

Appeal of Harold W. Sanders, a Professional Employee, from a decision of the Board of School Directors of the Mechanicsburg Area School District, Cumberland County, Pennsylvania

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

No. 270

OPINION

John C. Pittenger
Secretary of Education

Harold W. Sanders, Appellant herein, has appealed from the decision of the Board of School Directors of the Mechanicsburg Area School District abolishing his position of curriculum coordinator and assigning him to the position of teacher, which action, he contends, constitutes an improper demotion in position and salary.

FINDINGS OF FACT

1. The Appellant, Mr. Harold W. Sanders, is a professional employee. He has twenty-seven years of public school experience. He is certified to teach English and music. He is also certified to serve as an elementary or secondary principal, or as a supervising principal. He also holds a superintendent's letter of eligibility. The Appellant served as an elementary principal from 1961 to 1963. The Appellant began his service in the Mechanicsburg Area School District in August, 1963, serving as elementary supervisor. In 1965 he was appointed Curriculum Coordinator and served in that position until June, 1974.

2. In January, 1974, Mr. Charles E. Shields, Superintendent of the Mechanicsburg Area School District, informally discussed with the Appellant a proposed reorganization in which the Appellant's position as Curriculum Coordinator would probably be abolished. Superintendent Shields subsequently received the school board's approval in February, 1974, to develop his plans for the proposed reorganization.

3. At its May 14, 1974 meeting, the Mechanicsburg Area School Board approved a Central Staff Reorganization Plan phasing out the Curriculum Coordinator position as of June 30, 1974 and establishing a new position -- "Administrative Assistant (Secondary)." The school board also approved a job description for the new position.

4. Prior to the reorganization, the Appellant had considered taking a sabbatical leave during the 1974-75 school year. On May 8, 1974 he submitted his request for such a leave. The school board referred the request to the Superintendent and Teacher's Committee for review and recommendation.

5. Because of the reorganization, the Appellant considered retiring or taking an administrative position in another district at the conclusion of the sabbatical leave. He discussed these possibilities with Superintendent Shields. In his letter dated May 20, 1974, Superintendent Shields summarized these discussions as follows:

- "1. Tentative educational plans to be confirmed at a later date will be acceptable.
2. An understanding as to a potential assignment for the 1975-76 school year should be discussed and concluded as part of the recommendation to the Board.
3. If your educational plans materialize, the likelihood of your request for waiver of the requirement that you return to the school district for one year after the termination of your sabbatical leave should be reviewed and in your interest an understanding established."

6. By letter dated May 28, 1974, the Appellant submitted his application for the new position of "Administrative Assistant-Secondary," noting that the new position appeared to be similar to the Curriculum Coordinator position. His reasons for submitting the application were stated in the letter as follows:

"By so doing I am expressing an interest in the same or comparable position and, thereby, not forfeiting my privilege to return to the district in the 1975-76 school year."

7. On that same day, May 28, 1974, the Appellant met with the Superintendent and the Teacher's Committee -- composed of three directors of the school board -- to discuss his sabbatical leave and future plans. The Appellant was asked to summarize his understandings on the topics discussed, which he did in his letter of May 31, 1974. That letter provides in part:

"2. Future Assignment--

Also, as discussed, a position will be available to me in the district in my area of teacher certification (music, English) at the conclusion of the sabbatical leave for a period of one to three years. First choice -- instrumental music; second choice -- English.

3. Waiver-

If an appropriate professional opportunity were to become available to me outside the district (at the conclusion or during the leave), it is respectfully requested that the Board would waive, without penalty, the requirement that I return to the district for a minimum of one year at the conclusion of the leave. If I were to elect to retire from public school service at the conclusion of the leave, the request for waiver would also be asked."

8. At the June 11, 1974 meeting of the Mechanicsburg Area School Board the Appellant's sabbatical leave request was approved. The School Board's minutes point out that the sabbatical leave was granted, "...with the understanding that at the termination of his leave he would be reassigned as a classroom teacher in his area of certification with his salary adjustment to be based on the teaching salary scale in effect for the 1975-76 school year."

9. The Appellant was informed of the School Board's action by letter dated June 12, 1974 from Superintendent Shields. That letter provides in part:

"It is also understood that at the termination of your leave, you will be reassigned as a classroom teacher in your area of certification with your salary adjustment to be based on the teaching salary scale in effect for the 1975-76 school year."

The letter also stated that the approval of the sabbatical leave was predicated on the understanding that Mr. Sanders would document by September his educational plans supporting his sabbatical leave request.

10. The Appellant was on sabbatical leave for the 1974-75 school year. In August, 1974, the School Board appointed another applicant to the position of Administrative Assistant-Secondary.

11. By letter dated April 2, 1975, the Appellant responded to Superintendent Shield's letter of June 12, 1974. The Appellant objected to the teaching assignment, claiming it was a demotion in salary and status. He would accept the teaching assignment under protest, subject to a final determination as a result of an appropriate hearing. He requested a meeting with Superintendent Shields to discuss alternatives to the assignment, pointing out that he would request a formal hearing before the School Board if a satisfactory solution was not reached.

12. At the Appellant's request, a hearing was held before the Board of School Directors of the Mechanicsburg Area School District on July 17, 1975.

13. On August 12, 1975, the School Board approved by an 8 - 0 vote a resolution sustaining the Appellant's assignment to a teaching position with commensurate salary for the 1975-76 school year. In its resolution, the School Board noted that the Appellant agreed to his assignment as a classroom teacher at the meeting held May 28, 1974 with the Teachers' Committee of the School Board. The resolution also noted that Appellant received official notification of his reassignment and salary in the June 12, 1974 letter and that he did not file timely objections to that assignment. Notice of the Board's action was sent to Mr. Sanders in a letter dated August 13, 1975 from Mr. Richard L. Fry, Secretary of the Mechanicsburg Area School Board.

14. On August 25, 1975, the Appellant's petition of appeal was received in the Office of the Secretary of Education. A copy of that petition was sent to the School Board's solicitor, who sat with the Board at the hearing to make rulings on evidence; the Board had retained special counsel to represent the school district at the hearing. The Appellant failed to send a copy of his petition of appeal to the Secretary of the School Board. In his petition the Appellant contends that the School Board failed to return him to the position held prior to the sabbatical leave, failed to grant an increment for the period of the sabbatical leave, failed to consider him for other administrative positions for which he is certified according to his seniority, and arbitrarily and capriciously demoted him by abolishing the Curriculum Coordinator position and creating another position with the same responsibilities.

15. On September 22, 1975, the school district filed a petition to quash the appeal because the Secretary of the School Board had not been served with a copy of the petition of appeal, as is required by Section 1131 of the School Code, 24 P.S. Section 11-1131.

16. A hearing on the appeal was held in the Office of the Secretary of Education on September 25, 1975, at which time additional testimony was heard.

17. The Appellant's salary for the 1973-74 school year as Curriculum Coordinator was \$18,250. His salary as a teacher for the 1974-75 school year is \$15,500.

18. The "Administrative Assistant-Secondary" position differs substantially from the Curriculum Coordinator position, even though it includes some of the duties of that position. The Administrative Assistant-Secondary is to assist the Superintendent with administrative detail. Approximately 80% of the Assistant's time is spent in duties which are not directly related to the instructional program.

DISCUSSION

The Mechanicsburg Area School Board asks that the appeal be quashed because the Appellant failed to send a copy of his Petition of Appeal to the Secretary of the School Board, as required by Section 1131 of the Public School Code, 24 P.S. Section 11-1131. We find that the School Board had adequate notice and knowledge of the appeal and was not prejudiced by the Appellant's failure to follow the express provisions of the School Code; a copy of the Petition of Appeal was sent to the School Board's solicitor, the School Board retained special counsel for the appeal who received a copy of the petition from the solicitor, notice that an appeal had been filed was sent by this office to the Secretary of the Board on September 5, 1975. Accordingly, the School Board's motion to quash is dismissed.

The Appellant contends he was improperly demoted in type of position and salary. We find that the Appellant's reassignment from the administrative position of Curriculum Coordinator to the instructional position of teacher, with a reduction in salary, constitutes a demotion in both salary and position. However, we find that this demotion was not improper. Further, we find that the Appellant consented to this demotion. Accordingly, we must dismiss his appeal.

There is no doubt the Appellant's assignment to a teaching position is a demotion. As Curriculum Coordinator, the Appellant occupied a high level administrative position directly under the Superintendent. In that position the Appellant had administrative responsibilities concerning the entire instructional program of the district, responsibilities which included limited supervision of teachers. Now the Appellant is in the position of those he once supervised and evaluated. His authority and responsibility is limited to the classroom and his assigned subject. As further evidence of his reduced status, he has been placed on a lower salary scale with a corresponding reduction in his own salary.

The important question is whether this demotion violates the School Laws. Section 1151 of the School Code provides in part:

"...but there shall be no demotion of any professional employe either in salary or in 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 and an appeal in the same manner as hereinbefore provided in the case of the dismissal of a professional employe." 24 P.S. Section 11-1151

The School Board contends this Section does not apply to the Appellant because the Curriculum Coordinator position is a so-called nonmandated position. This contention is without merit, there is nothing in the School Code limiting the provisions of Section 1151 to mandated positions. On the contrary, Section 1151 expressly applies to "any professional employee." The terms "mandated" and "nonmandated" have no meaningful significance and merely serve to raise false considerations which can lead a school board to reversible procedural errors in proceedings such as this. The important consideration is whether or not the person is a professional employee in the position in which he serves. The Appellant was clearly a professional employee while serving as Curriculum Coordinator, *Appeal of Spano*, 267 A.2d 848, 439 Pa. 256 (1970).

Section 1151 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, *Smith v. Darby School District*, 130 A.2d 661, 666, 388 Pa. 301 (1957). Should the matter come to a hearing, the school board has the burden to explain and justify its action if a demotion is proposed or has occurred, *Smith v. Darby School District*, *ibid*, 130 A.2d at 671, *Tassone v. School District of Redstone Township*, 183 A.2d 536, 538-39, 408 Pa. 290 (1962). Once that explanation and justification has been offered the professional employee has the heavy burden of establishing that the school board's action resulted from arbitrary or discriminatory reasons, *Smith v. Darby School District*, *supra*, 130 A.2d at 672.

Leaving aside the issue of consent for the moment, it is clear the Appellant's reassignment to a teaching position was not improper. The school board has the right to reorganize the district's staff for the purpose of more efficient management. With that purpose in mind, the Superintendent recommended an administrative reorganization wherein the Curriculum Coordinator's position would be abolished and a new position with a different type of responsibility created. We do not accept the Appellant's argument that the position of Administrative Assistant-Secondary is substantially the same as that of Curriculum Coordinator; the record satisfies us that these are different positions.

The School Board could assign the Appellant to a teaching position because it had proper and acceptable reasons for abolishing the Curriculum Coordinator's position. Since the Administrative Assistant-Secondary was a new position, the School Board was not required to assign the Appellant to it, but was free to solicit applications.

The decisive finding in this appeal is that the Appellant consented to his demotion. Consent can be expressed, (i.e. verbal or written) or inferred, (i.e. failure to make a timely objection to a demotion). We find the Appellant expressly consented to his demotion at the May 28, 1974 meeting, summarized by him in his May 31, 1974 letter. The Appellant's failure to object to his teaching assignment until April 1975, nine months after being informed of that assignment, strengthens our conclusion that he had consented to his demotion.

It is our impression he consented because he did not plan to return to the district after his sabbatical leave, expecting instead to retire or obtain employment elsewhere. When he realized he would be returning, he objected to his new assignment. By then, however, it was too late; the objection must be made within a reasonable time of the school board's action approving the reassignment. A nine month delay is not reasonable.

The Appellant contends Section 1168 of the School Code, 24 P.S. Section 11-1168, requires him to be reinstated to the Curriculum Coordinator position since it provides:

"No such leave of absence shall be considered a termination or breach of the contract of employment, and the person on leave of absence shall be returned to the same position in the same school or schools he or she occupied prior thereto."

We conclude that Section 1168 does not prevent a school board from abolishing a position for proper reasons while the employee is on leave. If the school board cannot place the employee in a similar position at the conclusion of the leave and has to demote him, the employee can implement his rights under Section 1151 and require the school board to justify its actions. This rule is not applicable in the instant case because the Board's action occurred prior to the leave and the Appellant failed to make timely objection to that action.

The Appellant contends he was not given the proper increment while on leave. The record is sketchy on this point. The Coordinator's position ended June 30, 1974; the teaching assignment was not to begin until September, 1975. This suggests that the Appellant did not have a position during the 1974-75 school year. However, we are not aware of any action by the School Board removing the Appellant from the salary schedule for administrators prior to the 1975-76 school year. Accordingly, if that salary schedule provided an increment above the Appellant's 1973-74 salary of \$18,250, which he would have received had he served as Curriculum Coordinator during the 1974-75, he is entitled to be placed on the appropriate step and to receive one-half of the increment, as provided by Sections 1169 and 1170 of the School Code.

The Appellant contends he is qualified for the Administrative Assistant-Secondary position. In light of his experience, we have no doubts that he is qualified. However, being qualified does not mean he is entitled to the position. Since it is a new position, the School Board has the right to fill it with whomever it wants.

While we cannot agree with the Appellant's claim he has been improperly demoted, we understand the disappointment he must feel in his current situation; as he nears the conclusion of a long and dedicated career in public education, during which he has continually studied to improve his skills to provide better service, he finds himself in much the same status as when he began. It is unfortunate that the Mechanicsburg Area School District is unable to find a position for the Appellant that makes better use of his extensive administrative experience and skills.

Accordingly, we make the following:

ORDER

AND NOW, this 20th day of November, 1975, it is hereby Ordered and Decreed that the Mechanicsburg Area School District grant Mr. Harold W. Sanders the appropriate salary increment for the 1974-75 school year, as determined according to the administrative salary schedule for that year.

IT IS further Ordered and Decreed that the Appeal of Harold W. Sanders, contending that he was improperly demoted, be dismissed and that the resolution of the Board of School Directors of the Mechanicsburg Area School District upholding his assignment to a teaching position be sustained.

* * * *

WILLIAM L. PYLE, Appellant

v.

The Board of Education of the
Pittsburgh School District

Teacher Tenure Appeal No. 271