

"Any school district or intermediate unit with respect to area technical schools that now are hereafter employs any teacher, who does not hold any form of teacher certification to teach in the public schools of this Commonwealth, valid for the subjects or grades in which the teacher is given instruction, shall forfeit one reimbursement unit for each such teacher employed." 24 P.S. 25-2518.

And, Section 2838 of the School Laws provides in part:

"It is unlawful for any person within this Commonwealth to assume or use the professional title or other designation which any registrant may use in connection with his or her name in the practice of the art of teaching, which may be prescribed in accordance with this act, unless he or she has a legal and valid certificate of registration issued under this act, (providing for the registration of qualified teachers)...." 24 P.S. 1231.

Section 1122 of the Public School Code states in part:

"The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employe shall be ... persistent and wilful violation of the school laws of this Commonwealth on the part of the professional employe." 24 P.S. 11-1122.

Mr. Kemmerer held a Provisional I certificate in music which he failed to renew by completing the required twelve additional credits in education. As a result, he was teaching as of September 1972 without a valid teaching certificate. By the time of the hearing in April before the Board of School Directors, he still had not earned the required credits. By law, he has three years in which to earn them.

We could make considerably greater reference to the School Laws on this subject. However, the statutory provisions we already cited are more than sufficient authority to support our finding that teachers in the public schools are required to be properly certificated. Failure to maintain or hold such certification constitutes wilful violation of the School Laws and is therefore grounds for dismissal.

Accordingly, we make the following

#### ORDER

AND NOW, this 10th day of August, 1973, it is ordered and decreed that the Appeal of Donald W. Kemmerer from the decision of the Board of School Directors of the Pine Grove Area School District be and is hereby dismissed, and the action of the said Board dismissing him as a professional employe is hereby sustained on the ground of persistent and wilful violation of the School Laws of this Commonwealth.

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Appeal of Kenneth Smeltz, a substitute teacher, from a decision of the Board of School Directors of the Blue Mountain School District, Schuylkill County, Pennsylvania

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

No. 225

## OPINION

John C. Pittenger  
*Secretary of Education*

Kenneth Smeltz, Appellant herein, has appealed from a decision of the Board of School Directors of the Blue Mountain School District terminating his services as music teacher and band director.

### FINDINGS OF FACT

1. On June 7, 1972, a Professional Employee's Contract was issued to Mr. William E. Shenenberger, as a result of his completing satisfactorily two years of service with the Blue Mountain School District as an instrumental music teacher in the high school and as band director.
2. On June 15, 1972, Mr. Shenenberger requested a military leave of absence for approximately four years, to be effective immediately. Mr. Shenenberger, facing imminent induction into the Armed Forces, chose to enlist into the United States Air Force. He auditioned for and was accepted into the Ceremonial Band stationed in Washington, D.C. At the time he enlisted, the United States was involved in the Vietnam War.
3. Mr. Shenenberger's request for a military leave of absence was approved by the Blue Mountain Board of School Directors on June 19, 1972.
4. On July 17, 1972, the Blue Mountain Board of School Directors approved the hiring of Kenneth Smeltz, the Appellant, as a teacher, duties to be assigned by the District Superintendent, Mr. Ray A. Kurtz.
5. By letter dated July 18, 1972, Superintendent Kurtz notified the Appellant that the School Board had elected him on the previous night as a substitute teacher beginning with the 1972-73 school year. The letter clearly indicated that the Appellant was hired to substitute for Mr. Shenenberger, who had been given a military leave of absence. The letter stated that the Appellant would be assigned to the instrumental music program at the high school and would be assigned as Director of the Band.
6. On August 21, 1972, the Appellant signed a standard form Temporary Professional Employee's Contract which had the word "substitute" typed in at the top of the document.
7. By letter dated December 15, 1972, Mr. William Shenenberger notified the Blue Mountain School District that he had been given an honorable discharge from the Armed Forces. Mr. Shenenberger requested reinstatement in his former position, effective the beginning of the second semester of the 1972-73 school year.
8. At its December 18, 1972 meeting, the Blue Mountain Board of School Directors voted to reinstate Mr. Shenenberger and to terminate the Appellant, effective as of the beginning of the second semester of the 1972-73 school year. The Appellant was notified of the Board's action by a letter dated January 3, 1973.
9. At its January 15, 1973 meeting, the School Board voted to grant the Appellant's request for a hearing on his dismissal. A hearing before the Board was held on January 22, 1973.
10. On March 16, 1973, the Appellant received official notification from the Blue Mountain School District that the Board of School Directors had decided not to reinstate him.
11. By letter dated April 12, 1973, received in the Office of the Secretary of Education on April 16, 1973, the Appellant appealed from the decision of the Blue Mountain Board of School Directors. This appeal was perfected by a petition filed on May 17, 1973. A hearing on the appeal was held on June 29, 1973. Certain information was requested of the Appellant at that hearing; as yet, such information has not been furnished.

### DISCUSSION

The Public School Code of 1949, as amended, 24 P.S. §1-101 et seq., provides for three classifications of employment status for persons serving on a school district's educational staff. These classifications are professional employe, temporary professional employe, and substitute, and are defined in Section 1101 of the School Code.

The Secretary of Education has the authority under Section 1131 of the School Code to hear and decide appeals of *professional employes* who are dismissed or demoted. I emphasize the term "*professional employe*" since substitutes and temporary professional employes do not have the right to appeal to the Secretary of Education. Section 1131 clearly limits this right to professional employes:

"In case the professional employe concerned considers himself or herself aggrieved by the action of the board of school directors, an appeal by petition, setting forth the grounds for such appeal, may be taken to the Superintendent of Public Instruction (Secretary of Education)...." 24 P.S. §11-1131.

Therefore, it is necessary for a person taking an appeal to the Secretary of Education to show that he or she has earned professional employe status. Otherwise, the Secretary does not have jurisdiction to decide the appeal.

The Appellant in this appeal is a "substitute", as is clearly shown by the definition appearing in Section 1101(2):

"The term "substitute" shall mean any individual who has been employed to perform the duties of a regular professional employe during such period of time as the regular professional employe is absent on sabbatical leave or for other legal cause authorized and approved by the board of school directors or to perform the duties of a temporary professional employe who is absent." 24 P.S. §11-1101(2).

The Appellant was hired to replace Mr. William Shenemberger, who was given an approved leave of absence for military service in accordance with Section 1176 of the School Code. The Appellant knew he was hired as a substitute for Mr. Shenemberger; the letter from Superintendent Kurtz, dated July 18, 1972, clearly informs the Appellant of his substitute status. The Appellant's contract of employment has "substitute" typed on it.

As a substitute, the Appellant should have known he had no tenure rights to his teaching position; that his employment was conditioned on Mr. Shenemberger remaining on leave. Further, since Mr. Shenemberger was on a military leave, the Appellant should have known that Mr. Shenemberger had the right to return to his teaching position immediately upon the completion of military service. Section 1177 of the School Code states:

"Upon termination of the military service of such an employe, the school board shall immediately return said employe to the same position in the same school or schools, from which said employe was granted leave of absence, or if this is impracticable in the opinion of the board, then to a similar position." 24 P.S. §11-1177.

Admittedly, the Appellant had the expectation of a longer term of service as a substitute. Nevertheless, the School Board was obligated to recognize Mr. Shenemberger's statutory right to return to the teaching position filled by the Appellant. We find that the School Board tried to be as fair as possible to the Appellant. It gave him a hearing as required by the Local Agency Law. It gave him the extra compensation he would have earned during the Spring semester as band director. However, under the circumstances, the Board had little choice but to terminate the Appellant's services.

We find that the Appellant is a substitute and therefore does not have the right to appeal to this Office for a review of the action of the Board of School Directors of the Blue Mountain School District terminating his services.

Accordingly, we make the following

ORDER

AND NOW, to wit, this 19th day of September, 1974, the Appeal of Kenneth Smeltz is dismissed.

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Appeal of Dr. Earl A. Becker, a Professional Employee, from a decision of the Board of School Directors of the Allentown School District, Lehigh County, Pennsylvania

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

No. 226

OPINION

John C. Pittenger  
*Secretary of Education*

Dr. Earl A. Becker, Appellant herein, has appealed from the decision of the Board of School Directors of the Allentown School District reassigning him from the position of Director of the Regional Instructional Materials Center to Science and Mathematics teacher, which action, he contends, is an improper demotion.

FINDINGS OF FACT

1. Dr. Earl A. Becker, Appellant, is a professional employee. He began his employment in the Allentown School District in 1946 as a ninth grade general Science teacher, and served in that capacity until 1958. In 1958 the Appellant helped to establish the Allentown School District's Instructional Materials Center, and served as its Director until June, 1972.
2. On October 30, 1971, the Carbon County Board of School Directors and the Lehigh County Board of School Directors established the Lehigh Valley Audio Visual Library and Instructional Materials Center.
3. On the same day, October 30, 1971, the Lehigh Valley Audio Visual Library and Instructional Materials Center agreed to purchase audio visual services from the Allentown School District, in accordance with the terms of the Participating Agreement entered into on that date.
4. Under the terms of the Participating Agreement, it was agreed that the Appellant would be appointed as Director of the Lehigh Valley Audio Visual Library and Instructional Materials Center; in that capacity he was to devote one-half of his time to the Lehigh Valley Center. The other half of his time was to be spent in the service of the Allentown School District. The Appellant remained in the employment of the Allentown School District, with his salary and benefits paid by the District; however, the Lehigh Valley Audio Visual Library and Instructional Materials Center reimbursed the Allentown School District for one-half of the Appellant's salary, in return for the services he performed on behalf of the Center. The Appellant served as Director of the Lehigh Valley Center until June, 1972.
5. The Carbon County Board of School Directors and the Lehigh County Board of School Directors evolved into the Carbon-Lehigh Intermediate Unit, pursuant to the Act of May 4, 1970, Act 102. On October 18, 1971 the Carbon-Lehigh Intermediate Unit resolved to terminate the "October 30, 1961" Participating Agreement with the Allentown School District, effective as of June 30, 1972.
6. It was the intention of the Carbon-Lehigh Intermediate Unit to establish and operate its own audio visual and instructional materials center to serve the School Districts within the Intermediate Unit, including the Allentown School District. The staff of the Intermediate Unit's audio visual center would be employees of the Intermediate Unit. The Appellant applied in the early part of 1972 for the position of Director of the Intermediate Unit's new center, but he was not given the position.