

prosecutor may reasonably not have known that his associate "ought" to be called as a witness. Moreover, even after the Appellant called the associate as a witness on cross-examination, the associate's testimony was not prejudicial to the school board's case.

E. THE SCHOOL DISTRICT SUPERINTENDENT'S ROLE

The Appellant contends that the school board had ex parte discussions with the superintendent of the school district. In the present case, the superintendent testified that in January, May and December of 1975, and on other occasions prior to the beginning of the hearings, he discussed the Appellant with the school board. The content of these discussions is not in the school board's minutes.

The superintendent testified that he had decided to wait until the Appellant's criminal prosecution concluded before taking any action against the Appellant. The superintendent discussed this decision at an executive session of the school board at which eight members who voted at the hearing were present. The school board then decided to wait until the end of the criminal prosecution. After the Appellant entered the accelerated rehabilitative disposition program, the superintendent informed the school board that the solicitor had explained to him that the Appellant had not entered the ARD program under which he was "neither not guilty nor guilty." (N.T. 137).

The Appellant argues that on the authority of *Commonwealth Department of Education v. Oxford Area School District*, ___ Pa. Comm. Ct. ___, 356 A.2d 857 (1976), these discussions should render the school board's decision void. *Oxford Area School District* can be distinguished from the present case. In both cases, the superintendents investigated the teachers' conduct, advised the school boards on the results of the investigations and appeared at hearings as witnesses adverse to the teachers. In *Oxford*, however, the superintendent also participated in the adjudicatory phase of the dismissal action when he appeared at a private deliberative session after the close of testimony and before the rendering of the decision. In the present case, the superintendent did not participate in the adjudicatory phase of the hearing.

F. THE APPELLANT'S DEMOTION

The Appellant also argues that his reassignment to a 10th and 11th grade English teaching position commencing in September of 1975 was a demotion under Section 1151 of the Public School Code precluding his dismissal under Section 1122. There is nothing in the Public School Code or in the cases construing it in terms of an election of penalties in this sense. The Appellant consented to his demotion and did not ask for a hearing.

Accordingly, we make the following:

ORDER

AND NOW, this 19th day of January, 1977, it is hereby Ordered and Decreed that the appeal of Anthony P. Giangiacomo be and hereby is dismissed, and that the decision of the Board of School Directors of Pottsgrove School District dismissing him as a professional employee on the grounds of immorality, intemperance, and persistent and willful violation of the school laws, be and hereby is sustained.

* * * *

In Re:

Appeal of Alfred B. Traub, from the
decision of the School Board of the
Garnet Valley School District
terminating his contract as a teacher

Teacher Tenure Case No. 306

OPINION

John C. Pittenger
Secretary of Education

Alfred B. Traub, Appellant herein, has appealed from a decision of the School Board of the Garnet Valley School District terminating his contract as a teacher. This Appeal is taken in accordance with section 1131 of the Public School Code, Act of March 10, 1949, P.L. 30., art. XI, Section 101 et seq., Section 1131, as amended; 24 P.S. Section 11-1131 (hereinafter the "Public School Code"). Counsel for both parties have stipulated the absence of any procedural issues (N.T. 3-4) and this Appeal is based solely on the finding of intemperance by the School Board.

FINDINGS OF FACT

1. Prior to May 8, 1975, Appellant was and had been a professional employee under a contract with the Garnet Valley School District, Upper Darby, Pennsylvania (hereinafter the "District"), since 1965.
2. In the Spring of 1966, without forewarning to the student, Appellant kicked a chair out from under Gregory Rowe, a student in Appellant's mathematics class, causing the said student to fall to the floor where he was struck on the arms by either Appellant's feet or fists.
3. On October 18, 1973, Walter Bell, a student in Appellant's mathematics class, accused Appellant of failing to teach certain materials required for an examination. Without warning, Appellant used his foot to shove a desk into the said student and subsequently pinned the student against a wall by grasping him around the throat in a choking manner. Appellant was removed from the classroom by another teacher who was summoned by the sound of Appellant's angry comments.
4. As a result of the incident involving Walter Bell and at the instigation of a parental complaint, an investigation of the incident was undertaken by Walter J. Udovich, principal of the Garnet Valley High School, at the direction of the School Board. The findings of the investigation resulted in a warning to Appellant on future such incidents, such findings being embodied in a memorandum of December 27, 1973 prepared by Walter Udovich and signed by Appellant.
5. Appellant's teaching ratings including "personality", "emotional stability", "professional relationships", and "judgment", subsequent to the investigation were classed as "satisfactory" by Walter Udovich as principal.
6. On December 4, 1974, Paul Carbutt and Edward Firth, students in the ninth grade, were engaged in horseplay in a corridor of the Garnet Valley High School, when Appellant seized each student around the neck and pulled them to the concrete floor, restraining them there with the weight of his body.
7. After hearing a report of the Carbutt and Firth incident, the School Board on or about April 14, 1975 charged Appellant with three separate instances of assault on students and, by resolution, set a hearing for April 30, 1975 at 8:00 p.m., for purposes of receiving evidence on the alleged assaults.
8. A hearing was held before the School Board at the aforesaid date and time.
9. On May 8, 1975, the School Board voted to dismiss Appellant on grounds of intemperance and incompetency.
10. On or about May 9, 1975, Appellant was informed of the Board's decision by a letter signed by Henry F. Hofmann, superintendent of schools.
11. On May 30, 1975, the Secretary of Education received a Petition filed on behalf of Appellant pursuant to section 1131 of the Public School Code.
12. On July 17, 1975, a hearing was held on Appellant's Petition.
13. On April 9, 1976, the Secretary of Education sustained the Appeal and reversed the decision of the School Board, ordering a remand of the case to the School Board for a rehearing solely on the issue of intemperance.

14. On July 12, 1976, a rehearing on the issue of intemperance was held before the School Board in compliance with the Order of the Secretary of Education.
15. On July 12, 1976, at the conclusion of the aforesaid rehearing and after deliberation, the School Board voted to sustain the charge of intemperance against Appellant and to dismiss Appellant accordingly.
16. On July 29, 1976, the Secretary of Education received a Petition filed on behalf of Appellant pursuant to section 1131 of the Public School Code.
17. On September 8, 1976, a hearing was held on Appellant's Petition.

DISCUSSION

Appellant contends that the facts relied upon by the School Board do not constitute "intemperance" as that term is used in section 1122 of the Public School Code which reads, in pertinent part, as follows:

"The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employe shall be immorality, incompetency, *intemperance*, cruelty, persistent negligence, mental derangement, advocacy of or participating in un-American or subversive doctrines, persistent and wilful violation of the school laws of this Commonwealth..." (Emphasis added.)

The term, "intemperance", is not further defined by statute; nor has it been defined by the Courts of the Commonwealth under this section of the Public School Code.

Under such circumstances, we turn to the Statutory Construction Act of 1972, Act of Nov. 25, 1970, P.L. 707, No. 230, Section 1 et seq., 1 Pa. C.S.A. Section 1501 et seq. for guidance. That statute which, by legislative act, applies to "[e]very statute finally enacted on or after September 1, 1937" unless the Legislature expressly indicates otherwise (Id. at Section 1503(a)), provides:

"Words and phrases shall be construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a peculiar and appropriate meaning or are defined in this part, shall be construed according to such peculiar and appropriate meaning or definitions." Id. at Section 1903(a).

Likewise, section 1921 reads in pertinent part:

"(a) The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly...

"(c) When the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters:

- (1) The occasion and necessity for the statute.
- (3) The mischief to be remedied.
- (4) The object to be attained.
- (6) The consequences of a particular interpretation."

In applying these rules of construction, we look to Webster's preferred definition of "intemperance" as set forth in the unabridged International Dictionary for the ordinary use of the term. By this standard, "intemperance" is construed as meaning:

"Quality or state of not being temperate; want of moderation or restraint... (b) excess in any action or indulgence..." [Emphasis added.]

Although the definition indicates that the term is often applied to the use of intoxicants, general usage is not limited to that situation. Thus, we conclude that "intemperance" may include excessive actions reflecting a lack of personal restraint when viewed against the circumstances from which the actions arise.

This definition is supported by one of the clear intentions of the Legislature in enacting section 1122 of the Public School Code: to protect school children from potentially dangerous individuals in the classroom while delineating the specific grounds upon which public school teachers may be discharged by school boards. Without doubt, the statute contemplates and provides for discharge of a teacher whose actions, intentional or negligent, raise the potential of abuse or harm to students. To narrowly circumscribe a term such as "intemperance" to situations involving intoxicants, as Appellant suggests, would both conflict with the preferred common definition of the term as well as deprive school officials of a basis for removal of an individual whose lack of restraint endangers students. We thus find for Appellee that a charge of intemperance may properly be brought as a ground for discharge where excessive force is used to restrain or punish students reflecting an inability on the part of a teacher to maintain his temper or restrain his physical actions.

Appellant further contends that the facts relied upon by the School Board are insufficient to support a finding of intemperance. Although we do not condone the resurrection of an incident occurring nine years prior to discharge as a proper basis for the decision of the School Board, the occurrence of two serious incidents in 1973 and 1974, each involving a violent action towards students after minor provocation and without warning, does support the Board's decision.

The Courts of the Commonwealth have consistently indicated that a decision of a school board may be sustained by the Secretary if substantial evidence exists to support the Board's determination. See, i.e., *Caffas v. Board of School Directors of Upper Dauphin Area School District*, ___ Pa. Commonwealth Ct. ___, 352 A.2d 898 (1976); *Lande v. West Chester Area School District*, ___ Pa. Commonwealth Ct., ___, 353 A.2d 895 (1976); *Stroman v. Board of School Directors of Harrisburg City School District*, 7 Pa. Commonwealth Ct. 418, 300 A.2d 286 (1973). The record in this case contains substantial evidence that Appellant on at least two distinct occasions was unable to restrain his personal actions as a result of which the safety of students was endangered by excessive physical acts. We thus sustain the action of the School Board in discharging Appellant.

Accordingly, we make the following:

ORDER

AND NOW, this 27th day of December, 1976, it is hereby Ordered and Decreed that the decision of the School Board of the Garnet Valley School District dismissing Appellant, Alfred B. Traub, be sustained on the ground of intemperance.