

Robert Pawlowski, Appellant

vs.

The Board of School Directors of the Steel
Valley Area School District

Teacher Tenure Appeal No. 224

OPINIONS

John C. Pittenger
Secretary of Education

Robert Pawlowski, Appellant herein, has appealed from the decision of the board of school directors of the Steel Valley Area School District dismissing him as a professional employe on the grounds of incompetency and immorality.

FINDINGS OF FACT

1. Robert Pawlowski, Appellant, is a professional employe. On October 9, 1967 he was issued a professional employe contract with the Munhall School District, later incorporated into the Steel Valley School District.
2. On February 23, 1973, two criminal complaints were brought against Mr. Pawlowski, accusing him of receiving stolen goods, a violation of Section 817 of the Criminal Code. The acts of which Mr. Pawlowski was accused were specified in the complaints as follows:

"The acts committed by the accused were: Unlawfully and feloniously did buy, have and receive (1) Man's Pocket Watch (Gruen) value of \$150 belonging to Mr. Andrew Wallace, (1) Ladies Watch value \$40 belonging to Mrs. Elizabeth Wallace, Combination G. E. Stereo-Record Player, value \$150 belonging to Mrs. Katherine Miller, well knowing and having reasonable cause to know that the aforesaid property to have been recently before stolen and feloniously taken by (name of minor deleted) from various residences aforesaid."

The second complaint accused Mr. Pawlowski of the following:

"The acts committed by the accused were: Unlawfully and feloniously did buy, have and receive (1) 35mm Camera with case, Serial No. 1105310 value of \$239 belonging to Joseph J. Seaman also Kodak Slide projector, value \$229.95 Model No. 860H belonging to Joseph J. Seaman well knowing and having reasonable cause to know that the aforesaid property to have been recently before stolen and feloniously taken by (name of minor deleted) and (name of minor deleted) from Joseph J. Seaman, 530 Commonwealth Avenue, West Mifflin, Pa."

3. On February 23, 1973, the Friday evening edition of Daily News of McKeesport, Pennsylvania, reported that the previous night police officers from Elizabeth Township had apparently cracked a burglary ring involving house break-ins in the Township when the officers discovered a burglary in progress and arrested two juveniles from Munhall. The news article stated in part:

"Chief Brkovich said the two [juveniles] implicated Robert A. Pawlowski, 29, of 3710 Wood St., West Mifflin...."

"Chief Brkovich said a search of the Pawlowski home revealed a large quantity of items viewed as possible burglary loot. Pawlowski was arraigned before District Magistrate Daniel Kelly on charges of receiving stolen goods.....The two juveniles were turned over to county juvenile officials. No hearing dates have been set."

4. A similar article appeared in the Daily Messenger on Saturday, February 24, 1973. The Daily Messenger article stated in part:

"Pawlowski, a teacher in the Steel Valley School District, was arraigned on the same charge (receiving stolen goods) and was released on \$1,000 bond."

5. Mr. Pawlowski was absent from school on Friday, February 23, 1973, without excuse. He was also absent on personal leave on Monday, February 26, 1973. Thereafter, he was apparently suspended without pay by the superintendent of schools.

6. By letter dated March 12, 1973, from the president of the board of school directors of the Steel Valley School District, Mr. Pawlowski was notified that a hearing would be held on March 26, 1973 to determine whether or not his contract as a professional employe should be terminated on the charges of immorality and incompetency. The statement of charges noted that in connection with Mr. Pawlowski's arrest was the arrest of several students of the Steel Valley School District, two of whom had implicated him as having bought a stolen gun from them. The charges also noted that his arrest had received extensive newspaper coverage, and that the incidents were well known throughout the student body and the communities of the Steel Valley School District. The charges stated:

"That due to the loss of your reputation in the communities and the student body, your effectiveness as a teacher is ended resulting in a loss of your competency. The buying of stolen goods from students renders you immoral and incompetent. The finding of stolen goods on your residence renders you immoral."

7. A hearing was held before the board of school directors of the Steel Valley School District on March 26, 1973. Police Officer David Graham testified about the events which led up to Mr. Pawlowski's arrest. Mr. Pawlowski's counsel was not permitted to cross examine Officer Graham. The school board, becoming concerned that further examination could possibly jeopardize the criminal prosecution, decided to excuse Officer Graham as a witness and to expunge all of his testimony from the record.

8. Only two other witnesses testified on behalf of the school district at the March 26, 1973 hearing; they were, Dr. Lawrence Griffin, superintendent of schools, and Mrs. Mary Kautz, president of the Parents Teachers Organization. Their testimony essentially concerned the fact that by his arrest, Mr. Pawlowski had lost the respect of the school community and was therefore no longer competent to serve as a teacher. Introduced as exhibits at the hearing were the two newspaper articles and copies of the criminal complaints filed against Mr. Pawlowski.

9. The school board met on April 2, 1973 to decide what further action to take with respect to Mr. Pawlowski. One of the board members advised that there were only two avenues open; Mr. Pawlowski must either be reinstated to his teaching position or be permanently dismissed because the School Code did not provide for further suspension. The school board voted 9-0 that the suspension of Mr. Pawlowski should be changed to dismissal. Three of those voting did not attend the hearing and did not have an opportunity to read the transcript. Notice of the school board's action was sent to Mr. Pawlowski by letter dated April 4, 1973 from John J. Lordon, president of the Steel Valley Board of School Directors.

10. On April 5, 1973 Mr. Pawlowski's petition of appeal was received in the office of the Secretary of Education. A hearing on the appeal was held on May 17, 1973.
11. On April 24, 1973 the Grand Jury indicated Mr. Pawlowski on each charge of receiving stolen goods.
12. On July 19, 1973, Mr. Pawlowski pleaded not guilty and waived a trial by jury.
13. On July 20, 1973, after trial in open court, Mr. Pawlowski was found guilty of receiving stolen goods. He was released on probation for a period of three years upon payment of the costs of prosecution.

DISCUSSION

This case illustrates the problems which occur when a school board attempts to dismiss a professional employ for reasons which are the subject of a pending criminal prosecution. In order to avoid compromising or jeopardizing the criminal prosecution against Mr. Pawlowski, the school board withdrew from the record of the dismissal hearing all testimony relating to whether Mr. Pawlowski had purchased and possessed property stolen by students. By eliminating such testimony, the only evidence the school board had to support Mr. Pawlowski's dismissal was the superintendent's opinion that Mr. Pawlowski could no longer be an effective teacher, because of the community and student reaction to the criminal charges which were outstanding against him and the newspaper accounts of his arrest, and therefore, he was incompetent. Mr. Pawlowski contends that such evidence is not sufficient to justify the permanent termination of a professional employe's contract. We agree, and accordingly cannot sustain the school board's decision to change Mr. Pawlowski's suspension to a dismissal.

On appeal, one of our functions is to determine whether there is substantial evidence on the record supporting the school board's decision. It is clear that such evidence is lacking in this case. The superintendent's opinion that Pawlowski can no longer be an effective teacher because of the outstanding criminal complaints and the newspaper articles is not sufficient to warrant Pawlowski's dismissal. The superintendent's opinion was based solely on the community reaction to newspaper accounts of Pawlowski's arrest. The community's opinion of a teacher, in and of itself, is not proper basis for terminating that person's employment. The community could have a bad opinion of a teacher for reasons which are absurd, trivial or otherwise without merit. If the reasons which form the basis for the community's opinion are not sufficient to warrant the teacher's dismissal, it should be obvious the community's opinion is inadequate, also.

In this case, the reasons for what the superintendent perceives as the community's bad opinion of Pawlowski are the newspaper accounts of his arrest and the criminal complaints against him, neither of which is evidence of wrongdoing. In essence, they are merely allegations of wrongdoing.

The permanent termination of a teacher's employment must be based on something more than accusations. The purpose of the hearing required for the dismissal of a professional employe is to determine whether there is sufficient evidence to support the accusations, not to determine whether accusations exist.

In the instant case, Pawlowski was dismissed because he had been accused of improper and illegal conduct. No evidence was presented to establish whether he was actually guilty of such conduct. Whether or not the accusations were true or false was apparently unimportant. It is improper to dismiss a professional employe simply because he has been accused of improper conduct. Accordingly, we cannot sustain the school board's decision to dismiss Pawlowski.

Instead of dismissing Mr. Pawlowski, the school board should have continued his suspension until the criminal proceedings had been completed. The power of a school board to suspend a professional employe without pay as an incident of dismissal proceedings was recognized by the State Supreme Court in *Kaplan vs. School District of Philadelphia*, 388 Pa. 213, 130 A.2d 672 (1957). The Court noted in that case that it sometimes becomes necessary, in order to protect the welfare of the students, to suspend a professional employe pending dismissal proceedings; should the school board decide after a hearing to dismiss the employe, he is not entitled to

back pay for the period of his suspension since he did not work during that time. We note that there are other alternatives to a suspension without pay; for example, the professional employe could be assigned duties which do not bring him into contact with children, or he could be suspended with pay, or, with the employes permission, he could be given a leave of absence without pay. We feel it is for the superintendent of schools to decide which of these alternatives is best under the circumstances. In making his decision, the superintendent should recognize that the paramount issue is the welfare of the children.

If the superintendent elects to suspend the employe without pay, he should have his action affirmed by the school board since the dropping of criminal charges for a not guilty verdict could mean that the employe is entitled to reinstatement without loss of pay. It does not necessarily have to mean that, however, because conduct which does not warrant a criminal conviction could still be the basis for the dismissal of a professional employe. Therefore, the school board could still bring dismissal proceedings against the professional employe for conduct which did not warrant a criminal conviction.

Our conclusion that we cannot sustain the school boards decision dismissing Mr. Pawlowski does not mean that he is entitled to reinstatement. Instead, his status remains what it was before the school board dismissed him, namely, a suspension without pay.

Were it not for the fact that Mr. Pawlowski was subsequently convicted on each complaint of receiving stolen property, we would have remanded this case back to the school board for further proceedings on the question of whether or not Mr. Pawlowski should be dismissed. In our opinion, Mr. Pawlowski's conviction makes such action unnecessary. Section 1131 of the Public School Code of 1949, Act of March 10, 1949, P.L. 30, 24 P.S. §11-1131, provides that the Secretary of Education, shall enter such order, either affirming or reversing the action of the board of school directors, as to him appears just and proper. We have taken judicial notice of the fact that Mr. Pawlowski was convicted of the charge of knowingly receiving stolen property. In our opinion, such a conviction is conclusive evidence of immorality and incompetency; the burden of proof in a criminal proceeding being far more severe and demanding than the burden which must be met to justify the dismissal of a professional employe.

Accordingly, we make the following:

ORDER

AND NOW, this 30th day of July, 1976, it is hereby Ordered and Decreed that the decision of the Board of School Directors of the Steel Valley School District dismissing Mr. Robert A. Pawlowski as a professional employe on the grounds of immorality and incompetency be reversed;

IT IS FURTHER ORDERED that Mr. Pawlowski's status for the period from April 2, 1973 to July 30, 1973 be that of a professional employe suspended without pay;

AND, IT IS FURTHER ORDERED that Mr. Pawlowski's request for reinstatement be denied.