 1968-69 school year. However, the first time he informed the Board that he did not consent was when he made his request for a hearing at the July 14, 1969 meeting of the School Board--over a year after he would have received his first pay check for the 1968-69 school year.

There are cases that hold that a professional employe may be demoted without his or her consent, but that the demotion cannot become effective until after the hearing is held, *Tassone v. School District of Redstone Township*, 183 A. 2d 536, 408 Pa. 290 (1962). There are other cases which hold that a professional employe has ten days within which to request a hearing after notice of a demotion, *Speer v. School District of Collingdale Borough*, 24 D. & C. 2d 550, 48 Del. Co. 396 (1962). Ten days may be too rigid a time requirement because it may not be clear when notice of a demotion has been received or because it may not be clear that a demotion has in fact occurred, as with a possible mistake in making out a pay check. However, since nonconsensual demotions cannot become effective until after a hearing, where an employe has reason to believe he has been demoted, that employe has a duty to make his objections known as soon as he is aware of the demotion. The employe cannot sit back and wait until an extensive amount of time has passed before objecting, thereby postponing the effective date of what had been to all appearances a closed matter, particularly since the school board can demote an employe without his or her consent, provided the demotion is neither arbitrary nor discriminatory, *Tassone, op. cit.*

Accordingly, we find that if the Appellant was in fact demoted in salary for the 1968-69 school year, his failure to make timely objection to the action of the School Board must be construed as consent to that demotion.

By the same reasoning, if the Appellant's salary of \$10,800.00 for the 1968-69 school year was set by action of the School Board, the Appellant cannot claim a demotion occurred when his salary was raised to \$11,000.00 for the 1969-70 school year. If the ratio formula applied, the Board's action in setting the 1968-69 salary would be a rejection of the ratio formula for the elementary supervisor. That action would be a demotion which the Appellant should have objected to when made. The Appellant cannot come in a year after the ratio formula for him was abolished, and try to argue in effect that the Board only abolished the ratio formula for the elementary supervisor for one year.

The only way the Appellant can claim a reversable demotion is if the ratio formula was in effect for the elementary supervisor during the 1968-69 year, but that the school district's

employees, for one reason or another, failed to pay Mr. Kobeski the \$12,960.00 salary he was entitled to receive. In that situation, the \$11,000.00 salary for the 1969-70 school year could not become effective until the School Board rendered its decision in June of 1971.

However, after an exhausting review of inadequate minutes of School Board meetings that are part of the record in this appeal, and a review of the arguments at the hearings in the Department of Education, we find that the School Board did not intend to adopt a ratio formula that applied to the elementary supervisor, but instead chose to set his salary by independent Board action; and that the Board set his salary for the 1968-69 school year at \$10,800.00. In support of this last finding, we note that the minutes of the May 20, 1968 Board meeting included in the Board's budget for the 1968-69 school year provision for the salary of one "supervisor" at \$10,400.00. That meeting, it is noted, occurred just one month after the April 15, 1968 meeting, when the minutes first included provision for a ratio formula. If the School Board had intended to apply the ratio formula to the elementary supervisor, they would have reflected their intentions in the salary provisions of the budget. The additional \$400.00 apparently came from the Board's decision of its June 10, 1968 meeting to divide \$1,500.00 among the principals.

The Lackawanna Trail School Board's methods of keeping its minutes and setting salaries for its employes, as reflected in the record in this case, are very poor. Section 508 of the Public School Code requires the Board to set salaries by a majority vote of the Board, duly recorded. The record in this case indicates that salary decisions for administrators were not properly recorded, that they were frequently made on an ad hoc basis, by indirection, or possibly even by accident.

We find the Board's adoption of salary schedules that pay supervisors of teachers, like Mr. Kobeski, a lower salary for working a longer school year than they would receive had they remained teachers to be improper and contrary to the intent of the School Code. Policies of this nature are self-defeating since they discourage those teachers with the most experience from accepting supervisory positions. However, since salaries in excess of the statutory minimums are within the Board's discretion, we can only comment on what we see to be an injustice. It should be noted that Mr. Kobeski appears to be performing the duties of a principal, and, if so, he may not have been paid in accordance with the statutory minimum.

Accordingly, we make the following

ORDER

AND NOW, this 26th day of July, 1973, the Appeal of Leonard J. Kobeski from the decision of the Board of School Directors of the Lackawanna Trail School District rejecting his claim of demotion is hereby dismissed and the decision of the School Board is sustained.

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Appeal of James Morandini, a Professional
Employee, from a decision of the Board of
School Directors of the Kiski Area School
District, Westmoreland County, Pennsylvania

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

No. 202

OPINION

John C. Pittenger
Secretary of Education

James Morandini, Appellant herein, has appealed from a decision of the Board of School Directors of the Kiski Area School District, Westmoreland County, Pennsylvania, terminating his contract and dismissing him as a professional employe.