

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

JEREMY ASKIN, ET AL.	:	
Appellants	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 05-19
	:	
SCHOOL DISTRICT OF PITTSBURGH	:	
Appellee	:	

OPINION AND ORDER

Jeremy Askin, representing 36 assistant principals, (Appellants) appealed to the Secretary of Education (Secretary) from the decision of the School Board of the School District of Pittsburgh (School Board) to adopt a new compensation plan that Appellants believe is a demotion.

Appellants argue that they were demoted pursuant to the Public School Code of 1949 (School Code),¹ by virtue of the School Board’s decision to (1) increase their number of work days from 208 days per year to 250 days per year; and (2) freeze their salary at their current salary step.

Employees alleging that they have been demoted bear the burden of proof. *Jefferson County-DuBois Area Vocational Technical School v. Horton*, 413 A.2d 36 (Pa. Cmwlt. 1980). In *Ahern v. Chester-Upland School District*, 582 A.2d 741 (Pa.Cmwlt.1990) , the Commonwealth Court held that an increase in the number of workdays school administrators were required to work could not be a demotion under Section 1151 of the School Code, (24 P.S. § 11-1151) even when such a change reduced administrators' per diem or hourly wages because

¹ Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. §§ 1-101-27-2702.

administrators' salaries must be calculated on an annual, not per diem, basis.

In accordance with the *Ahern* Opinion of the Commonwealth Court, I conclude that Appellants have not been demoted under the School Code. Pursuant to the School Board's new compensation plan the Appellants' positions remained the same, and they were not frozen at their current salary step. They received both a two percent raise in January 2018 and 25 vacation days. Appellants failed to meet their burden to show that they were demoted. Accordingly, the decision of the School Board is affirmed and the request that Appellants be regarded as demoted is denied.

FINDINGS OF FACT

1. Appellants are 36 tenured assistant principals employed by the School District of Pittsburgh (District) at the time of the commencement of this action.² (H.O. Ex. 7; N.T. 12, 34).

2. The list of the 36 assistant principals at issue in the present matter, was jointly stipulated to by the parties. (H.O. Ex. 2A, 8).

3. The parties also agreed that the hearing before the Secretary would be held only to determine whether a demotion occurred within the meaning of the School Code. (H.O. Ex. 3, No. 2).

4. Section 1164 of the School Code requires that school districts adopt a written administrative compensation plan (plan) providing for the compensation of school administrators. 24 P.S. § 11-1164. (H.O. Ex. 3, No. 4).

5. The assistant principals at issue in the present matter are defined as "school administrators." Compensation is defined as the salaries and fringe benefits provided to school

² "N.T. ___" refers to Notes of Testimony recorded at the evidentiary hearing before Department of Education (PDE) in this matter. The Exhibits admitted into evidence at the hearing by the Hearing Officer are referred to as "H.O. Ex. ___."

administrators. 24 P.S. § 11-1164. (H.O. Ex. 3, Nos. 5, 6).

7. The plan must include a description of the program for determining salaries, the salary amounts or schedule, and a listing of the fringe benefits. 24 P.S. § 11-1164. (H.O. Ex. 3, No. 7).

8. Prior to the adoption of the plan, the School Board must meet with employees covered by the plan and discuss the plan in good faith. 24 P.S. § 11-1164. (H.O. Ex. 3, No. 8). However, the School Board retains final authority to approve the plan. 24 P.S. § 11-1164. (H.O. Ex. 3, No. 8)

9. On January 1, 2018, all eligible assistant principals moved up one step on the salary schedule in effect at that time. The assistant principals were eligible for this step unless they received an unsatisfactory rating in the prior year, or their date of hire was after July 1, 2017. (H.O. Ex. 3, No. 9).

10. On March 21, 2018, the School Board approved a new five-step salary schedule for assistant principals hired or promoted after April 1, 2018. All assistant principals hired or promoted before April 1, 2018 remained on the old salary schedule. (H.O. Ex. 3, No. 10).

11. Effective April 1, 2018, the salary for all assistant principals on the old salary schedule was frozen. (H.O. Ex. 3, No. 11).

12. The old salary schedule has ten (10) steps ranging from \$102,087 on Step 1 to \$108,387 on Step 10. The new salary schedule has five (5) steps ranging from \$96,760 on Step 1 to \$99,312 on Step 5. (H.O. Ex. 3, No. 12).

13. On March 21, 2018, the School Board also changed the assistant principals work year. The School Board moved the assistant principals from a 208-day work year to a 250-day work year. The School Board also provided the assistant principals with 25 annual vacation days

in addition to all District holidays. (H.O. Ex. 3, No. 14).

14. Additionally, the School Board indicated that the assistant principals would no longer be eligible to receive compensation for summer work or other additional work. The assistant principals had previously been eligible for compensation for summer work and other additional work prior to moving to a 250-day work year. (H.O. Ex. 3, No. 15).

15. Any assistant principals temporarily promoted to acting principals would now receive either \$250.00 a month or the difference between their current salary and the starting salary of a principal at that school, whichever was higher. (H.O. Ex. 3, No. 16)

16. However, an assistant principal's date of hire continues to determine when the assistant principal is eligible for their first salary step. Assistant principals hired from January 1 to June 30 each year are eligible for a salary step on the next January 1. Assistant principals hired from July 1 to December 31 are eligible for their first salary step on the second January 1. (H.O. Ex. 3, No. 17).

17. Twelve (12) current assistant principals were hired or promoted on or after July 1, 2017, but prior to April 1, 2018 and were, therefore, ineligible to receive a salary step on January 1, 2018. (H.O. Ex. 3, No. 18).

18. There are currently nine assistant principals on the new salary schedule, and 36 assistant principals on the old salary schedule. Nine (9) assistant principals on the old salary schedule received step increments on January 1, 2018. Fifteen (15) were not eligible to receive a step increment on January 1, 2018 because they were on the maximum step. (H.O. Ex. 3, No. 19).

19. On December 19, 2018, the School Board approved a two percent retroactive annual salary increase for 2018 for all assistant principals, regardless of their date of hire or

salary schedule. (H.O. Ex. 3, No. 20).

20. As of the date of the hearing before the School Board, the School Board has not authorized steps for assistant principals on either salary schedule in 2019. (H.O. Ex. 3, No. 21).

21. As of the date of the hearing before the School Board, the 2019 plan has not yet been approved by the School Board. (H.O. Ex. 8, No. 21).

22. A hearing was held before the School Board on August 20, 2019 before Hearing Officer Ira A. Weiss. (H.O. Ex. 6)

23. Following the hearing, the School Board concluded that absent a reduction in an employee's annual salary, there has been no demotion in salary and or salary freeze under the School Code, even when the employee is required to work more days or longer hours. (H.O. Ex. 1, 2)

24. Accordingly, the School Board concluded that the assistant principals at issue did not suffer a demotion within the meaning of Section 1151 of the School Code. 24 P.S. § 11-1151. (H.O. Ex. 2)

25. By letter dated December 4, 2019, Appellants filed a Petition for Appeal with the Secretary from the decision of the School Board that held that Appellants had not suffered a demotion within the meaning of Section 1151 of the School Code. (H.O. Ex. 10)

26. The Secretary sent a Sunshine Act Meeting Notice for the Hearing to be held on March 3, 2020. (H.O. Ex. 11)

27. By letter dated February 3, 2020, the Secretary appointed Maribeth Wilt-Seibert, Esquire as the Hearing Officer. (H.O. Ex. 12)

28. By letter dated February 26, 2020, the School Board filed the documents from the School Board proceeding with the Secretary. (H.O. 13)

29. On February 18, 2020, Appellants filed a Brief in Support of the Petition to Appeal.
30. On February 26, 2020, the School Board filed a Brief in Opposition to the Appeal.
31. The hearing was scheduled and held on March 3, 2020, before Maribeth Wilt-Seibert, Esquire, Hearing Officer, who was appointed by the Secretary. (N.T. 1)
32. Appellants were represented by Jonathan M. Gesk, Esquire. (N.T. 1)
33. The School Board was represented by Hobart J. Webster, Esquire. (N.T. 1)
34. All testimony was transcribed. (N.T., generally)

LEGAL STANDARDS

Section 1101(1) of the School Code provides that the term “professional employee” shall include those who are certificated as teachers, supervisors, supervising principals, principals, assistant principals, and vice-principals. 24 P.S. § 11-1101(1).

Section 1142(a) of the School Code provides as follows:

(a) Except as hereinafter otherwise provided, all school districts and career and technical school districts shall pay all regular and temporary teachers, supervisors, directors and coordinators of career and technical education, psychologists, teachers of classes for exceptional children, supervising principals, career and technical teachers, and principals in the public schools of the district the minimum salaries and increments for the school year 1968-1969 and each school year thereafter, as provided in the following tabulation in accordance with the column in which the professional employe is grouped and the step which the professional employe has attained by years of experience within the school district each step after step 1 constituting one year of service. When a school district, by agreement, places a professional employe on a step in the salary scale, each step thereafter shall constitute one year of service. When a district adopts a salary scale in excess of the mandated scale, it shall not be deemed to have altered or increased the step which the employe has gained through years of service.

24 P.S. § 11-1142(a).

Section 1164 of the School Code provides as follows:

(a) As used in this section, the following words will have the following meanings:

“Administrative compensation” shall mean administrator salaries and fringe benefits and shall include any board decision that directly affects administrator compensation such as administrative evaluation and early retirement programs.

“School administrator” shall mean any employe of the school entity below the rank of district superintendent, executive director, director of career and technical school, assistant district superintendent or assistant executive director, but including the rank of first level supervisor, who by virtue of assigned duties is not in a bargaining unit of public employes as created under the act of July 23, 1970 (P.L.563, No.195), known as the “Public Employe Relations Act.” However, this definition shall not apply to anyone who has the duties and responsibilities of the position of business manager or personnel director, but not to include principals.

“School employer” shall mean a board of school directors, the area career and technical school board of directors or the intermediate unit board of school directors as defined in this act.

(b) The purpose of this section is to provide a means by which compensation matters affecting school administrators can be resolved within the framework of a management team philosophy.

(c) School employers, upon the written request of a majority of the school administrators in the district, shall be required to meet and discuss in good faith with the school administrators on administrator compensation prior to adoption of the compensation plan.

(d) School employers shall be required to adopt written administrator compensation plans which shall apply to all eligible school administrators, as provided in this section, and which shall continue in effect until a time specified in the compensation plan, but in no event for less than one school year.

(e) An administrator compensation plan adopted pursuant to this section shall include, but not be limited to, the following items:

- (1) A description of the program determining administrative salaries.
- (2) Salary amounts or a salary schedule.
- (3) A listing of fringe benefits.

24 P.S. § 11-1164.

Section 1151 of the School Code provides as follows:

The salary of any district superintendent, assistant district superintendent or other professional employe in any school district may be increased at any time during the term for which such person is employed, whenever the board of school directors of the district deems it necessary or advisable to do so, but there shall be no demotion of any professional employe either in salary or in type of position, except as otherwise provided

in this act, without the consent of the employe, or, if such consent is not received, then such demotion shall be subject to the right to a hearing before the board of school directors and an appeal in the same manner as hereinbefore provided in the case of the dismissal of a professional employe.

24 P.S. § 11-1151.

A demotion within the meaning of Section 1151 of the School Code requires either a reduction in salary or a change in the type of position. *Horton v. Jefferson County-Dubois Area Vocational Technical School*, 545 A.2d 998 (Pa. Cmwlth. 1988). Employees have the burden of proving that they suffered demotions. *Ahern v. Chester-Upland School Dist.*, 582 A.2d 741, 743, (Pa. Cmwlth. 1990).

In Ahern v. Chester-Upland School District., 582 A.2d 741 (Pa. Cmwlth. 1990), the Commonwealth Court held that an increase in the number of workdays school administrators were required to work could not be a demotion under Section 1151, even when such a change reduced the administrators per diem or hourly wages. Rather, the Commonwealth Court held that the administrators' salaries must be calculated on an annual, not per diem, basis.

Section 1131 of the School Code, 24 P.S. § 11-1131, vests the Secretary with authority to hear appeals brought by professional employees from actions of school boards. The Secretary has the authority to review the school board's termination decision *de novo*. *Belasco v. Board of Public Educ. of the Sch. Dist. of Pittsburgh*, 510 A.2d 337, 343 (Pa. 1986). The credibility of witnesses and the weight to be accorded their testimony is within the exclusive province of the Secretary. *Rhodes v. Laurel Highlands Sch. Dist.*, 544 A.2d 562, 565 (Pa. Cmwlth. 1988). Additionally, the Secretary is not required to make specific findings as to the credibility of each witness where the decision itself reflects which witnesses were believed and upon whose testimony the Secretary relied. *Forrest Area Sch. Dist. v. Shoup*, 621 A.2d 1121, 1124 (Pa.

Cmwlth. 1993). Furthermore, the Secretary is the ultimate fact finder when, as here, he decides to make findings of fact. *Belasco v. Board of Public Educ. of the Sch. Dist. of Pittsburgh*, 510 A.2d 337 (Pa. 1986). The Secretary makes findings of fact based on the preponderance of the evidence. *See Fislser v. State System of Higher Educ.*, 78 A.3d 30, 47 (Pa. Cmwlth. 2013).

CONCLUSIONS OF LAW

1. Appellants received due process of law in that they received notice of the hearing and an opportunity to be heard *de novo* before the Secretary. 2 Pa. C.S. § 504.
2. As assistant principals, Appellants were professional employees pursuant to Section 1101(1) of the School Code. 24 P.S. § 11-1101(1).
3. A demotion within the meaning of Section 1151 of the School Code requires either a reduction in annual salary or a change in the type of position. 24 P.S. § 11-1151. *Horton v. Jefferson-County Dubois Area Vocational Technical School*, 545 A. 2d 998 (Pa. Cmwlth. 1988).
4. Appellants' assistant principal positions have not changed.
5. Appellants were never guaranteed that work and extra pay would be available to them in the summer.
6. Administrators' salaries must be calculated on an annual, not a per diem basis. *Ahern v. Chester-Upland School District.*, 582 A.2d 741 (Pa. Cmwlth. 1990).
7. Appellants were not subject to a "salary freeze" as they received both a two (2) percent increase and 25 vacation days.
8. *Mifflinburg Area Education Association by Ulrich v. Mifflinburg Area School District*, 724 A.2d 339, 343 (Pa. 1999) is inapplicable to this case as in *Mifflinburg* the Court held only that Sections 1142 and 1149 of the School Code require the District to credit the

teachers for years of past service within the District. Here, Appellants was credited for years of past service within the District.

9. Once the statutory minimums have been met, Section 1142 of the School Code has been satisfied and nothing in the provision prevents other means to be used to determine increases in salary, including an award that eliminates step increments and instead provides for a pay for performance plan. *Commonwealth Association of School Administrators v. Board of Education of the School District of Philadelphia*, 740 A. 2d 1225, 1230 (Pa. Cmwlth. 1999)

10. Employees alleging that they have been demoted bear the burden of proof. *Jefferson County-DuBois Area Vocational Technical School v. Horton*, 413 A.2d 36 (Pa. Cmwlth. 1980).

11. Appellants have failed to meet their burden to show that they were demoted.

12. Because Appellants have failed to meet their burden that they were demoted, the decision of the School Board is affirmed.

13. Appellants' request that they be regarded as demoted is denied.

DISCUSSION

I. Appellants were not demoted pursuant to the School Code

Appellants argues that they have been demoted pursuant to the Public School Code of 1949 (School Code), by virtue of the School Board's decision to (1) increase their number of work days from 208 days per year to 250 days per year; and (2) freeze their salary at their current salary step.

A demotion within the meaning of Section 1151 of the School Code requires either a reduction in annual salary or a change in the type of position. 24 P.S. § 11-1151. *Horton v.*

Jefferson-County Dubois Area Vocational Technical School, 545 A.2d 998 (Pa. Cmwlth. 1988). Employees have the burden of proving that they suffered a demotion. *Jefferson County-Dubois Area Vocational Technical School v. Horton*, 413 A.2d 36 (Pa. Cmwlth. 1980).

I find the testimony of Dr. Crenshaw to be not credible. (H.O. Ex. 6). Appellants did not suffer a reduction in their annual salary or a change in the type of position. Appellants remain in the same position and Appellants were never guaranteed that work would be available in the summer. There has been no change in the type of position.

In *Ahern v. Chester-Upland School District*, 582 A.2d 741 (Pa.Cmwlth.1990), the Commonwealth Court affirmed the Secretary and held that an increase in the number of work days school administrators were required to work could not be a demotion under Section 1151 of the School Code, (24 P.S. § 11-1151) even when such a change reduced administrators' per diem or hourly wages because administrators' salaries must be calculated on an annual, not per diem, basis. The Court agreed with the Secretary's reasoning that traditionally, professional employees, including administrators, have been paid on an annual basis and that administrators, "are required to successfully organize and manage certain projects throughout the year. These requirements must be met, whether it takes the administrator eight hours per day or twelve hours per day, and regardless of the amount of leave that may be taken by the administrator." *Ahern*, 582 A.2d at 743. The Secretary concluded that because the administrators did not suffer a reduction in annual salary, they were not demoted under the School Code. *Id.*

The Commonwealth Court agreed with the Secretary's analysis and, additionally, concluded that it was supported by other sections of the School Code. The Court noted that Section 1142 sets minimum salaries for teachers and administrators which are based upon the entire school year and not on a per diem basis. 24 P.S. § 11-1142(a), *Id.* The Court also noted

that the form contract for professional employees provided in section 1121 states that professional employees are employed for annual compensation. 24 P.S. § 11-1121, *Ahern*, 582 A. 2d at 744.

The Court concluded, based upon the above-referenced School Code sections that the term "salary" as used in Section 1151 means "annual salary," and that the School Code does not support a per diem rate calculation. *Id.* Because it was undisputed in *Ahern* that the administrators' annual salaries increased following the implementation of the plan, as they do here, the Court held that the administrators did not suffer a demotion as defined in Section 1151 of the School Code. As a result, the Secretary finds not credible the testimony of Dr. Crenshaw that Appellants have suffered from a reduction in their annual salary.

The issue Appellants raise that a "salary freeze" violates Section 1142 of the School Code (24 P.S. § 11-1142(a)) was addressed and decided in *Commonwealth Association of School Administrators v. Board of Education of the School District of Philadelphia*, 740 A. 2d 1225 (Pa. Cmwlth. 1999). In that case, the administrators for the School District of Philadelphia argued that the provisions of their collective bargaining agreement abolishing annual salary increases violated Section 1142. The Commonwealth Court held that once the statutory minimums have been met, Section 1142 has been satisfied and other means may be used to determine increases in salary, including an award that eliminates step increments and instead provides for a pay for performance plan. As the statutory minimums have been met here, the Secretary concludes that an elimination of step increments, standing alone, does not violate Section 1142 of the School Code.

Moreover, Appellants received a two percent raise in January 2018 as well as 25 additional vacation days. Fringe benefits are statutorily regarded as part of the administrative compensation pursuant to Section 1164 of the School Code. 24 P.S. § 11-1164. Because

Appellants received a two percent pay raise and 25 vacation days, I find the School Board's testimony credible that Appellants was not subject to a salary freeze.

Appellants also argue that they have accumulated unused sick and vacation days and that if at the time of their separation, they are paid their severance in that they still retain those days, they will be less valuable due to the decrease in their per diem pay rate. However, I conclude that there is no guarantee that at the time of severance Appellants will still retain those unused sick and vacation days as Appellants may use them prior to his severance. As Appellants are paid an annual salary, I conclude that Appellants unused sick and vacation days retain the same value. Appellants have not lost any compensation.

Because Appellants have failed to meet their burden to show that they were demoted, I conclude that the decision of the School Board is affirmed and Appellants' request that they be regarded as demoted is denied.

II. De novo review of the record by the Secretary of Education ensures that Appellants received due process of law.

Appellants claim that because the hearing officer for the School Board is the solicitor for both the School District and the School Board, they have been denied due process of law. (H.O. Ex. 10). I disagree.

Due process requires that Appellants be given notice of the charges against them and an opportunity to be heard. 2 Pa. C.S. § 504; *McCoy v. Lincoln Intermediate Unit No. 12*, 391 A.2d 1119 (Pa. Cmwlth. 1978). Due process also requires that a litigant have, at some stage of a proceeding, a neutral fact finder. *Katruska v. Bethlehem Center Sch. District*, 767 A.2d 1051, 1056 (Pa. 1997).

“A *de novo* review entails full consideration of the case another time; the Secretary, in

effect, is substituted for the Board, the prior decision maker, and re-decides the case.” *Forest Area School District v. Shoup*, 621 A.2d 1121, 1125 (Pa. Cmwlth. 1993), citing *Civitello v. Department of Transportation, Bureau of Traffic Safety*, 315 A.2d 666 (Pa. Cmwlth. 1974).

The *de novo* review conducted by the Secretary eliminates any alleged due process denial in the conduct of the hearing held locally. *Katruska*, 767 A.2d 1056. Specifically, “the Secretary of Education’s *de novo* review of the decision of a school board ensures that the requirements of due process are satisfied.” *Id.* at 1056.

Appellants also argue that due process was violated because the plan was implemented before the hearing. Again, Appellants are incorrect. The Commonwealth Court has held that while demotions pursuant to Section 1151 cannot become effective until after a hearing, because the Court held that Appellants were not demoted, the School Board was entitled to implement the plan before conducting the hearing. *See Nagy v. Belle Vernon Area School District*, 412 A.2d 172 (Pa. Cmwlth. 1980).

Accordingly, following my *de novo* review, I conclude that Appellants have received due process of law.

The following order is entered.

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

JEREMY ASKIN, ET AL.	:	
	:	
Appellants	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 05-19
	:	
SCHOOL DISTRICT OF PITTSBURGH	:	
	:	
Appellee	:	

ORDER

AND NOW this 25th day of September 2020, the Secretary of Education concludes that Appellants *et al.* **have not been demoted and have received due process of law.** Therefore, the decision of the School Board of the School District of Pittsburgh is **AFFIRMED.**



Pedro A. Rivera
Secretary of Education

Date Mailed: September 29, 2020