

considers teaching techniques, pupil reaction, preparation and personality. In the *Appeal of Sullivan County Joint School Board*, 410 Pa. 222, 189 A.2d 249 (1963) the court held that two preliminary unsatisfactory ratings must be made before an employee can be dismissed for incompetency. See also *Mulhollen Appeal*, 155 Pa. Super. Ct. 587, 39 A.2d 283 (1944) and *Streibert v. York School Directors*, 339 Pa. 119, 14 A.2d 303 (1940).

A review of the record in this case indicates the Appellant was never given any unsatisfactory ratings during the last years of his employment with the School District of the City of Allentown.

"If a dismissal is to be justified on the grounds of incompetency, the legislative provision for supervising the competency of professional employes must be strictly followed." at 252, 227-228. *Appeal of Sullivan County Joint School Board*, 410 Pa. 222, 227-28. 189 A.2d 249, 252 (1963).

Since the school board had not supported its charge of incompetency with the statutory requirement of two unsatisfactory ratings, the charge must be dismissed for lack of sufficient evidence and failure to comply with Section 1123 of the School Code.

In the instant case, the school board acted properly as to the charge of immorality. Section 1122 of the School Code specifically empowers the board of school directors to dismiss a teacher for certain causes and on certain grounds. Participating in an illegal gambling operation may be deemed contrary to accepted standards of morality and brings reproach upon the teaching profession. We hold that such professional misconduct provides a basis for the school board to dismiss a teacher.

Accordingly, we make the following:

ORDER

AND NOW, this 22nd day of June, 1976, it is hereby Ordered and Decreed that the Appeal of Richard C. Baker be and hereby is dismissed, and that the decision of the School Board of the City of Allentown dismissing him as a professional employee on the ground of immorality be and hereby is sustained.

* * * *

HELEN K. McCracken, Appellant

In the Office of the Secretary of Education

v.

Central Susquehanna Intermediate Unit,
Appellee

Teacher Tenure Appeal No. 280

OPINION

John C. Pittenger
Secretary of Education

Helen K. McCracken, Appellant herein, has appealed the termination of her employment as "Adult Basic Education Specialist" with the Central Susquehanna Intermediate Unit.

FINDINGS OF FACT

1. Prior to her being hired by Appellee, Appellant was a certified teacher in Pennsylvania, having taught business courses for some time.
2. On or about June 21, 1972, Appellant was hired by Appellee and appointed to the position of Administrative Assistant in Special Education.

3. According to the job description, Appellant's duties as Administrative Assistant can fairly be summarized as overseeing and supervising secretarial and clerical employees.
4. Appellant did a good job as Administrative Assistant receiving satisfactory ratings and in fact receiving a merit increase for her outstanding work in that position.
5. In the spring of 1973, Appellant was promoted to the position variously referred to in the testimony as Business Manager or Specialist I.
6. According to the C.S.I.U. job description, the Business Manager was responsible for all business transactions for special education, including all purchase requisitions, approvals and payments. Specifically, Appellant was to give final approval for purchase requisitions; approve payments of invoices; code invoices; check financial status of the department through printouts and obligations; collect computer attendant forms for printouts; request reports from teachers on In-Service attended; complete all room rental and transportation contracts; complete financial and auditor's reports; issue bid requests when necessary; complete forms for the distribution of transportation costs to districts; complete reports of all expenditures and reimbursements of special education at mid-year revised budget.
7. In July 1974, Appellant assumed the positions of Adult Basic Education Coordinator and Coordinator of Non-Public School Education.
8. According to the C.S.I.U. job description, the Director for Adult Basic Education is responsible for the planning, organization and day-to-day operation of the Adult Education services, including generating, assembling and disseminating relevant information for the use of the intermediate unit and its constituent districts. The following specific job activities and job responsibilities are also listed: keep abreast of state and federal regulations concerning A.B.E.; secure instructional materials and equipment; encourage and prepare experimental programs; assist in identifying and selecting and using community resources; assist in compiling information for reports; develop expertise in adult education; exhibit leadership among staff members; exhibit qualities needed to accept and supervise projects outside primary assignments; provide guidance to students; assist in formulating and administering the budget; work with school superintendents and others to secure teachers housing, etc.; initiate and administer In-Service programs in conjunction with others; represent the assistant-executive director at programs and keep the director and the school board informed concerning adult education and other programs; prepare applications for adult education programs; and attend professional meetings.
9. According to the C.S.I.U. job description, the coordinator for non-public school services was generally responsible for administering local implementation of Acts 194 and 195 of 1972 and had the following specific tasks: assist in formulating and administering C.S.I.U. responsibilities in implementing Acts 194 and 195 per Department guidelines; work with staff members in arranging for auxiliary and instructional services and present plans for approval before submission to non-public schools; act as coordinator and advisor for all portions of Acts 194 and 195 as required in the efficient implementation of the Acts; prepare or cause to be prepared records required for implementation of the Acts; keep open the line of communication between non-public schools and the I.U.; and suggest policy matters to the executive director.
10. In addition to the duties required by the job descriptions in paragraphs 8 and 9 above, Appellant visited at least twice at the Lewisburg Penitentiary and did some other visiting with the institutions and schools with which she was working and talked with instructors, guidance counselors and others seeking advice pertaining to the G.E.D. test.
11. In her final positions, Appellant did not have a contract similar to a teacher's contract, rather being employed by a letter from the Board.
12. Following submission to the Department of Education of the job description and explanation of Appellant's qualifications, the Department on October 23, 1974, granted permission to the Board to employ Mrs. McCracken as Adult Basic Education Program Specialist. The permit limited Appellant to the position for which she was approved and was not transferable.
13. On June 30, 1975, the executive director of Appellee notified Appellant that effective June 30, 1975, she was furloughed from her half-time position concerning Acts 194 and 195 since those Acts had been declared unconstitutional by the U.S. Supreme Court. Appellant was in the same letter relieved of any and all responsibilities in Adult Basic Education; the other half of her position.

14. Following an administrative hearing attended by Executive Director and Appellant, the Central Susquehanna Intermediate Unit Board of Directors held public formal hearings on the Executive Director's charges against Appellant on August 20, 1975, August 26, 1975 and September 17, 1975. At all of said evidentiary hearings, the Appellant was represented by counsel and the case against Appellant was presented by independent counsel while the Board's solicitor sat as an advisor to the Board. All hearings were transcribed by a competent, disinterested public stenographer.

15. Following receipt by members of the Board of all transcripts, a private session of the Board members was held on October 8, 1975, to discuss the case concerning Appellant. Following that session, a public meeting was held at which a roll call vote was taken and a resolution passed, on a vote of 11 for and 2 against, which resolution *inter alia* found Appellant was not a professional employee of the Unit; charges of incompetency and persistent negligence on the part of Appellant were sustained; and the employment of Appellant was thereby terminated.

16. On October 9, 1975, the Board, by letter, notified Appellant of the decision.

17. By letter dated November 7, 1975, Appellant, by her attorney, filed a Petition for Appeal with the Secretary.

18. On December 2, 1975, the Secretary received Appellee's Answer.

19. On December 9, 1975, a hearing was held before Edward A. Miller, examiner, at which testimony was taken on behalf of both Appellant and Appellee.

DISCUSSION

The Appellant contends that her employment with the Central Susquehanna Intermediate Unit was improperly terminated in that the statement of charges, the evidence, and the proceedings were allegedly insufficient to warrant the dismissal and in that the proceedings and action of the Board of Directors violated Appellant's constitutional rights.

The initial question to be reached is jurisdiction. Before the Secretary of Education can review the merits of the proceedings before the Court, it is essential that the Secretary's jurisdiction be established. The Public School Code of 1949, (Act of March 10, 1949, P.L. 30, Article XI, Section 1131, 24 P.S. Section 11-1131) gives the Secretary of Education the power to hear appeals from professional employees. The School Code does not grant similar authority to the Secretary of Education to hear appeals from other classes of employees.

A professional employee is defined in Section 1101 of the School Code as follows:

"(1) The term 'professional employee' shall include those who are certificated as teachers, supervisors, supervising principals, principals, directors of vocational education, dental hygienists, visiting teachers, home and school visitors, school counsellors, 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."

If Appellant is to prevail in her contention that she is a professional employee, she must show that she 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, 315 A.2d 644 (1974).

Appellant attempts to classify herself as a professional employee under Section 1101 by seeking inclusion as a teacher under Section 1141. Section 1141 provides in relevant part:

"(1) 'Teacher' shall include all professional employees and temporary professional employees, who devote 50 percentum (50%) of their time, or more, to teaching or other direct educational activities, such as classroom teacher, demonstration teachers, museum teachers, counsellors, librarians, school nurses, dental hygienists, home and school visitors, and other similar professional employees and temporary professional employees, certificated in accordance with the qualifications established by the State Board of Education."

In *Spano*, supra, the Pennsylvania Supreme Court construed Sections 1101 and 1141 together and held that an individual is a teacher for the purposes of 1141 if he holds the necessary certificate and devotes at least half of his time to teaching or direct educational activities and that he is a professional employee under 1101 if he is found to be a teacher under 1141.

It is uncontested that Appellant holds a teaching certificate in Pennsylvania. Therefore, the examination focuses on the issue of whether Appellant spent at least fifty per cent (50%) of her time in "direct educational activities."

In her position as Administrative Assistant from 1972-1973, Appellant cannot be said to have spent at least half her time in direct educational activities, it being apparent that her position was that of a supervisor of a secretarial pool.

Likewise, in her position from 1973-74, as business manager, it is apparent that Appellant did not participate in direct educational activities in that virtually all of her activities concerned the handling of requisitions, invoices, contracts, reports and other in-house paper work.

In her final position from July 1974 through June 30, 1975, we are also not convinced that Appellant was engaged in direct educational activities in either one of her positions. Once again, her position primarily involved paper work concerning the Adult Basic Education Program and non-public school services, such as keeping abreast of regulations, processing requisitions for instructional materials and equipment, compiling information for reports and budgets and submitting those budgets to the Department of Education. Appellant spent an unspecified amount of time visiting with the institutions and schools with which she was working and did some talking with instructors, guidance counselors and others seeking advice about the G.E.D. test, but there is no indication on the record what portion of her time was thus occupied.

The Director of the Intermediate Unit testified that based on Appellant's job description and his own knowledge of Appellant's duties and functions as Director of Adult Basic Education, his opinion was that Appellant spent zero (0%) per cent of her work in teaching or other direct educational activities. The duties of the Appellant must be evaluated in light of *Rhee*, supra, in which the Commonwealth Court discussed what duties constitute direct educational activities under Section 1141 of the School Code. The Court upheld the lower court's decision that *Rhee*'s job in a material center was making special education material available to local schools and institutions and that *Rhee*'s duties in library functions, purchasing, inventory control, tour guidance and other office work were not such direct educational activities as to bring *Rhee* within the provisions of Sections 1141 and 1101(1) of the School Code. It is our opinion, using *Rhee* as a guideline, that Appellant did not devote fifty percent (50%) or more of her time to teaching or other direct educational activities.

Appellant has not advanced the argument that she falls within any of the other categories of 1101(1) such as supervisor, supervising principal, assistant principal, vice principal, director of vocational education, dental hygienist, visiting teacher, home and school visitor, school counselor, child nutrition program specialist, school librarian, school secretary, or school nurse.

Two additional points must be discussed. The first is the argument made on behalf of Appellant that intermediate units are somehow a unique creation under which most employees of an intermediate unit should be considered professional employees simply because their work relates to educational services. This argument is militated against by Sections 951 and 963 of the School Code, which provide that intermediate units are part of the public school system and also that professional and temporary professional employees of intermediate units have the same rights and privileges as professional and temporary employees of school districts. Taking these sections, together, we ascertain a legislative intent to put intermediate unit employees on an equal footing with other school employees; the intent is not to enlarge the powers and privileges of intermediate unit employees as opposed to other school-related personnel. Therefore, the criteria established in other cases are applicable to intermediate unit employees.

The final point Appellant raises is that the Board of Directors, in appointing Appellant to her position in 1974, allegedly appointed her to the "non-teaching professional staff". We feel that in light of the preceding discussion and consideration of the exact functions performed by Appellant that she is not a professional employee within the meaning of the School Code and

of the intermediate unit, and that the unit is not bound to consider Appellant a professional employee because of the single use of that term.

The Appellant in this case clearly was not a professional employee while serving in the positions of coordinator of non-public school services and director for Adult Basic Education.

An employee of a school district who is not a professional employee has the right to challenge her dismissal by recourse to the provisions of the Local Agency Law, Act of December 1, 1968, P.L. 1133, as amended, 53 P.S. Section 11301, et seq. The Local Agency Law provides for an appeal to the Common Pleas Court after action by the School Board.

As 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 December, 1976, it is Ordered and Decreed that the Appeal of Helen K. McCracken be dismissed for lack of jurisdiction.

* * * *

Appeal of Anne E. Weikel, a professional employee, from a decision of the Board of School Directors of the Milton Area School District, Northumberland County, Pennsylvania

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

No. 281

OPINION

John C. Pittenger
Secretary of Education

Anne E. Weikel, Appellant herein, has appealed from the decision of the Board of Directors of the Milton Area School District, Northumberland County, terminating her contract and dismissing her as a professional employee.

FINDINGS OF FACT

1. Appellant is a professional employee. She was first employed by the Milton Area School District in September of 1968 as a physical education teacher for girls in the sixth, seventh and eighth grades.
2. On August 30, 1975 the Board of School Directors of the Milton Area School District by resolution duly adopted, instituted proceedings for the dismissal of the Appellant on the grounds of incompetency, cruelty, persistent negligence and persistent and wilful violation of the School Laws of the Commonwealth. Appellant was given notice of these charges and had an opportunity to be heard.
3. Hearings were held before the school board on these charges on the following dates: September 15, 1975; September 22, 1975; September 23, 1975; September 25, 1975; September 29, 1975; October 15, 1975; October 20, 1975; and October 23, 1975. By resolution of the School Board dated October 28, 1975; the Appellant was dismissed on the grounds of incompetency, persistent negligence and persistent and wilful violation of the School Laws of the Commonwealth of Pennsylvania and her contract terminated. The charge of cruelty was dismissed by the school board.
4. On November 24, 1975, the Appellant filed her appeal with the Office of the Secretary of Education.
5. Pursuant to notice, a hearing on the appeal was held on March 24, 1976.