

In the instant case, the teacher has elected to have the arbitrator determine the justifiability of the unsatisfactory rating. In so doing, she has waived the right to contest the unfairness of the unsatisfactory ratings before the school board or the Secretary.

As stated above, the arbitrator's right to make a binding decision under a specified collective bargaining agreement is decided by the Pennsylvania Labor Relations Board. The PLRB, in *PLRB V. Coatesville Area School District*, PERA-C-7158-B, has held that the Appellee school district must submit the propriety of Appellant's unsatisfactory ratings to binding arbitration. Therefore, at the new hearing before the school board the arbitrator's determination of the fairness of Appellant's ratings will be binding. Before the school board's dismissal of the Appellant on the ground of incompetence can be finalized it must have the arbitrator's decision as to the propriety of the ratings.

Accordingly, we make the following:

ORDER

AND NOW, this 13th day of August, 1976, it is hereby Ordered and Decreed that the decision of the Board of School Directors of the Coatesville Area School District be reversed, and that the case be remanded to the Board.

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GRANT D. STEFFEN, Appellant

v.

The Board of School Directors
of the South Middleton Township School
District

Teacher Tenure Appeal No. 259

OPINION

John C. Pittenger
Secretary of Education

Grant D. Steffen, Appellant herein, has appealed from the decision of the board of school directors of the South Middleton Township dismissing him as a professional employe on the grounds of incompetency.

FINDINGS OF FACT

1. Mr. Steffen, Appellant, is a professional employe. He is certificated in the areas of Special Education, Elementary Education, and Social Studies. He graduated from Lycoming College in 1962 and taught two years at Central Dauphin School District as an elementary teacher in grades 4 and 5. During the 1964-65 school year he worked as an elementary teacher in Harrisburg School District teaching grade 5. During the 1965-66 school year he taught Special Education, grades 7 through 9, at the Warwick Union Junior High School. From 1966 through 1968 he taught Special Education in the Lower Dauphin School District. In August of 1968, he began his employment in the South Middleton Township School District as a teacher of special education.
2. In June, 1972, Dr. Joseph M. Mainello became superintendent of the South Middleton Township School District. Dr. Mainello instituted a uniform evaluation procedure for all professional employes, requiring probationary employes to be rated at least four times a year and tenured employes at least twice a year. Before Dr. Mainello's appointment, the school district lacked established evaluation procedures.
3. In the summer of 1973, Dr. Mainello requested and received school board approval to revise the district's special education program for secondary students. Under the old program, these

students received all their instructions from one teacher, Mr. Steffen, and were essentially kept apart from the regular students. The new program called for the special education students to be mainstreamed, that is, placed in a regular learning environment where they could socialize with their peers. The proposed program would help the special education students learn to cope with the every day frustration of living in a world where others do not share their disadvantages. The older students would be placed in the district's work experience program, to develop basic skills with which to earn a living. The number of students who would be affected by this new program was small; during the 1972-73 school year, there were about one dozen secondary students (grades 7-12) in the district's special education program. The implementation of the new special education program meant that Mr. Steffen's teaching position would have to be abolished.

4. By letter dated August 7, 1973, Dr. Mainello notified Mr. Steffen that his special education position had been abolished. He was offered another position for the next school term in which he would have to teach three sections of 7th grade Social Studies and two sections of 10th grade English. By letter dated August 13, 1973, Mr. Steffen rejected this new position on the basis that he was not certified in English. He expressed his willingness, however, to exercise his seniority rights and "bump" another teacher so that he could take a full time position in Social Studies.

5. By letter dated August 28, 1973, Dr. Mainello informed Mr. Steffen that he was being suspended because he had rejected the combination English-Social Studies teaching position. Dr. Mainello informed him that he could have the next available position in Social Studies.

6. At Mr. Steffen's insistence, a meeting was held on August 31, 1973 in the office of the Commissioner of Basic Education. At that meeting the school district was informed that the suspension of Mr. Steffen appeared to be improper because the district had not obtained Department of Education approval to curtail the Special Education program. Accordingly, the school board decided to retain Mr. Steffen in his special education position, pending Department approval of the proposed program.

7. Mr. Steffen taught Special Education for the entire 1973-74 school year. The number of students he taught at any one time was extremely small; in one of his classes there were only two students, in another, only four.

8. Mr. Steffen was rated satisfactory for the 1972-73 school year; however, he had the lowest rating of any member of the professional staff. In December, 1973 he received an unsatisfactory rating for the first semester of the 1973-74 school year. In June, 1974, he received a satisfactory rating for the second semester of that school year.

9. The ratings of Mr. Steffen were conducted by Mr. William Young, Principal high school principal, and Mr. Jack N. Beil, assistant middle school principal. In arriving at a rating, these men observed Mr. Steffen numerous times in his classes. It was their standard policy after each observation to give the teacher in question a copy of the evaluation report and also to have a follow-up conference with the teacher after the evaluation. Dr. Mainello felt that Mr. Young was rating Mr. Steffen too high. However, Mr. Young stood by his evaluation of Mr. Steffen and refused to lower the rating.

10. On September 3, 1974, at a teachers in-service day just prior to the beginning of the 1974-75 school year, Mr. Steffen was informed that he would be teaching two sessions of regular students in 9th grade world cultures, in addition to four very small sessions of special education students. Each of the world cultures classes had at least 20 students enrolled. It had been many years since Mr. Steffen taught Social Studies courses to regular students.

11. No later than a week into the school term, students began asking the administration to transfer them out of Mr. Steffen's world cultures classes. The students did not feel they were learning anything; they thought that there was a lack of discipline and control in the classroom. The administration did not grant the requests to be transferred.

12. Mr. Steffen was observed on a number of occasions by Mr. Young and Mr. Beil during the fall semester of the 1974-75 school year. He was evaluated as being in need of improvement in many areas; his lessons were poorly prepared, there was a lack of evidence of long range planning, there was student dissatisfaction with his performance.

13. At a parents' open house in late October, 1974, Mr. Steffen, instead of discussing with parents

the progress of their children, complained about the problems he was having teaching world cultures. He told the parents that nothing was going on in class, that he was unable to educate the children because the classes were undisciplined. He told them he was qualified to teach world cultures, because he was certificated in Social Studies, but stated he did not want to teach that subject. He contended that he was primarily a Special Education teacher, not a Social Studies teacher. He indicated he had become ill as a result of having to teach world cultures; he missed approximately 13 days of school during October. He told the parents they should complain to the administrative staff and to the school board about the world cultures classes he was teaching and request that he be relieved of his duties teaching that subject. Many parents did complain, but requested that their children be removed from Mr. Steffen's class as soon as possible.

14. Mr. Steffen's performance in his world cultures classes failed to improve. He was unable to maintain discipline, students were extremely bored and restless.

15. On December 18, 1974, the students in Mr. Steffen's fifth period world cultures class refused to participate in the lesson. Although present, they would not open their textbooks or to engage in a discussion of the lesson. Instead, when Mr. Steffen insisted that they continue with the lesson, many began talking at once, complaining that they were not learning anything, that they kept doing the same thing every day. They complained that he was not a history teacher.

16. Mr. Steffen notified his principal, Mr. Young, that his students refused to cooperate. Mr. Young immediately relieved Mr. Steffen of his duties teaching world cultures, and assigned those classes to other Social Studies teachers, even though it meant they would have an overload.

17. In a letter dated December 24, 1974, Dr. Mainello reviewed Mr. Steffen's performance that semester. Dr. Mainello noted that Mr. Steffen's world cultures classes had reached a chaotic state and that Mr. Steffen, not knowing what to do to remedy the situation, had requested to be relieved of these classes. Dr. Mainello concluded that Mr. Steffen was incompetent to carry on his duties as a full time employe in the district. Accordingly, he suspended Mr. Steffen with pay pending formal action by the school board. On January 3, 1975, Dr. Mainello prepared a final rating for the first semester of the 1974-75 school year for Mr. Steffen. The rating was unsatisfactory. Mr. Steffen apparently did not receive a copy of this rating until January 23, 1975.

18. On January 13, 1975 the school board decided to initiate dismissal action against Mr. Steffen on the grounds of incompetency, intemperance, cruelty, persistent negligence and willful violation of the school laws. The hearing was initially scheduled to commence on January 28, 1975, but, at the request of counsel for Mr. Steffen, the hearings began, instead, on February 6, 1975. Hearings were held on that date and on February 7, 11, 15, 18, 24, and 25, of 1975. On April 23, 1975 the school board voted to dismiss Mr. Steffen solely on the grounds of incompetency.

19. On May 8, 1975, Mr. Steffen's petition for appeal was received in the office of the Secretary of Education. A hearing on the appeal was scheduled for June 5, 1975, but was rescheduled for July 18, 1975.

DISCUSSION

Mr. Grant Steffen, Appellant, contends he is entitled to reinstatement because there is a lack of substantial evidence to support his dismissal and because the procedural requirements of the School Code were not followed. We disagree. In our opinion, the South Middleton Township School District satisfied the procedural requirements of the School Code. Further, we find there is more than substantial evidence to support the Appellant's dismissal for incompetency. Accordingly, we must dismiss the appeal.

Mr. Steffen contends that he cannot be dismissed unless he receives at least two, *consecutive*, unsatisfactory ratings. We find no support for this contention in either the Public School Code of 1949, Act of March 10, 1949, P.L. 30, 24 P.S. Sections 1-101 et. seq., or in the case cited by Mr. Steffen, the **Thall Appeal**, 410 Pa. 222, 189 A.2d 249 (1963) Mr. Steffen's reliance upon **Thall** is misplaced. In effect, **Thall** requires that there be at least two unsatisfactory ratings; the first serving as a warning that improvement in performance is essential if the employe is to retain

his position. The **Thall** decision prevents the abrupt dismissal of a professional employe of long standing for reasons which, if brought to the employe's attention, could be easily corrected. However, a second unsatisfactory rating indicates that the employe was unable or unwilling to take corrective action, and that the quality of his services continues to be unacceptable.

It should be obvious that the improvement called for by the first unsatisfactory rating is intended to be permanent, not temporary. A teacher who briefly improves his performance after an unsatisfactory rating so as to obtain a satisfactory rating, but then allows his performance to decline and become inadequate once again is not a competent teacher. We hold that the unsatisfactory ratings necessary to dismiss a teacher for incompetency do not have to be consecutive, but that they have to be close enough in time so that the second rating serves as an indication that the employe failed to heed the warning given him by the first. What is a proper amount of time between ratings will have to be determined on a case by case basis. However, where the reason for the unsatisfactory rating is inadequate performance, (as opposed to improper conduct which can be immediately corrected), we do not feel that a lapse of more than three years between unsatisfactory ratings can be accepted. In the instant case, there was a lapse of only one year between the first and the second unsatisfactory ratings. We find that these ratings are close enough together to justify dismissing Mr. Steffen.

Mr. Steffen next contends that virtually all of the evidence introduced against him is inadmissible. Testifying on behalf of the school district were students and parents, Mr. Beil, the assistant middle school principal, Mr. Young, the high school principal, Dr. Ronald L. Finkenbinder, Director of Special Education, Capital Area Intermediate Unit, Dorothy Werner, a school psychologist employed by the Capital Area Intermediate Unit, and Dr. Mainello. Mr. Steffen seeks to strike the testimony of all these persons, with respect to his incompetence except for that of the parents and Dr. Mainello. He objects to the students' testimony because they are not educational experts. He objects to the testimony of Dr. Werner and Dr. Finkenbinder, who are experts in Special Education, because they had no supervisory responsibilities over him. He objects to Mr. Beil's conclusion that he was incompetent on the sole basis that that was a decision for the school board to make. He objects to the testimony of Mr. Young on the basis that Mr. Young is not certificated in Special Education.

The Appellant's objections are absurd. The students' testimony has probative value and, as will be developed later in this opinion, refutes Mr. Steffen's contention that there was a conspiracy by the administrative staff to dismiss him. Although neither Mr. Beil or Mr. Young are certificated in Special Education, they hold administrative certification as principals; their positions as supervisors over the Appellant give their opinions as to his competence the status of expert testimony, *Appeal of Kiebler*, 30 D. & C. 620 (1938). Although the principal is qualified under law to rate a teacher in a specialized subject in which the principal lacks background, the school district engaged the services of experts in Special Education, Dr. Finkenbinder and Dr. Werner, to assist Mr. Young in evaluating Mr. Steffen's deficiencies, and also, to help Mr. Steffen correct those deficiencies. We find that their testimony is admissible. As impartial experts in Special Education, their testimony carries great weight with respect to Mr. Steffen's performance as a Special Education teacher. Their testimony also refutes Mr. Steffen's contention that there was a conspiracy to have him dismissed.

Mr. Steffen contends that his performance in the world cultures class should not be a basis for his dismissal. He cites the fact that he was assigned to these classes without any advance warning, and accordingly had no opportunity to prepare himself.

In our opinion the school administration used extremely bad judgment to wait until the last moment before assigning Mr. Steffen to teach a subject he had not taught for nearly 13 years. On the other hand, we feel that he should have been able to handle his classes after one month of the semester had passed. It is clear to us from the record that the school administration intended to allow him a reasonable time in which to get himself organized; when students complained during the first week of school that they wished to be transferred, they were told to wait and see if things improved. Also, he was not evaluated in his world cultures class until October 10, 1974. We note that he had an extremely light schedule; he was only assigned two regular classes in world cultures, the rest of his schedule was comprised of four special education

classes with only a couple of students in each class. Further, we note that the previous year, when the school district unsuccessfully attempted to terminate its secondary special education program, Mr. Steffen insisted that the school district observe his rights to bump a Social Studies teacher because he was certified in Social Studies. The school district's unsuccessful attempt to eliminate the Appellant's special education teaching position gave him a warning of one year of what was to come. Having been forewarned, he should have done something to refresh his skills in his other areas of certification.

Mr. Steffen contends the administration conspired to have him dismissed. His contention is absurd. In order for there to be a conspiracy, we would have to believe that Mr. Steffen is a competent teacher and that the school administration managed to get the students, their parents, Dr. Finkenbinder, Dr. Werner, and the principals to lie that he was incompetent. On the contrary, we find evidence that Mr. Steffen intimidated the administration in an attempt to prevent it from terminating his special education position. He had told a number of people that he was going to bring criminal charges against Dr. Mainello for conspiring against him. The basis for this so called conspiracy however was the administration's intention to reassign him to a regular position as part of its plan to revise the special education program.

Throughout this matter the administration continually attempted to recognize Mr. Steffen's rights. When the administration attempted in the summer of 1973 to eliminate Mr. Steffen's special education teaching position, it immediately offered him another position, as it is required to do by Section 1125 of the School Code, 24 P.S. Section 11-1125. Mr. Steffen rejected this position because two of the courses he would have had to teach were outside his area of certification. (However, we note it might have been possible for him to have obtained emergency certification for those two courses). When Mr. Steffen rejected that new assignment, the administration informed him he was suspended, but that he would have the first available position in his area of certification. However, when it was brought to the administration's attention that it had acted precipitously in terminating the special education position because it had failed to obtain Department of Education approval to curtail the special education program, Mr. Steffen was immediately reinstated in his old special education position and allowed to remain in that position for the entire 1973-74 school year, even though Department approval was received in the early Fall. When the 1974-75 school year began, the school district did not attempt to dismiss or suspend Mr. Steffen. Instead, because there was no need for a full time special education teacher, the administration assigned to him two classes of regular students. It was Mr. Steffen's complete inability to educate these regular students, his inability to maintain discipline in his classes, and his failure to improve his performance in teaching his special education classes that led to his dismissal, not a conspiracy.

In our opinion, what Mr. Steffen sees as a conspiracy or as harassment directed against himself is nothing more than the school administration's effort to reorganize its teaching staff and the school curriculum so as to provide effective and efficient instructional services. There were sound reasons for eliminating Mr. Steffen's teaching position in special education. The enrollment in those classes was extremely small, so much so that some classes had as few as two students. Further, the concept of mainstreaming special education students into regular classes so that they may work and learn with their peers is considered to be a more effective and desirable form of instruction than that offered by Mr. Steffen.

In our opinion, there is substantial evidence on the record to support Mr. Steffen's dismissal for incompetency. Although he may once have been competent to teach Social Studies, it is clear that during the 1974-75 school year his performance in that subject was unsatisfactory; his students were bored and restless, he could not maintain order. The record shows that his performance in Special Education was unsatisfactory, also.

Accordingly, we make the following:

ORDER

AND NOW, this 6th day of July, 1976, is hereby ordered and decreed that the appeal of Grant D. Steffen be and hereby is dismissed.