

**IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA**

DR. CAROLE POLICASTRO,	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 06-09
STEEL VALLEY SCHOOL DISTRICT,	:	
Appellee	:	

OPINION AND ORDER

Dr. Carole Policastro (“Dr. Policastro”) appeals to the Secretary of Education (“Secretary”) from the decision of the Board of School Directors (“Board”) of the Steel Valley School District (“District”) demoting her from Director of Elementary Education to an elementary teacher.

FINDINGS OF FACT

1. In November 2006, the District hired Dr. Policastro as the Director of Elementary Education. (Tr. 79).¹
2. At the time she was hired, Dr. Policastro possessed professional certifications in the areas of Early Childhood N-3, Elementary K-6, and Reading Specialist K-12. (Tr. 82).
3. The District’s job description for the position of Director of Elementary Education identified the duties and responsibilities of Dr. Policastro when she was the Director of Elementary Education. (P. Exh. 13).²

¹ Tr. refers to the Transcript of Proceedings before the Board on August 24, 2009.

² P. Exh. refers to exhibits entered into evidence by Dr. Policastro at the hearing on August 24, 2009.

4. Until June 2009, the District's administrative team included a Superintendent, Director of Elementary Education, Director of Secondary Education and Director of Pupil Personnel and Special Services. (A. Exh. 1).³

5. As Director of Elementary Education, Dr. Policastro would have earned a salary of \$75,000 for the 2009 – 2010 school year. (Tr. 74).

6. On June 23, 2009, the Board approved a Resolution eliminating three administrative positions: Director of Elementary Education, Director of Secondary Education, and Director of Pupil Personnel and Special Services. (A. Exh. 1).

7. The Resolution stated that the changes were being made in order to "restructure the central administration" and achieve a "more effective educational program." (A. Exh. 1).

8. The Resolution also established the new position of Director of Pupil Personnel and Special Services/Elementary Education. (A. Exh. 1).

9. The Resolution demoted Dr. Policastro from Director of Elementary Education and reassigned her to an "appropriate elementary position for which she is certified effective July 1, 2009." (A. Exh. 1).

10. The District Superintendent sent Dr. Policastro correspondence on June 25, 2009, informing her that she was demoted and explained that the demotion was a "matter of economic necessity." (P. Exh. 1).

11. Upon learning that she had been demoted, Dr. Policastro exercised her right to request a hearing on the matter.

12. A hearing was held before the Board on August 24, 2009 and Dr. Policastro was represented by counsel. (Tr. 1, 2).

³ A. Exh. refers to exhibits entered into evidence by the District at the hearing on August 24, 2009.

13. On August 24, 2009, the first in-service day for teachers for the 2009 – 2010 school year, Dr. Policastro received her teaching assignment to Park Elementary School as an Instructional Resource teacher. (Tr. 49; Tr. 85; P. Exh. 15).

14. Dr. Policastro received her teaching assignment three days before the first student day of school. (Tr. 86).

15. In her new position as Instructional Resource teacher, Dr. Policastro will earn a salary of \$69,767 during the 2009 – 2010 school year. (P. Exh. 15).

16. At the hearing, District Superintendent Dr. William Kinavey (“Dr. Kinavey”) testified that at the time the Board demoted Dr. Policastro, he was considering Dr. Policastro for assignment to numerous positions but was not immediately sure where to assign her. (Tr. 27).

17. The elimination of the administrative positions, including Dr. Policastro’s, was recommended in order to operate a more “streamlined administration” and “deliver the services better.” (Tr. 53).

18. The demotion of Dr. Policastro and the elimination of her position resulted in an immediate savings of about \$7,000 to the District and will continue to produce savings into the future. (Tr. 75).

19. On appeal, Dr. Policastro argues that she was in fact suspended, not demoted, and that even if she was demoted, the demotion was arbitrary and capricious. (Petition for Appeal).

DISCUSSION

A. Dr. Policastro failed to establish that she was suspended.

A demotion, by its very definition, involves reassignment to a position that has less authority, prestige *or* salary. *Filoon v. Middle Bucks Area Vocational-Technical Sch.*, 634

A.2d 726, 729 (Pa. Cmwlth. 1993), appeal denied 651 A.2d 544 (1994). “A suspension is in the nature of an impermanent separation: a furlough or layoff.” *Id.*

Dr. Policastro argues that she was not demoted but was rather suspended. (Tr. 9). She bases this argument on the following: she did not immediately receive any new assignment when the Board approved the Resolution eliminating her position (Tr. 9); she was told to clean out her office and was cut off from district email access upon learning that her position had been eliminated (Tr. 84); and she had to use sick days and vacation days to get paid after July 1, 2009. (Tr. 84).

However, Dr. Policastro’s arguments do not convert the action of the Board into a suspension. Dr. Policastro received a teaching position upon her demotion. The Board Resolution of June 23, 2009 and Dr. Kinavey’s correspondence two days later both indicated that Dr. Policastro would be reassigned to an elementary teaching position for which she was qualified. (A. Exh. 1; P. Exh. 1). The reassignment was to take effect on July 1. (P. Exh. 1). Dr. Policastro received her specific assignment for that position on August 24, prior to the start of the school year. (Tr. 49). Dr. Kinavey testified that there was a delay in supplying Dr. Policastro with her specific teaching assignment due to the fact that the hearing before the Board was postponed multiple times (Tr. 45; Tr. 68) and because there were numerous available teaching assignments for which Dr. Policastro was being considered. (Tr. 51). Thus, it appears that Dr. Policastro had a position as an elementary teacher upon the effective date of her demotion and that she received an appropriate teaching assignment in time for the start of the school year.⁴

⁴ The affidavits submitted by Dr. Policastro and the Principal of Park Elementary School evidence that Dr. Policastro had a teaching assignment at the Park Elementary School for the 2009-2010 school year. Whether positions were properly posted pursuant to the Collective

Further, the action taken with respect to Dr. Policastro constitutes a demotion within the definition laid out in *Filoon*; Dr. Policastro was re-assigned to a position with less authority and at a lower salary. Dr. Policastro's ultimate assignment as an Instructional Resource teacher obviously carries less responsibility than her previous position as Director of Elementary Education. (P. Exh.13). Finally, her salary in this new position is \$69,767, which is less than the \$75,000 salary she would have earned in her previous position. (P. Exh. 15; Tr. 74).

Notwithstanding Dr. Policastro's arguments that she was subjected to a *de facto* disciplinary suspension over which she believes the Secretary has jurisdiction, case law is clear that the Secretary does not have jurisdiction over suspensions of professional employees. In *Rike v. Sec'y of Educ*, 494 A.2d 1388, 1390 (Pa. 1985), the Pennsylvania Supreme Court stated:

School boards are local agencies, 2 Pa.C.S.A. §101, and jurisdiction of appeals therefrom is vested generally in the courts of common pleas, 42 Pa.C.S.A. §933(a)(2). The Public School Code provides exceptions to this appellate jurisdiction of common pleas court for decisions of school boards dismissing or demoting tenured teachers, 24 P.S. §§11-1131, 11-1151, and for disputes over accumulated sick leave. 24 P.S. §11-1154. In these cases, jurisdiction of the appeals is vested in the Secretary of Education. *Id.* As Rike was given a disciplinary suspension without pay or other benefits for the remainder of the school year, appeal of the Board's adjudication was not within the jurisdiction of the Secretary.

Thus, if there had been a finding that Dr. Policastro had been suspended rather than demoted, the Secretary would not have jurisdiction over Dr. Policastro's suspension. However, as stated above, Dr. Policastro was demoted, not suspended.

Bargaining Agreement is not within the purview of the Secretary's jurisdiction. The Secretary is to determine whether a demotion occurred and, if so, whether it was arbitrary, discriminatory or founded upon improper considerations.

B. Dr. Policastro failed to meet her burden of proving that her demotion was arbitrary, discriminatory or founded on improper considerations.

Dr. Policastro alleges that her demotion was arbitrary and capricious. In an appeal of a school board's decision to demote a professional employee, the action of the board is presumptively valid and the demoted employee contesting the action before the Secretary has the burden of proving it to be arbitrary, discriminatory or founded upon improper considerations. *Brownsville Area Sch. Dist. v. Lucostic*, 297 A.2d 516, 518 (Pa. Cmwlth. 1972). Case law addressing the issue of demotions of professional employees clearly shows that school districts possess broad discretion in personnel and administrative actions that result in demotions. School districts have the discretion to reorganize their programs, which may result in demotions of professional staff. *See, Nagy v. Belle Vernon Area Sch. Dist.*, 412 A.2d 172 (Pa. Cmwlth. 1980); *Black v. Wyalusing Area Sch. Dist.*, 401 A.2d 1251 (Pa. Cmwlth. 1979).

Courts have been reluctant to interfere with a school district's exercise of discretion in a demotion case unless the court is satisfied that the professional employee has met his or her burden of proving that the demotion was arbitrary or based upon inappropriate or discriminatory considerations. *Bollinger v. Curwensville Area Sch. Dist.*, TTA No. 9-94 at 4. This burden to prove that the demotion was arbitrary or improper has been described as "a very heavy one" by the Commonwealth Court. *Williams v. Abington Sch. Dist.*, 397 A.2d 1282, 1283 (Pa. Cmwlth. 1979). An arbitrary action is one "based on random or convenient selection rather than on reason." *Bd. of Pub. Educ. of Sch. Dist. of Pittsburgh v. Thomas*, 399 A.2d 1148, 1150 (Pa. Cmwlth. 1979). So long as it has some rational basis, a demotion is not arbitrary simply because it does not effectuate a policy in the most efficient or effective manner. *Id.* at 1150.

In determining whether the demoted employee has satisfied his or her heavy burden of proof, the Secretary conducts a *de novo* review of the record. *Belasco v. Bd. of Pub. Educ. of the*

Sch. Dist. of Phila., 510 A.2d 337, 343 (Pa. 1986). Accordingly, the Secretary is the ultimate fact finder in appeals involving demotions and is not required to give deference to the school board's findings. *Shumaker v. Baldwin-Whitehall Sch. Dist.*, TTA No. 7-93 at 6. In other words, the Secretary re-decides the case. *Forrest Area Sch. Dist. v. Shoup*, 621 A.2d 1121, 1125 (Pa. Cmwlth. 1993); *Bollinger v. Curwensville Area Sch. Dist.*, TTA No. 9-94 at 4.

In the instant case, Dr. Policastro has failed to meet the heavy burden of proving that her demotion was arbitrary, discriminatory or founded upon improper considerations. (Petition of Appeal). The District argued that Dr. Policastro's demotion was a matter of economic necessity. (Tr. 60). The District presented sufficient evidence establishing that the demotion was based on economic reasons. A valid reason for eliminating positions or demoting employees is the need to reduce the district's budget. *See School District of Pittsburgh v. Thomas*, 399 A.2d 1148 (Pa. Cmwlth. 1979). Prior to the adoption of the Board resolution in June, the District prepared a document detailing the savings that would result from Dr. Policastro's pending demotion. The document indicates a savings of \$33,791.34. (P. Exh. 7). Although the estimate was based on a mistaken assumption regarding Dr. Policastro's placement on the salary scale upon her demotion and the savings would ultimately be much lower, the document shows that prior to the demotion the District was motivated by a potential cost savings. Commonwealth Court stated in *Thomas* that even though a board's reasons turn out to be erroneous, that does not mean the demotion was arbitrary if facts on which the demotion was based were reasonably believed to have been accurate. *Id.* at 1149.

Mr. Mark Cherpak ("Mr. Cherpak"), the District's Business Manager, testified that Dr. Policastro's demotion would yield the District a savings of approximately \$7,000 in the first year. (Tr. 75). Mr. Cherpak testified that the District will continue to receive savings into the

future. (Tr. 106). Moreover, this savings would be combined with the savings achieved by elimination of the need to fill the Director of Secondary Education position and the elimination of the food services supervisor's position. (Tr. 22, 25).

Furthermore, the District presented evidence that Dr. Policastro's demotion was part of a larger restructuring of the administrative staff which yielded benefits aside from the cost savings. The Resolution itself stated that the changes were being made in order to "restructure the central administration" and achieve a "more effective educational program." (A. Exh. 1). Dr. Kinavey testified that the elimination of the administrative positions, including Dr. Policastro's, was recommended in order to operate a more "streamlined administration" and "deliver the services better." (Tr. 53). For example, Dr. Kinavey testified that prior to the demotion he was spending "an enormous amount of time in the business area" but that after the restructuring he could "devote more of my time to helping out in the curriculum." (Tr. 53). In fact, Dr. Kinavey testified, and Dr. Policastro conceded, that he explained to the Board at the time the Resolution was adopted that the Resolution would create a more streamlined administrative structure. (Tr. 32; Tr. 89). In summary, the District presented sufficient evidence of a rational reason for Dr. Policastro's demotion apart from the cost savings it would generate.

Finally, Dr. Policastro argued that the District failed to meet its burden of proof at the August 24 hearing. (Petition of Appeal). Specifically, Dr. Policastro argued that the only evidence which the District presented was the Resolution of June 23 and that the District offered no testimony "in order to explain its demotion." (Petition of Appeal). However, the burden of a school board in a demotion hearing is minimal. At a hearing on the demotion of a professional employee "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. Sch. Dist. of Darby Tp.*, 130 A.2d 661, 671 (Pa. 1957). The District met this burden. At the August 24 hearing, John Smart, Solicitor to the District, offered into evidence the Resolution and explained that the Resolution eliminated Dr. Policastro's position and demoted and reassigned her to an elementary position. (Tr. 6). The Resolution itself clearly states a reason for the demotion: "a more effective educational program." (A. Exh. 1). And as explained above, the District Superintendent and Business Manager testified at the hearing about the reasons for the demotion, which included a "more streamlined administration" and cost savings.

CONCLUSION

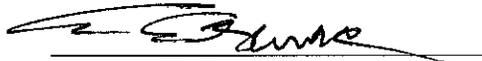
In conclusion, Dr. Policastro did not present any evidence that the District relied on any reasons other than financial constraints or achieving a more streamlined administrative structure in deciding to abolish her position and demote her to an elementary teacher position. Further, Dr. Policastro failed to demonstrate that she was suspended. The reasons provided by the District for Dr. Policastro's demotion are valid reasons. The only evidence which Dr. Policastro presented to support her position that her demotion was arbitrary, capricious, discriminatory or based on improper considerations was that she did not promptly receive her specific teaching assignment and that the impact on the budget was minimal. However, these facts alone are not sufficient for Dr. Policastro to meet the heavy burden of proving that her demotion was arbitrary, capricious, discriminatory, or founded on improper considerations.

Accordingly, the following Order is entered:

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AND NOW, this 25th day of June, 2010, it is hereby Ordered and Decreed that Dr. Carole Policastro failed to meet her burden of proving that her demotion was arbitrary, discriminatory or founded on improper considerations. Therefore, the decision of the Board of the Steel Valley School District to demote Dr. Carole Policastro from Director of Elementary Education to an elementary school teacher position is upheld.


Thomas E. Gluck
Acting Secretary of Education

Date mailed: June 25, 2010