

4. The Opto-Electronic Technology Program is a two-year program for juniors and seniors. (N.T. 13).

5. From 2003-2004 through 2008-2009, enrollment in the Opto-Electronics Technology Program was:

School Year	Juniors	Seniors	Total
2003-2004	9	10	19
2004-2005	3	9	12
2005-2006	6	2	8
2006-2007	9	6	15
2007-2008	7	6	13
2008-2009	6	7	13

(Respondent's Brief, Page 9).

6. Prior to the 2008-2009 school year, those juniors and seniors enrolled in the Opto-Electronic Technology Program attended separate classes. (N.T. 36).

7. Sometime after the 2007-2008 school year, Dawn Kochler-Taylor, Administrative Director of Lenape, recommended to Lenape's Joint Operating Committee that the Opto-Electronic Technology Program be combined and the instructor position be reduced to 70%.

(N.T. 11-12).

8. Ms. Kochler-Taylor's recommendation was based upon a six-year history of low student enrollment in the Opto-Electronic Technology Program (N.T. 12, 86).

³ The Opto-Electronic Technology Program is officially recognized by the Pennsylvania Department of Education as the Electrical, Electronic and Communications Engineering Technology/Technician Program. (McCauley Exhibit #1).

9. On June 19, 2008, Lenape's Joint Operating Committee adopted a resolution approving Mr. McCauley's demotion from the position of a full-time Opto-Electronic Technology Instructor to a part-time (70%) Opto-Electronic Technology Instructor. (J. Exh. #1).

10. Prior to the demotion becoming effective, McCauley was given the opportunity to consent to the demotion or request a hearing before the Joint Operating Committee for purposes of challenging the demotion. (J. Exh. #1).

11. At Mr. McCauley's request, a hearing before the Joint Operating Committee was held on August 21, 2008. (J. Exh. #2; *see generally* N.T.).

12. On September 18, 2008, the Joint Operating Committee issued an Adjudication, denying Mr. McCauley's challenge and approving his demotion. (Petitioner's Brief, Exhibit #1).

13. As a result of the Joint Operating Committee's actions, Mr. McCauley will receive a 30% reduction in wages, but will continue to receive full fringe benefits, including employer provided health insurance. (N.T. 20).

14. As a result of the Joint Operating Committee's actions, juniors and seniors currently enrolled in the Opto-Electronics Technology Program attend class together; seniors attend a three hour instruction period and juniors attend the last two hours of the three hour period. (N.T. 36).

OPINION

There is no dispute that Mr. McCauley was demoted pursuant to section 1151 of the School Code of 1949. 24 P.S. § 11-1151. The principles controlling the Secretary's inquiry in demotion cases were enumerated in *Brownsville Area School District v. Lucostic*, 297 A.2d 516 (Pa. Cmwlth. 1972). The principles are as follows:

- (1) A Board of School Directors may demote a professional employee in position or salary or both without his or her consent;
- (2) the action of the Board in such case is presumptively valid; and
- (3) the demoted employee contesting the Board's action has the burden of proving it to be arbitrary, discriminatory or founded upon improper considerations.

Id. at 518. In determining whether the demoted employee has satisfied his or her heavy burden of proof, the Secretary must perform a *de novo* review of the record. *See Belasco v. Board of Public Education of the School District of Phila.*, 510 A.2d 337,343 (Pa. 1986). Accordingly, the Secretary is the ultimate fact finder in appeals involving demotions and is not obliged to give deference to the school board's findings. *Shumaker v. Baldwin-Whitehall School District*, TTA No. 7-93 at 6.

Case law addressing the issue of demotions of professional employees clearly shows that school entities possess broad discretion in personnel and administrative actions that result in demotions. Courts have been loathe to interfere with a school's exercise of discretion in a demotion case unless the court is satisfied that the petitioner has met his or her heavy burden of proving that the demotion was arbitrary or based upon discriminatory considerations. *See Piazza v. Millville Area Sch. Dist.*, 624 A.2d 788 (Pa. Cmwlth. 1993).

Mr. McCauley argues that Lenape has mistakenly based its argument on the enrollment numbers of the past six years instead of the past five years and, therefore, has not established that enrollment in the Opto-Electronic Technology Program is low. Essentially, Mr. McCauley contends that if Lenape would have based its decision on only five years of enrollment data, the enrollment numbers have actually increased. *See* Petitioner's Brief at 8. Enrollment in the Opto-Electronic Technology Program at Lenape, however, has been consistently low over the course of the last six years. In fact, during each of the past five school years, fifteen or less students

were enrolled in the Opto-Electronic Technology Program. *See* Respondent's Brief, Page 9. Low and/or declining enrollment in a specific class or program is a rational basis for demoting a professional employee. *See e.g., Reed v. Juniata-Mifflin Counties Area Vocational-Technical School*, 535 A.2d 1229 (Pa. Cmwlth. 1988); *Piazza v. Millville Area Sch. Dist.*, 624 A.2d 788 (Pa. Cmwlth. 1993). Consequently, Mr. McCauley failed to meet his heavy burden of proving that the Joint Operating Committee's decision to demote him was arbitrary, discriminatory or founded upon improper considerations.

Accordingly, we enter the following:

IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

RONALD J. McCAULEY,
Appellant

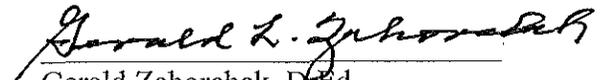
v.

LENAPE AREA VOCATIONAL-
TECHNICAL SCHOOL,
Appellee

:
:
:
: Teacher Tenure Appeal
: No. 04-08
:
:
:

ORDER

AND NOW, this 22nd day of December, 2008, it is hereby ordered and decreed that the appeal of Ronald McCauley is denied and the decision of the Joint Operating Committee of the Lenape Area Vocational-Technical School to demote Ronald McCauley from a full-time Opto-Electronic Technology Instructor to a part-time (70% status) Opto-Electronic Technology Instructor is upheld.


Gerald Zahorchak, D.Ed.,
Secretary of Education

Date Mailed: December 22, 2008