

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

VICKY ROSE,	:		
	:		
	:		
v.	:		TTA No. 04-09
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SCHOOL DISTRICT OF PITTSBURGH BOARD OF EDUCATION,	:		
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On August 3, 2009, the Secretary of Education received a Petition for Allowance of Appeal *Nunc Pro Tunc* (“Petition”) from Appellant, Vicky Rose (“Ms. Rose”) appealing her dismissal from employment by the Appellee, School District of Pittsburgh, Board of Education (the “Board”). On August 10, 2009, the Secretary notified Ms. Rose and the School District of the appointment of a hearing officer. On August 13, 2009, the hearing officer conducted a conference call with the parties. The parties agreed that briefs should be filed setting forth each party’s position about whether the Petition should be accepted by the Secretary. After consideration of the Petition, and the parties’ briefs, and for the reasons set forth below, Ms. Rose’s Petition is denied.

Findings of Fact

1. By letter dated September 2, 2008, Ms. Rose was informed by William Isler, President of the Board, that the School District Superintendent had recommended that she be terminated from her employment with the School District. *See Exhibit “D” attached to Ms. Rose’s Brief.*

2. Mr. Isler’s letter included a Statement of Charges and advised Ms. Rose that a hearing was scheduled for September 17, 2008 for purposes of allowing the School District and

Ms. Rose to submit evidence and testimony regarding the Statement of Charges. *See Exhibit "D" attached to Ms. Rose's Brief.*

3. Ms. Rose apparently requested that the Pittsburgh Federation of Teachers ("PFT") represent her at the hearing scheduled for September 17, 2008, but the PFT declined to provide her representation. *See Exhibit "B" attached to Ms. Rose's Brief.*

4. The hearing was held September 17, 2008 and Ms. Rose appeared without counsel and provided testimony and evidence to support her position. *See Exhibit "E" attached to Ms. Rose's Brief.*

5. On November 25, 2008, the Board adopted and approved the Board Solicitor's proposed Findings of Facts, Conclusions of Law and Adjudication and dismissed Ms. Rose from her employment with the School District effective November 26, 2008. *See Exhibit "A" attached to Ms. Rose's Brief.*

6. The Board's solicitor mailed a letter to Ms. Rose on December 1, 2008 notifying her of the Board's vote dismissing her from employment effective November 26, 2008. *See Exhibit "A" attached to Ms. Rose's Brief.*

7. Ms. Rose received the letter dismissing her from employment with the School District on or about December 5, 2008. *See Ms. Rose's Brief, p. 13.*

8. On August 3, 2009, Ms. Rose filed her Petition with the Secretary and the Secretary appointed a hearing officer.

9. During a conference call, the hearing officer and the parties discussed the matter and the parties agreed that briefs should be filed setting forth each party's position about whether the Petition should be accepted by the Secretary. Both parties filed briefs.

Discussion

Pursuant to 24 P.S. §11-1131, if a professional employee considers herself aggrieved by action of the board of school directors, she may file an appeal with the Secretary within thirty (30) days after receipt by registered mail of the written notice of the board. On or about December 5, 2008, Ms. Rose received notice from the School District that the Board had terminated her employment with the District. Thus, Ms. Rose should have filed her Petition by January 4, 2009. However, Ms. Rose's Petition was not filed with the Secretary until August 3, 2009.

Appeal periods are jurisdictional and may not be extended as a matter of grace or mere indulgence. *West Penn Power Co. v. Goddard*, 333 A.2d 909 (Pa. 1975); *Olson v. Borough of Homestead*, 443 A.2d 875 (Pa. Cmwlth. 1982). However, Commonwealth courts have recognized that, under extraordinary circumstances, an appeal period may be extended by a court granting equitable relief in the form of a *nunc pro tunc* appeal. *Criss v. Wise*, 781 A.2d 1156 (Pa. 2001). The decision to allow or deny such appeals is left to the discretion of the trial court. *McKeown v. Bailey*, 731 A.2d 628, 630 (Pa. Super. 1999). "More is required before such an appeal will be permitted than the mere hardship imposed upon the appellant if the request is denied." *Id.*

According to the Pennsylvania Supreme Court, the limited exceptions for allowing an appeal *nunc pro tunc* are where the appellant proves: (1) the appeal was filed late as a result of non-negligent circumstances; either related to the appellant or the appellant's attorney; (2) the appellant filed the notice of appeal shortly after the expiration date; and, (3) the appellee was not prejudiced by the delay. *Criss*, 781 A.2d at 1159, citing *Bass v. Commonwealth, Bureau of Corrections*, 401 A.2d 1133 (Pa. 1979). The Court further stated that "the exception for an

allowance of an appeal *nunc pro tunc* in non-negligent circumstances is meant to apply only in unique and compelling cases in which the appellant clearly established that she attempted to file an appeal, but unforeseeable and unavoidable events precluded her from actually doing so.”

Criss, 781 A.2d at 1160. A Court may allow an appeal *nunc pro tunc* upon a showing of fraud or breakdown in the administrative process. *Nayak v. Commonwealth, Dept. of Public Welfare*, 529 A.2d 557 (Pa. Cmwlth. 1987). In addition, an appeal *nunc pro tunc* may be permitted where an appellant relied on negligent or erroneous information from administration personnel.

Commonwealth Bank & Trust Co., N.A. v. Winterberger, 582 A.2d 730 (Pa. Cmwlth. 1990).

Ms. Rose argues that there are two bases that support the granting of her Petition. First, Ms. Rose claims that she was unaware of her right to appeal. Ms. Rose states that the Board solicitor’s letter of December 1, 2008 failed to provide her any information about an appeal process. Ms. Rose then cites in her Brief, a number of cases that support the position that an appeal *nunc pro tunc* may be permitted when the late filing of the appeal was the result of the appellant’s reliance on erroneous information provided by an administrative agency official. Thus, implicit in Ms. Rose’s argument is that the Board solicitor’s letter provided erroneous information because he did not advise her of an appeal process.

The law does not support Ms. Rose’s argument. Section 1130 of the Public School Code states, in relevant part:

Written notice of any decision of the board of school directors discharging a professional employe, shall be sent by registered mail to such professional employe at his or her last known address within ten (10) days after such hearing is actually concluded.

24 P.S. §11-1130. This section does not require that the notice of discharge include information about the professional employee’s right to appeal or about an appeal process.

In addition, Section 1131 of the Public School Code provides the procedure for a professional employee to appeal action of the board of school directors if the professional employee believes she was aggrieved by the board's action. This requires the professional employee to file a petition of appeal with the Secretary of Education within thirty (30) days after receipt of the written notice of the board's decision. 24 P.S. §11-1131. "When an agency, through regulations, or the Legislature, through statute, has provided a duly published procedure for an appeal, due process of law does not require the administrative agency to extend additional notice of such right." *Quaker State Oil Ref. v. Commonwealth, Dept. of Environmental Resources*, 530 A.2d 942, 944-45 (Pa. Cmwlth. 1987) citing *Commonwealth v. Derry Township*, 314 A.2d 868 (Pa. Cmwlth. 1973). The Legislature, through the Public School Code, provided a duly published procedure for an appeal, which is clearly set forth in Section 1131. Thus, the Board was not required to provide Ms. Rose with information about her right to appeal or the process of appealing the Board's decision to terminate her from her employment with the School District.

Ms. Rose's second argument is that George Gensure of the PFT provided her erroneous information that resulted in her delay in filing her appeal. Mr. Gensure wrote to Ms. Rose that the PFT would not provide her representation at her hearing and that the dismissal hearing was the final step in the Board actions to terminate her employment. Ms. Rose states that she believed this hearing would be the final decision of her termination with no further remedy. However, Mr. Gensure's letter says that this is the final step in the Board actions to terminate her employment. It does not say that she does not have any right to appeal from the Board's actions.

Even though Ms. Rose might have misunderstood Mr. Gensure's letter, Mr. Gensure's letter is not a breakdown in the administrative process caused by administrative personnel. Mr.

Gensure is a staff representative of the PFT. Mr. Gensure is not an administrative official of the administrative agency. The cases cited by Ms. Rose to support her position on this issue are cases in which inaccurate or misleading information was communicated by an administrative agency's employee. Mr. Gensure is not an administrative agency employee. Thus, Ms. Rose has not provided any basis for finding that there was a breakdown in the administrative process caused by an administrative official providing negligent or erroneous information.

In addition, Ms. Rose has not provided any evidence that clearly established that she attempted to file an appeal, but that unforeseeable and unavoidable events precluded her from actually doing so. *See, Criss, 781 A.2d at 1160.* Thus, for all the reasons stated above, Ms. Rose failed to provide any evidence that supports the granting of her Petition for Allowance of Appeal *Nunc Pro Tunc.*

Accordingly, the following Order is entered:

IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

VICKY ROSE,

Appellant

v.

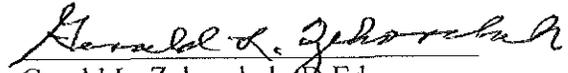
SCHOOL DISTRICT OF PITTSBURGH
BOARD OF EDUCATION,

Appellee

TTA No. 04-09

ORDER

AND NOW, it is hereby ordered and decreed that Vicky Rose's Petition for Allowance of Appeal *Nunc Pro Tunc* is denied.


Gerald L. Zahorchak, D.Ed.
Secretary of Education

Date Mailed: October 29, 2009