

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.

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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.

## DISCUSSION

The appeal in this case involves the refusal of the School Board to grant a hearing to the Appellant on his alleged demotion by the Board. Section 1151 of the School Code provides, inter alia:

" . . . but there shall be no demotion of any professional employe either in salary or in type of position 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."

The School Board argues that it is not obligated to provide the Appellant with a hearing because, in its opinion, the Appellant has not been demoted in rank, pay or status. The position of the School District in this appeal was discussed and rejected by the State Supreme Court in *Smith v. Darby School District*, 388 Pa. 301 (1957). In that case the Court said:

"Appellee [the Darby School District] urges that the remedy given by the Public School Code of 1949 [i.e. Section 1151] is an exclusive remedy and, since the School Code does not provide for a hearing where an employee is not demoted, and since Appellant was not demoted, he, therefore, is without a remedy. Appellee acknowledges that a professional employee, if demoted in type of position or salary, is entitled to a hearing under the School Code, but argues that if, however, before a hearing is held, the school board is of the opinion that the professional employee has not been demoted in type of position or salary, then he is not entitled to a hearing. *Under this view a board could arbitrarily conclude the employee had not been demoted and, in the absence of a demotion, a fortiori no right to a hearing under the statute would exist. We do not read the statute in this light nor do we conceive that the legislature ever intended such an anomalous result. When a professional employee claims he has been demoted in type of position and/or salary he is entitled to a board hearing just as a professional employee claiming an unlawful dismissal is entitled to a hearing.*" *Smith v. Darby*, 388 Pa. 301, 317-318. Emphasis supplied.

The Court further stated:

"When a professional employee *claims* that he has been demoted it is the school board's duty to grant him a hearing. At that hearing two questions are before the school board: (1) whether or not the professional employee has been demoted either in type of position or salary, and, (2) in the event the professional employee has been demoted, the reason for such demotion must be made clear and apparent." *Smith v. Darby*, *ibid*, page 319. Emphasis supplied.

The position taken by the Cornell School District in this case is directly contrary to the above language. In light of the Supreme Court's decision, we find that the School Board's refusal to provide the Appellant with a hearing on his claim of demotion is unexcusable. Because of the Board's refusal to grant him a hearing, the Appellant has had to suffer unnecessary expense and loss of time in pursuing his right to a hearing which the Cornell School Board has the duty to provide.

Accordingly, we make the following:

## ORDER

AND NOW, to wit, this 23rd day of August, 1974, the Appeal of B. Franklin Shue from the action of the Board of School Directors of the Cornell School District refusing him a hearing is sustained, and the Board of School Directors is hereby ordered to set a date for a hearing before it on the demotion as alleged by the Appellant.

\* \* \* \*

Appeal of Paul D. Landi, Professional Employee; from a decision of the Board of School Directors of the West Chester Area School District, Chester County, Pennsylvania

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

No. 246

## OPINION

John C. Pittenger  
*Secretary of Education*

Paul D. Landi, Appellant herein, has appealed from the decision of the Board of School Directors of the West Chester Area School District, dismissing him as a professional employee on the grounds of cruelty.

## FINDINGS OF FACT

1. The Appellant is a professional employee. He has been employed in the West Chester School District since 1963. During the 1972-73 school year he taught sixth grade at the Fernhill Elementary School in the district. During the 1973-74 school year he taught sixth grade at Paoli Pike Elementary School.
2. On the afternoon of Monday, May 6, 1974, the Appellant's sixth grade students were restless and edgy in anticipation of dismissal which would be occurring within the next 15 minutes; it was a study period and the students were free to work as they wished. The Appellant noticed that one student, Donald F., was talking with his classmates instead of studying. The Appellant called Donald to the front of the room and asked him to be quiet and work on his lessons. When Donald returned to his chair, someone said: "The elephant is angry." This remark the Appellant understood to be a reference to himself -- the Appellant is a large, heavyset man, weighing approximately two hundred thirty pounds and standing six feet, one inch tall.
3. Believing that Donald had made the remark, the Appellant called him back to the front of the room. The Appellant grabbed Donald by the shoulders, shook him, then pushed him into the blackboard causing Donald to hit his head. Donald fell to the floor. The Appellant grabbed Donald by his hair and arm and lifted him to his feet. The Appellant then pushed Donald into the bookcase. Donald hit his head again and fell to the floor. He was crying. The Appellant exclaimed: "Look at him. He is crying like a baby."
4. Shortly after the incident, Appellant dismissed the class but kept Donald in the room. Donald continued to cry until he was released to board the school bus. When the school bus arrived at his home he had to be helped to his home by fellow students. Donald by this time was dizzy and nauseous, he had pain in his head and was vomiting. The Appellant called Donald's mother after school, ostensibly to inform her of her son's bad behavior. Donald's mother told the Appellant that Donald was in a very distressed state and that she was taking him immediately to the hospital to determine if he had sustained any injuries. The Appellant then attempted to contact the principal of the elementary school, Mr. Donald Pitt, and inform him of the details of the incident.
5. Donald was taken to the hospital that evening. No injury was discovered, except for reddish