

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

DONALD BECKER,	:	
Appellant,	:	
	:	
v.	:	Sick Leave Appeal 04-04
	:	
YORK COUNTY SCHOOL OF TECHNOLOGY	:	
Appellee	:	

OPINION AND ORDER

Donald Becker (“Becker”) appeals from York County School of Technology’s (“YCST”) refusal to credit Becker with 107.5 days of sick leave that Becker accumulated while teaching at YCST from 1970-71 through 1978-79.

Findings of Fact

1. Becker was employed by YCST as a special education teacher from the 1970-71 through 1978-79 school years. *See*, Exhibit 1 to Becker’s Appeal – *Stipulation of Facts*.
2. At the end of the 1978-79 school year, YCST curtailed its special education program and suspended Becker pursuant to Pennsylvania Public School Code §1124. *See*, Exhibit 1 to Becker’s Appeal – *Stipulation of Facts*.
3. At the time Becker was suspended by YCST at the end of the 1978-79 school year, Becker had accumulated 132.5 days of sick leave. *See*, Exhibit 1 to Becker’s Appeal – *Stipulation of Facts*.
4. At the end of the 1978-79 school year, YCST transferred its special education program to Lincoln Intermediate Unit - 12 (“LIU-12”).

5. LIU-12 hired Becker at the beginning of the 1979-80 school year as a special education teacher and Becker remained a teacher for LIU-12 until the end of the 1991-92 school year. *See*, Exhibit 1 to Becker's Appeal – *Stipulation of Facts*.

6. When Becker became employed by LIU-12 at the beginning of the 1979-80 school year, LIU-12 credited Becker, pursuant to Pennsylvania Public School Code §1154, with 25 days of accumulated sick leave. *See*, Exhibit 1 to Becker's Appeal – *Stipulation of Facts*.

7. LIU-12 did not credit Becker with the remaining 107.5 sick days he had accumulated as an employee with YCST from 1970-71 through 1978-79. *See*, Exhibit 1 to Becker's Appeal – *Stipulation of Facts*.

8. Prior to the 1992-93 school year, YCST returned the special education program to YCST from LIU-12.

9. At the beginning of the 1992-93 school year, Becker again became an employee of YCST as a special education teacher pursuant to the Transfer of Entities Act, 24 P.S. §1113. *See*, Exhibit 1 to Becker's Appeal – *Stipulation of Facts*.

10. At the time of the transfer from LIU-12 to YCST, LIU-12 informed YCST that Becker had 154 days of available sick leave. *See*, Exhibit 1 to Becker's Appeal – *Stipulation of Facts*.

11. At the beginning of the 1992-93 school year, YCST provided Becker with a written memo advising him that he had 164 days of available sick leave. *See*, Appellant's Brief in Opposition to Motion to Dismiss, p. 5. This represented the 154 days of sick leave transferred from LIU-12 and 10 days of sick leave provided for the 1992-93 school year. *See*, YCST's Brief in Support of Motion to Dismiss, p. 3.

12. Becker signed the memo indicating that he disagreed with the information in the memo regarding his available sick leave. *See*, Exhibit D to YCST's Brief in Support of Motion to Dismiss.

13. In the fall of 1992, Becker met with YCST administrators to discuss his accumulated sick leave balance. He was told that he would not be credited with the 107.5 days he had accumulated during his prior employment with YCST during the 1970-71 through 1978-79 school years. *See*, Arbitrator's Decision, pp. 16-17.

14. Subsequent to the 1992-93 school year, Becker continued to receive a written memo of his available sick leave each school year. Becker failed to respond to any of the subsequent memos. *See*, July 14, 2004 letter from Becker's counsel referencing the Arbitrator's Decision, p. 17.

15. During the 1992-93 through 2001-02 school years, Becker did not file a grievance against YCST for its decision not to credit Becker with the 107.5 sick days he had accumulated during his prior employment with YCST during the 1970-71 through 1978-79 school years. *See*, Arbitrator's Decision, p. 17.

16. Becker remained employed by YCST as a special education teacher until his retirement at the end of the 2001-02 school year. *See*, Exhibit 1 to Becker's Appeal – *Stipulation of Facts*.

17. During the 2001-02 school year, YCST offered teachers contemplating retirement the opportunity to receive a severance payment of \$35.00 for each unused sick day. *See*, Exhibit E, p. 5 of YCST's Brief in Support of Motion to Dismiss. Teachers were required to provide written notice, prior to March 1, 2002, of their intent to retire at the end of the school year in

order to receive the severance payment. *See*, YCST's Brief in Support of Motion to Dismiss, p. 5.

18. Becker informed YCST of his intent to retire at the end of the 2001-02 school year and sent letters to YCST asking that the 107.5 sick days he had accumulated during the 1970-71 through 1978-79 school years be credited to him. *See*, Exhibits F and G of YCST's Brief in Support of Motion to Dismiss.

19. By letter dated May 3, 2002, YCST's Superintendent of Record told Becker why he would not receive credit for the 107.5 sick days. *See*, Exhibit H of YCST's Brief in Support of Motion to Dismiss.

20. On July 24, 2002, YCST mailed Becker a check representing payment for 243.5 sick days, which did not include the 107.5 sick days Becker had accumulated during the 1970-71 through 1978-79 school years. *See*, Exhibit I of YCST's Brief in Support of Motion to Dismiss, and Becker's Brief in Opposition to Motion to Dismiss, p. 6.

21. Becker cashed this check in August 2002. *See*, Arbitrator's Decision, p. 20.

22. The York County Vocational-Technical Education Association filed a grievance on Becker's behalf on December 4, 2002, seeking payment of the 107.5 sick days. *See*, Exhibit J of YCST's Brief in Support of Motion to Dismiss and Becker's Brief in Opposition to Motion to Dismiss, p. 6.

23. On October 28, 2003, Becker and YCST participated in an arbitration hearing and provided testimony and evidence regarding the dispute about the 107.5 sick days. *See*, YCST's Brief in Support of Motion to Dismiss, p. 6 and Becker's Brief in Opposition to Motion to Dismiss, p. 6.

24. On March 25, 2004, the arbitrator filed a decision denying Becker's grievance. *See*, Exhibit B of YCST's Brief in Support of Motion to Dismiss.

25. On April 26, 2004, Becker filed with the Secretary of Education an Appeal from Denial of Accrued Sick Leave and Brief in support thereof.

26. YCST filed a Motion to Dismiss on April 29, 2004, and a Brief in support thereof on May 26, 2004.

27. Becker filed a Brief in Opposition to Motion to Dismiss on July 12, 2004.

Discussion

Background

Becker was initially employed by YCST as a special education teacher from the 1970-71 through 1978-79 school years. At the end of the 1978-79 school year, YCST transferred its special education program to LIU-12. When the special education program was transferred to LIU-12, Becker was suspended from employment with YCST. Prior to the 1979-80 school year, Becker was hired by LIU-12 as a special education teacher.

When LIU-12 hired Becker, Becker had accumulated 132.5 days of sick leave during his employment with YCST. Based on the law at that time, however, LIU-12 credited Becker with only 25 days of sick leave. At that time the Pennsylvania School Code provided that when professional employees severed their employment with one school district and entered employment with another, the employees were entitled to all accumulated leave not exceeding a maximum of 25 working days acquired during their employment in school districts of the Commonwealth. 24 P.S. §11-1154(a). In this appeal, Becker does not contest the legitimacy of LIU-12 granting him credit for only 25 days of sick leave even though he had accumulated 132.5 days when working for the YCST.

In 1982, the Pennsylvania Public School Code was amended by adding section 1113, which is referred to as the Transfer of Entities Act (the “Act”). 24 P.S. §11-1113, as amended. The Act provides a process by which a program or class may be transferred from one school entity to another and addresses the process of employing professional educators from the sending and receiving entities. “Transferred professional employes shall be credited by the receiving entity only for their sick leave accumulated in the sending entity and also for their years of service in the sending entity” 24 P.S. §11-1113(b).

Notwithstanding the enactment of the Act, Becker argues that Section 1154 of the Pennsylvania Public School Code allows him to receive credit for the 107.5 sick days he accumulated at YCST in the 1970-71 through 1978-79 school years. Section 1154 provides that a professional employee is to be paid, for a period of ten days, when he or she is prevented by illness or accident from working. “Any such unused leave shall be cumulative from year to year in the school district of current employment or its predecessors without limitation.” 24 P.S. §11-1154(a). Since Becker accumulated the 107.5 sick days when initially employed by YCST, he argues that he could not lose those sick days when rehired by YCST even though there was a break in his employment with YCST. Becker also relies on the case of *Mifflinburg Area Education Ass’n. v. Mifflinburg Area School District*, 555 Pa. 326, 724 A.2d 339 (1999) for his position.

Section 1154 of the Pennsylvania Public School Code is also the basis of Becker’s appeal to the Secretary. Section 1154 provides that “[i]n any case involving a dispute over the amount of accumulated sick leave, a professional or temporary professional employe shall have a right of appeal to the Secretary of Education pursuant to such rules and regulations he may establish.” 24 P.S. §11-1154(a).

However, YCST filed a Motion to Dismiss Becker's Appeal based partially on its argument that Becker has no standing to appeal to the Secretary because he was no longer a professional employee after he retired from YCST. If Becker has no standing to file this appeal, then the other issues raised in the Motion to Dismiss need not be addressed. Therefore, the issue of Becker's standing to file the appeal will be addressed first.

Professional Employee

The term professional employee includes "those who are certificated as teachers"

24 P.S. §11-1101(a).

Teacher shall include all professional employes and temporary professional employes, who devote fifty per centum (50%) of their time, or more, to teaching or other direct educational activities, such as class room teachers, demonstration teachers, museum teachers, counselors, librarians, school nurses, dental hygienists, home and school visitors, and other similar professional and temporary professional employes, certificated in accordance with the qualifications established by the State Board of Education.

24 P.S. §11-1141(1).

In *Brentwood Borough School District Appeal*, 439 Pa. 256, 267 A.2d 848 (1970), the Pennsylvania Supreme Court construed Sections 1101 and 1141 together to determine if a curriculum coordinator was a professional employee. The court held that an individual is a teacher for purposes of Section 1141 if the individual holds the necessary certificate and devotes at least 50% of the time to teaching or direct educational activities. *Id.*, 439 Pa. at 260, 267 A.2d at 850. An individual is a professional employee under Section 1101 if the individual is a teacher under Section 1141. *Id.* Thus, the court held that the curriculum coordinator was a professional employee because she devoted at least 50% of her time to direct educational activities.

Commonwealth Court looked to the Supreme Court's construction of these two sections to also decide whether an individual was a professional employee. *Fiorenza v. Chichester*

School District, 28 Pa. Commw. 134, 367 A.2d 808 (1977). After citing to the language from *Brentwood* that construed these two provisions together, Commonwealth Court stated:

It is clear from above that the holding of a teacher's certificate does not make one a teacher under Section 1141. One attempting to qualify as a teacher, and hence a professional employe, must also show that he devotes at least half his time to teaching or other direct educational activities.

Fiorenza, 28 Pa. Commw. at 137, 367 A.2d at 810. In *Fiorenza*, the court held that the Administrative Assistant for Personnel and Special Services was not a teacher because his duties did not require him to devote 50% of his time to teaching or direct educational activities. Therefore, he was not within the category of professional employee. *Id.*, 28 Pa. Commw. at 138, 367 A.2d at 810.

In the instant case, Becker filed his appeal with the Secretary on April 26, 2004. When Becker filed his appeal with the Secretary he had been retired from YCST for approximately 21 months. Since Becker had retired he was not devoting 50% of his time to teaching or direct educational activities. Therefore, Becker was not a teacher pursuant to Section 1141 when he filed his appeal with the Secretary. Since Becker was not a teacher when he filed his appeal, he also was not within the category of professional employee as defined by Section 1101 of the Pennsylvania Public School Code. Thus, the Secretary has no jurisdiction over this appeal because Becker was not a professional employee when he filed his appeal.

Accordingly, the following Order is entered:

**IN THE OFFICE OF THE SECRETARY OF EDUCATION
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DONALD BECKER,	:	
Appellant,	:	
	:	
v.	:	Sick Leave Appeal 04-04
	:	
YORK COUNTY SCHOOL OF TECHNOLOGY	:	
Appellee	:	

ORDER

AND NOW, this 29th day of July, 2004, upon review and consideration of York County School of Technology's Motion to Dismiss, and the briefs filed by the parties, it is hereby ORDERED that York County School of Technology's Motion to Dismiss is GRANTED.

s/s

Vicki L. Phillips
Secretary of Education

Date mailed: