

In the instant case, Mr. Layton, the high school principal, has occupied that position for the past 12 years, and has been in the school system since 1942. He personally observed the Appellant in class on various occasions. Accordingly, we attach considerable probative value to his testimony.

In view of the foregoing, we find that the record substantiates and establishes the charges of persistent negligence and persistent and wilful violation of the School Laws of the Commonwealth.

In accordance therewith, we make the following

### ORDER

AND NOW, to wit, this 3rd day of May, 1972, the Petition of Appeal of Ervin E. Johnson from the action of the Philadelphia Board of Education is hereby dismissed, and we affirm the discharge of Ervin E. Johnson by the Philadelphia Board of Education on the charges of incompetency, persistent negligence and persistent and wilful violation of the School Laws of the Commonwealth.

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Appeal of Erwin F. Albrecht, Jr., a Professional Employe, from a decision of the Board of School Directors of the Abington School District, Montgomery County, Pennsylvania

In the Office of the Secretary of Education, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania

No. 206

### OPINION

John C. Pittenger  
*Secretary of Education*

Erwin F. Albrecht, Jr., Appellant herein, has appealed from a decision of demotion by the Board of School Directors of the Abington School District, Montgomery County, Pennsylvania.

### FINDINGS OF FACT

1. In September, 1967, the Appellant executed a professional employe contract and was assigned to teach social studies at the North Campus of the Abington High School.
2. On January 9, 1970, a new contract was executed between the parties on a ten month term, and the Appellant was then assigned as an assistant principal at the same school.
3. Pursuant to a letter dated July 7, 1971, approved by Doctor Hoffman, District Superintendent, the Appellant's position as assistant principal was terminated July 9, 1971 and, as of September 2, 1971, he was to begin employment as a social studies teacher.
4. On or about July 14, 1971, the Appellant requested a hearing on the demotion.
5. Pursuant to notice, a hearing on the demotion was held before the School Board on October 11, 1971, and further hearings were held on October 15, 1971, October 22, 1971, October 29, 1971, November 15, 1971, November 17, 1971 and November 18, 1971.
6. On December 2, 1971, the Board of School Directors voted to sustain the demotion, and notice of said decision was given to the Appellant.
7. On January 3, 1972, the Appellant filed a Petition of Appeal with the Secretary of Education
8. A hearing on the appeal, pursuant to notice, was held on April 11, 1972.

## DISCUSSION

The appeal in this case is from a decision of demotion of a professional employe by the Abington School District.

The Appellant entered into a professional employe's contract with the School District in September, 1967 as a teacher of social studies at the North Campus High School, and was appointed as assistant principal in said high school in January, 1970 and served in this position until July, 1971 when he was reassigned to the position of social studies teacher.

The decision of demotion, after hearings, by the School Board was based on (1) failure to perform the duties of an assistant principal, (2) demonstrating poor judgment, and (3) unbecoming conduct.

We have read the 825 pages of testimony taken at the School Board hearings, and we can only find two serious questions which require our determination:

(1) Did the Appellant consent to the demotion prior to his request for a hearing? Testimony on this point was presented by the Appellee.

(2) Was the entire demotion proceeding void ab initio because of the failure of the Board of School Directors to consider and act on the charges of the Superintendent prior to the hearing? This question was averred in Appellant's Petition of Appeal.

In reading the testimony, we note that the members of the administrative staff who conferred with the Appellant concerning the transfer from assistant principal to teacher stated that he agreed to the demotion and that pursuant thereto, he accepted the extra period assignment in July, 1971, after the termination of his position as an assistant principal.

The solicitor for the Board argued that this action was a consent to the demotion. We cannot agree with this contention. The contractual power of a district is vested in the School Board. Any change therein must be presented to the Board for their consideration and resolution. In *Furey vs. Cheltenham School District*, 81 Montgomery Co. 85, the Court, in a case involving resignation of a teacher, held that the school board had the sole power to appoint or dismiss. It further stated that the presentation to the superintendent as an ex-officio member of the school board could be deemed a presentation to the board was an untenable argument. The superintendent is the agent of the board insofar as supervision over instruction is concerned, but he is not the board's agent as to any contractual or business affairs of the district. The Court further held that a resignation must be directed to the proper authority which is generally regarded as the tribunal having authority to appoint the successor or it is a nullity.

*Harrisburg School District vs. Eureka Casualty Co.*, 313 Pa. 342.

*Rice vs. Ford*, 2 Pa. D. & C. 2nd 543.

Since acceptance by the board is necessary to the completion of a resignation, the resigning officer may withdraw his resignation before it has been accepted by the proper authority.

*Application of Appt. of Supervisors for Hampden Twp.*, 5 Cumberland L. J. 192.

78 C. J. S. 1102.

Upon our analysis of the aforementioned citations, it is our opinion that a consent to a demotion could be considered in the same category as a resignation, as far as Board action is concerned. In the present appeal, the Appellant filed his request for a hearing on the demotion before any action was taken by the School Board. This, in our judgment, is equivalent to the revocation of any consent that he may have given prior thereto.

The averment by the Appellant that the entire demotion proceedings were void, ab initio, raises a basic question of what is required by the School Code in such an action.

It is to be noted that the Answer to the Appellant's Petition of Appeal to the Secretary of Education was not made by the School Board, the Appellee, but by the Superintendent of Schools. Said Answer to paragraph 10b avers that the Appellant consented to the "action of the administrative personnel or led said administrative personnel to believe that he had consented to their action, thus making further Board action unnecessary." Regardless of whether the demotion was consensual or not, there was responsibility upon the Superintendent to submit his recommendation to the Board of School Directors for their consideration and determination.

It is admitted that the members of the Board had no knowledge of the charges against

the Appellant prior to the hearings held before them. The secretary of the Board testified that the minutes of the School Board meetings do not indicate that the charges against the Appellant nor the setting of a date and time of hearing on the demotion were ever considered or determined by the School Board. The minutes of the Board meetings requested by the Secretary of Education fail to disclose any mention of action by the Board in reference to the Appellant's demotion, prior to the date of their final decision of demotion after the hearings.

Our examination of the many cases dealing with demotions discloses that every citation involved an action of demotion instituted by the Board of School Directors.

In *Wolf vs. Gettysburg Borough School District*, 52 D. & C. 520, the Court stated:

"It would seem to follow that a teacher might be demoted, in the discretion of the school board, for any proper cause, subject to a review upon appeal to prevent an abuse of discretion or arbitrary discrimination. See *Smith vs. Philadelphia School District*, 344 Pa. 197." (Underscoring ours)

In *Matevish vs. Ramsey Borough School District*, 167 Pa. Sup. 313, the Court held that a contract by a school board cannot be enlarged, diminished, supplemented or in any manner changed by evidence extraneous from the minutes.

In *Smith vs. Darby*, 388 Pa. 301, the Court stated:

"The right of a school board to make reasonable rules and regulations, reassign teachers and take other steps necessary for proper administration of the school system has been recognized on many occasions."

The notice of hearing sent to the Appellant as a Board notice, with the signatures of the President and Secretary of the Board, was not pursuant to any resolution of the Board, and, as said in *Furey vs. Cheltenham*, supra, "no single member of the board is the board itself."

The School Code, in Section 1151, describes the procedure to be followed in demotions, and such procedure is mandatory and not directory. Failure to follow such procedure is an abrogation of the authority vested in the school board and cannot be condoned by merely holding a hearing upon the request of the Appellant.

Although the testimony indicates a basis for possible dismissal, we cannot give proper consideration thereto by reason of our responsibility to be bound by the law applicable to this demotion matter.

Accordingly, we make the following

#### ORDER

AND NOW, to wit, this 13th day of September, 1972, the Appeal of Erwin F. Albrecht, Jr. from the demotion decision of the Board of School Directors of the Abington School District be and is hereby sustained and the said Board of School Directors is hereby directed to reinstate the Appellant to the position of Assistant High School Principal.