

As the Appellant is not a professional employee, the Secretary of Education has no jurisdiction over this appeal.

Accordingly, we make the following

ORDER

AND NOW, this 18th day of March, 1975, it is Ordered and Decreed that the Appeal of Barbara K. Wirth be dismissed for lack of jurisdiction.

* * * *

Appeal of Eugene Pasekoff, a Professional Employee, from a decision of the Board of School Directors of the Clairton School District, Allegheny County, Pennsylvania

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

No. 242

OPINION

John C. Pittenger
Secretary of Education

Eugene Pasekoff, Appellant herein, has appealed from the decision of the Board of School Directors of the Clairton School District assigning him to the position of Coordinator of Curriculum and Instructional Services from that of Principal of the Middle School, which action, he alleges, constitutes an improper demotion in status.

FINDINGS OF FACT

1. The Appellant is a professional employee. On August 20, 1973, the Board of School Directors of Clairton School District appointed the Appellant to the position of Principal of the Clairton Middle School at an annual salary of \$15,100.00. Prior to that assignment, the Appellant had been serving as an assistant principal.
2. On December 11, 1973, the Appellant was rated unsatisfactory by the District Superintendent, Dr. Hyman Haffner. At his request, this rating was done on the Department of Education's rating form, DEBE-333(5-72). The Appellant was rated unsatisfactory in judgment, dependability, planning and organization, and school generalship. Dr. Haffner discussed this rating with the Appellant and supplied him with anecdotal notes supporting that rating.
3. On December 12, 1973, Dr. Haffner informed the Appellant he was recommending to the School Board that it create the new position of Coordinator of Curriculum and Instructional Services, and that it assign the Appellant to this position.
4. At its December 17, 1973 meeting, the School Board approved the creation of the position of Coordinator of Curriculum and Instructional Services and approved Dr. Haffner's recommendation that the Appellant be assigned to the position at no loss in salary.
5. The job description for the position of Coordinator of Curriculum and Instructional Services, dated December 17, 1973, provides that the major duties of the Coordinator are to: provide leadership in curriculum development for the district; implement results of curriculum planning in the district; and, supervise and evaluate educational programs. The major responsibilities of the Coordinator are to: assemble and direct district-wide task forces for curriculum planning processes; develop strategies for implementation of task force work; provide in-service training; continuously evaluate curriculum and instruction; and, perform other tasks as required, assigned and directed by the Superintendent of Schools.
6. On January 14, 1974, a hearing was held before the Board of School Directors of the Clairton School District. The Appellant had previously requested such a hearing on the basis that he was

with witnesses who testify why a demotion has not occurred. The professional employee would then have the opportunity, through cross-examination or the introduction of rebuttal evidence, to show that a demotion had occurred."

The Appellant attempted to establish that he had been demoted by cross-examining Superintendent Haffner. Dr. Haffner testified, however, that he thought the Appellant had received a lateral transfer from one administrative position to another that was at least equal in importance. Dr. Haffner pointed out that the Coordinator would assume duties that the Superintendent would normally have to perform himself, would have responsibilities concerning the entire educational program of the district, and would have a closer working relationship with the Superintendent than a principal.

Dr. Haffner's testimony does not support the Appellant's contention that he has been demoted. Accordingly, we must dismiss the appeal since the evidence present on the record is not adequate to support a conclusion that the Appellant has been demoted.

Even if we were to find that the Appellant had been demoted, we would sustain the School Board's action assigning the Appellant to the Coordinator's position. As we stated in *Kauffman*, *op cit.*:

"The school board could go further and introduce evidence explaining the reasons for the action objected to by the professional employee. We recommend that this be done, even though the school board believes its action was not a demotion. By explaining the reasons for the action, and giving the professional employee the opportunity to challenge those reasons, the school board, to a limited extent, makes academic the question of whether there was a demotion.

"[Section 1151] . . . of the School Code does not prohibit a school board from demoting a professional employee, but simply provides that a nonconsensual demotion shall be subject to a right to a hearing. *** Any professional employee may be demoted under the statute provided that such demotion takes place only after a hearing and that such demotion not be made in an arbitrary or discriminatory manner.' *Smith v. Darby*, supra, 130 A. 2d at 666.

The prime function of the hearing procedure is to require the official authority to explain its action to the professional employee affected and to afford him the opportunity to present his position in light of such explanation, *Tassone*, supra. [*Tassone v. School District of Redstone Township*, 183 A. 2d 536, 408 Pa. 290 (1962)].

* * *

"Accordingly, we will not reverse a school board's action, even though the board had incorrectly determined that the professional employee was not demoted, where the school board has fully explained at the hearing how its action affects the professional employee and has given proper reasons for that action; reasons which the employee claiming a demotion has failed to discredit or rebut."

The reasons given at the hearing by Dr. Haffner for reassigning the Appellant show that the School Board's action was not arbitrary or capricious and that the Appellant was transferred because he was not performing well as Principal. As a Principal, the Appellant was marked

unsatisfactory in judgment because, at the beginning of the school year, he notified the Superintendent that there were not enough rooms available in the Middle School Building for a remedial math class. Arrangements were made through the Business Manager to find a facility elsewhere; one was rented and renovated at additional cost to the district. However, that facility was not used very long because the Appellant found space within the Middle School and had the students reassigned. Dr. Haffner felt that the Appellant should have been able to find that space at the beginning of the year rather than after the district, at some expense, had obtained another facility. The Appellant was rated unsatisfactory in the area of dependability because he failed to submit the monthly fire drill reports as required by the Superintendent. These reports are necessary to verify that fire drills were being conducted on a monthly basis. The Appellant was marked unsatisfactory in the areas of planning and organization, and school generalship because of his failure to provide adequate in-service day programs.

Accordingly, we make the following

ORDER

AND NOW, this 22nd day of July, 1975, it is hereby Ordered and Decreed that the Appeal of Eugene Pasekoff be and hereby is dismissed.

* * * *

Appeal of B. Franklin Shue, a Professional
Employee, from a decision of the Board of
School Directors of the Cornell School
District, Allegheny County, Pennsylvania

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

No. 243

OPINION

John C. Pittenger
Secretary of Education

B. Franklin Shue, Appellant herein, has appealed from the action of the Board of School Directors of the Cornell School District, Allegheny County, Pennsylvania, removing him as Band Director, and from the Board's refusal to grant him a hearing on this action, requested pursuant to Section 1151 of the Public School Code of 1949, as amended.

FINDINGS OF FACT

1. The Appellant, B. Franklin Shue, is a professional employe of the Cornell School District.
2. The Appellant was notified that he was being removed from his position as Band Director of the Cornell School District, effective with the beginning of the 1974-75 school year.
3. The Appellant requested a hearing before the School Board in accordance with Section 1151 of the School Code on what he alleged to be a demotion.
4. The School Board did not provide such a hearing because the Board did not consider its action to be a demotion under the School Code.
5. On June 3, 1974, a Petition of Appeal was received on behalf of the Appellant in the Office of the Secretary of Education.
6. On June 17, 1974, an Answer to the Petition of Appeal, filed on behalf of the Cornell School District, was received in the Office of the Secretary of Education.
7. A hearing on the appeal was held on August 20, 1974.