

Appellant further argued that the method of the hearing procedure for the hearing before the Board was not in compliance with the provisions of the Public School Code.

Section 1151 of the Public School Code, as amended, provides for the right to a hearing before the local school board and the right to appeal. The Appellant makes reference to the failure of the Board to cite the charges against him. There were no specific charges, as required in a dismissal case.

The basis for the termination of the yearly appointment was the dissension existing in the music department of the school during the Appellant's period of chairmanship and, as Dr. Hottenstein, the District Superintendent, said, it was having an effect upon the classroom and in the teaching position. Consideration must first be given to the educational progress of the students and, by reason thereof, the proper solution was in the termination of the particular chairmanship. These facts were known by the Appellant. The testimony at the hearing before the Board substantiated the problem that had existed.

Appellant further contends that the Board, in its decision of supporting the decision of the Superintendent not to renew the chairmanship appointment, abused its discretion and did not exercise sound judgment.

Smith vs. Darby, supra citing Hibbs vs. Arensberg, 276 Pa. 24, and Campbell vs. Bellevue Sch. Dist., 328 Pa. 197, stated that the burden is upon the Appellant to prove the impropriety of the board's action.

This, in our opinion, the Appellant has failed to do. This is further substantiated by the Appellant's testimony that the music department is now operating in a satisfactory and harmonious manner.

Accordingly, we make the following

ORDER

AND NOW, to wit, this 29th day of June, 1972, it is ordered and decreed that the Appeal of John M. Fino from the decision of the Board of School Directors of the Colonial School District be and is hereby dismissed.

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Appeal of Frank Bilotta, a Professional Employee, from a decision of the Board of School Directors of the Easton Area School District, Northampton County, Pennsylvania

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

No. 210

OPINION

John C. Pittenger
Secretary of Education

Frank Bilotta, Appellant herein, has appealed from a decision of demotion by the Board of School Directors of the Easton Area School District, Northampton County, Pennsylvania.

FINDINGS OF FACT

1. Frank Bilotta has been employed by the Easton Area School District as a professional employe since February, 1959, serving as a teacher.
2. In October, 1966, he became the Acting Director of the Title I program in said district, and on March 17, 1969 he was appointed as Director of Title I and Reading Coordinator.

3. On March 23, 1970, the School Board approved Appellant's request for a sabbatical leave for the school year 1970-71.
4. On April 26, 1971, the Easton Area School Board approved an administrative reorganization that included, inter alia, the elimination of the Appellant's position, and other positions in the system.
5. On August 31, 1971, the Appellant was assigned to teach English at Shull Junior High School in said district with a decrease in salary.
6. On September 3, 1971, the Appellant filed an application for the vacancy of Director of Secondary Education, and on September 15, 1971 he and seven other applicants were interviewed by the members of the School Board. On October 13, 1971, the Board appointed one of the applicants other than the Appellant to fill the said vacancy.
7. A hearing on the demotion was held before the School Board on November 15, 1971.
8. On December 1, 1971, at a School Board meeting, the Board approved a resolution stating that the reassignment of the Appellant was a transfer and not a demotion.
9. On January 20, 1972, the Appellant filed his appeal from the School Board decision with the Secretary of Education.
10. On March 8, 1972, the hearing on the appeal was held.

TESTIMONY

At the hearing held before the local School Board, testimony was taken substantially as follows:

Warren B. Fitzsimmons, Superintendent of the School District, stated that he had prepared a revision of the administrative organizational chart, recommending the elimination of seven positions; that the position of the Appellant as Director of Title I was included therein; and that all Federal programs were being placed under one category in charge of the Director of Federal Programs. This revised reorganization was adopted by the School Board on April 26, 1971. At the time of said reorganization the Appellant was on sabbatical leave. In his prior position the Appellant has earned \$15,255.00, and in the new position of English teacher his salary would be \$11,300.00. During the Appellant's leave, there was a vacancy in the nonmandated position of Director of Secondary Education. Subsequently, in August, 1971, this position vacancy was publicized, and eight applicants were received. The publication of this vacancy had indicated a requirement of a secondary school principal certification, and then said requirement was deleted by the Superintendent. All applicants were interviewed by the school directors, and the appointment was given to one other than the Appellant.

John J. Curley, Acting Assistant Superintendent, agreed that his testimony would corroborate that given by the Superintendent.

Frank A. Herting, former Superintendent of Schools, testified that the Appellant had applied for sabbatical leave in October, 1969 and it wasn't approved by the Board until April, 1970.

Jack Witty, a former Board member, and, at present, an advisory member, testified concerning an audit made of the Title I funds during the Appellant's directorship thereof.

David Kirkpatrick, a former President of the Easton Area School Association, testified about the prejudice of certain Board members against the teachers and their association.

Frank La Valva, a teacher at Easton High School, stated that on November 10, 1969, Mr. Baratta, a Board member, said that "heads will roll" and Mrs. Felver, also a Board member, said that they can "get dirty". Miss Norma Silviotti, a teacher at Easton High School, corroborated the testimony of Mr. La Valva and Dr. Herting. Samuel Trapani, also a teacher at Easton High School, stated that he had also heard the remarks made by the two directors.

Frank Bilotta, the Appellant, testified that he became Director of the Title I program in October, 1966 and continued in said position, plus Reading Coordinator, until he began his sabbatical leave in September, 1970. Mr. Baratta told him to watch himself; that heads will roll. On August 18, 1970, he wrote to Dr. Fitzsimmons requesting an option to resign after the sabbatical leave and the School Board granted him permission. On April 15, 1971, he again wrote to Dr. Fitzsimmons requesting to be returned to his directorship position, and on April 29, 1971 Dr. Fitzsimmons advised him that this position had been eliminated and that he could return to his prior position of English teacher.

James Masterson testified relative to the reorganization chart, and the interviews with all

with all the applicants for the position of Director of Secondary Education.

Robert Litz, a member of the School Board, testified about the reorganization revisions and the Board approval of the same. He also stated that the eight applicants for the vacancy were considered by the Board and only their qualifications were considered in the selection of the one appointed.

John J. Curley, Assistant Superintendent, corroborated the Superintendent's testimony, as well as the statements of Mr. Litz and Mr. Masterson.

Geraldine Felver, School Board member, testified that the remarks attributed to her were "if they want to be dirty, we can be dirty, too."

Dennis Baratta, advisory Board member (nonvoting since July 1, 1970), in referring to the remarks attributed to him, stated that he had told them that the behavior of certain people was unprofessional and unethical. He also said "heads would roll, metaphorically."

DISCUSSION

The appeal in this case involves a claim of demotion by the Easton Area School Board of the Appellant from the position of Director of Title I and Reading Coordinator.

The Appellant does not question the right of a school board to demote, but contends that the action in this instance was discriminatory.

The testimony taken in this case establishes that, while the Appellant was on sabbatical leave, Dr. Fitzsimmons, the new School District Superintendent, prepared a revised organizational administrative plan, which said plan was approved by the School Board on April 26, 1971. This revised plan eliminated seven directorships, including the one held by the Appellant. All Federal programs, under the revision, were placed under the supervision of the Director of Federal Programs. In August, 1970, the Appellant had written to the Superintendent requesting an option to terminate his employment at the end of the sabbatical leave, and this request was approved by the School Board. On April 15, 1971, he again wrote to the Superintendent requesting a return to his prior position upon termination of his leave. On April 29, 1971, the Superintendent, in reply, advised him that the position had been eliminated in the revised organizational chart, and offered him, in its stead, a position as English teacher in a junior high school. When a vacancy occurred for the position of Director of Secondary Education, the Appellant and seven others applied for the position, and the eight applicants were interviewed by members of the administrative staff and the school directors. An applicant, other than the Appellant, was finally appointed.

The Appellant contends that the action of the School Board was based on the enmity against him by reason of his activity as President of the local teachers' association. In support of this contention, testimony was introduced to establish the delay in the grant of his sabbatical leave, the audit of the funds of the Title I program during his directorship thereof, the statements made by two members of the School Board (one a voting member and the other an advisory member), and the denial of the appointment to fill the vacancy of Director of Secondary Education.

The delay in the grant of sabbatical leave, the audit, and the statements made by the two Board members were explained in the rebuttal testimony.

It is to be noted that any action by the Board was pursuant to resolutions adopted by the vote of the Board, and it is difficult to conceive of a board of nine plus advisory members being influenced by the reaction of two members.

In *Smith vs. Darby*, 388 Pa. 301, at page 312, the Court stated:

"It is the administrative function of the school directors and superintendents to meet changing educational conditions through the creation of new courses, reassignment of teachers and rearrangement of curriculum. *Jones vs. Holes*, 334 Pa. 538, *Mazzie vs. Scranton School District*, 341 Pa. 255, *Wesenberg vs. Bethlehem School District*, 148 Sup. 250, *Welsko vs. Foster Township School District*, 383 Pa. 390."

and at page 314:

"The number and character of departments, positions, offices and teachers necessary in any particular district are matters which lie within the sound discretion of the school board...The power of creation and abolition of departments, positions, and offices must rest with the school authorities. The only limitation which should be imposed on the exercise of this power should be that the board must act intelligently, impartially and with sound discretion ever mindful of the high principles enunciated in the Constitution and the Public School Code concerning our educational system."

The Appellant's testimony and that of his witnesses relative to bias and prejudice is not sufficient, in our judgment, to substantiate the burden of proof imposed upon the Appellant to prove the impropriety of the Board's action. *Hibbs vs. Arensberg*, 276 Pa. 24, and *Campbell vs. Bellevue School District*, 328 Pa. 197.

No testimony was offered establishing that the animus alleged against two board members influenced the balance of the Board membership when they voted on the revision of the organizational administrative plan submitted by the Superintendent or on the appointment to fill the vacancy in the position of Director of Secondary Education.

The Appellant, in his brief, has made reference to Section 1124 of the Public School Code, dealing with suspensions. He stresses the failure of the Board to recognize his seniority when the appointment was made for the vacancy of Director of Secondary Education. In the instant case, we are not dealing with a suspension and the rights of seniority are not pertinent to the Board's consideration of an appointment to fill such a vacancy.

The Appellant further raises the question of the Board's vote on his demotion. Seven Board members were in attendance. Four voted for the transfer, two voted nay, and one abstained.

Section 1151 of the Public School Code provides for a right to a hearing and appeal in demotion matters. The section refers 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."

The section does not specify whether "in the same manner" refers solely to an appeal or both the hearing and appeal. Section 1127 of the School Code refers to a compulsory hearing and the procedures relative thereto, whereas Section 1151 stipulates the right to a hearing, thereby making such hearing optional with the employe. There is a distinct difference between dismissal and demotion. Dismissal is a final termination of employment and it is understandable that Section 1129 requires a two-thirds vote of the entire board. A demotion is a transfer of position, and does not involve a severance of the employe from the school system. We have asked counsel for the Appellant to cite precedents for his contention that a two-thirds board vote is required, but no cases on this point are cited in his briefs. In view of the absence of specificity in Section 1151, it is our considered opinion that the wording of this section is reasonably construed as solely pertinent to the right of appeal in the same manner as the dismissal section, No. 1131 of the School Code. Accordingly, a quorum being in attendance, pursuant to Section 422 of the School Code, a majority vote thereof was sufficient to render a decision. The Public School Code states explicitly when a majority or a two-thirds vote of the entire school board is required, and if it was the legislative intent to require such a percentage of vote of the total board, that intention should have been expressed clearly as not to be open to doubt and, in the absence of a clearly expressed intent to the contrary, the will of the majority in a quorum is the will of the entire board. This rule derives from the common law and is applicable unless modified by statute. *Farrell vs. Chervenak*, 69 D. & C. 401.

We agree that efficient administration of a school system requires a school board, acting in concert with its administrators, to exercise its best judgment not capriciously or discriminatorily, to evaluate which administrative positions should be continued or discontinued; that tenure requires that when no mandated administrative position is available, a professional employe, formerly

occupying a mandated or nonmandated position, must be reassigned to a teaching position for which he is certified. *Lakeland Joint School District vs. William R. Gilvary, Appellant*, 283 A. 2d 500 (Commonwealth Court).

The evidence in this case fails to establish any abuse of discretion by the School Board and the Appellant has failed to meet the burden of proof imposed upon him to establish the invalidity thereof.

In view of the foregoing, we make the following

ORDER

AND NOW, to wit, this 23rd day of July, 1972, it is ordered and decreed that the appeal of Frank Bilotta from the decision of demotion by the Board of School Directors of the Easton Area School District be and is hereby dismissed.

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Appeal of Marjorie S. Kauffman, a Professional Employee, from a decision of the Board of School Directors of the Tuscarora School District, Franklin County, Pennsylvania

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

No. 212

OPINION

John C. Pittenger
Secretary of Education

by David W. Hornbeck
Deputy Secretary

Marjorie S. Kauffman, Appellant herein, has appealed from a resolution of demotion by the Board of School Directors of the Tuscarora School District, Franklin County, Pennsylvania, and their refusal to grant her a hearing on her demotion pursuant to Section 1151 of the Public School Code.

FINDINGS OF FACT

1. The Appellant, Marjorie S. Kauffman, has been employed as a guidance counselor in the Tuscarora School District since 1961.
2. On April 10, 1972, the Board of School Directors of the Tuscarora School District granted a one year sabbatical leave to the Appellant for the purpose of pursuing graduate study, said leave beginning in September, 1972.
3. On June 10, 1972, the said Board of School Directors reassigned the Appellant to the position of eighth grade English teacher, and advised her thereof on July 14, 1972, the same to become effective upon her return from sabbatical leave.
4. The Petition of Appeal avers that at a conference held on June 16, 1972, between the Superintendent, the Appellant and her counsel, she was informed of the action of reassignment contemplated by the Board. Her counsel then requested that a hearing be held on said proposed demotion.
5. On August 11, 1972, the Appellant filed her Petition of Appeal with the Secretary of Education.
6. Hearing on said appeal was held on September 6, 1972.

DISCUSSION

The appeal in this case involves the refusal of the School Board to grant a hearing to the Appellant on her demotion by the Board.