

Under the provisions of Act 195 and the above cited Labor Relations Board cases, we find that it is not a conflict of interest for an Assistant Principal or other first level supervisor who is a member of an employe organization to handle grievances involving other members of that organization. Therefore, since there is no conflict of interest, there is no legal basis for finding that George R. Reese was incompetent to perform his duties as Assistant Principal.

In addition, we find no factual basis for incompetency. Mr. Reese had never received any unsatisfactory ratings. Accordingly, he could not be dismissed for incompetency since two unsatisfactory ratings are required, *Appeal of Thall*, 410 Pa. 222, 189 A.2d 249 (1963). It should also be noted that Mr. Reese was never asked to participate in collective bargaining negotiations, that he was never asked to handle grievances, and that such actions were not a part of his job description. The Superintendent's testimony on Mr. Reese's performance as an Assistant Principal showed that he was considered to be highly competent and satisfactory.

However, concerning the question of Mr. Reese being able to participate in the collective bargaining process by virtue of his membership in an employe organization, it should be noted that public employes who are first level supervisors have a right to such membership under Act 195. That right cannot be circumvented by making participation in the collective bargaining process a requirement of the first level supervisor's job position. When a first level supervisor is involved in collective bargaining and is a member of an employe organization Act 195 provides that he shall be removed from his role in the collective bargaining process, Section 1801(b). It does not authorize dismissing the employe or requiring him to resign from the organization.

Accordingly, we make the following:

ORDER

AND NOW, to wit, this 4th day of January 1973, it is ordered and decreed that the Appeal of George R. Reese from the decision of dismissal by the Board of School Directors of the Ellwood City Area School District is hereby sustained and the Board of School Directors of the Ellwood City Area School District is directed to reinstate George R. Reese forthwith without loss of pay.

* * * *

Appeal of Beulah L. Burns, a Professional
Employe, from a decision of the Board of
School Directors of the Chester Upland
School District, Delaware County,
Pennsylvania

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

No. 216

OPINION

John C. Pittenger
Secretary of Education

Beulah L. Burns, Appellant herein, has appealed from a decision of the Board of School Directors of the Chester Upland School District, Delaware County, Pennsylvania, terminating her contract and dismissing her as a professional employe.

FINDINGS OF FACT

1. The Appellant served as a temporary professional employe in the Chester Upland School District from February, 1969 until February, 1971.
2. On February 1, 1971, the Appellant was issued a professional employe's contract by the Board of School Directors of the Chester Upland School District.
3. During the course of her employment with the School District, the Appellant taught seventh grade social studies and ninth grade civics at Showalter Junior High School.

4. The Appellant's services were rated satisfactory for the 1968-69, 1969-70, and 1970-71 school years.

5. The Appellant was rated unsatisfactory in June, 1972 by Mr. Alfred A. Gagliardi, her principal at Showalter School. The unsatisfactory rating concerned an incident between Mr. Gagliardi and the Appellant which occurred on June 13, 1972, during which the Appellant said "I don't give a 'shit' what you have to say." Notice of the rating and reasons for it were sent by Mr. Gagliardi to Dr. John J. Vaul, Superintendent of Schools, by letter dated June 14, 1972.

6. On June 15, 1972, Mr. Gagliardi sent to Dr. Vaul a letter containing a chronological summary of negative matters concerning the Appellant's service with the school district. The letter referred to the Appellant's "chronic lateness" for the 1969-70 school year, and to a conference scheduled for May 1971 with the Superintendent, which was cancelled, concerning the Appellant's "excess lateness". Reference was also made to an incident in June 1970 when a student was injured while the Appellant was out of the classroom. Also cited was an incident where some of the Appellant's students used profanity in a play performed in February 1972 for Negro History Week; the objectionable words were "white s.o.b.", "shit", "damn", and "hell". Additional matters mentioned in the letter are the following: The Appellant knitted in class. On one occasion the Appellant's class was noisy and had to be quieted by the principal, (no date was given for this incident). A birthday party was given for the Appellant by her students after school, in defiance of the principal's standing orders that no parties were to be held in the school; the principal stopped the party, (no date was given for this incident). On June 8, 1972, at closing exercises for the ninth grade class, the principal, after receiving a trophy of "thanks" from the class, was handed a package and asked to present it. The package contained a plaque to be presented to the Appellant as the outstanding teacher of the year, which the principal had no choice but to present. Upon questioning students, the principal was told that the Appellant had her classes make a private collection and had the plaque and trophies made. Reference was also made to the June 14, 1972 letter to Dr. Vaul in which the unsatisfactory rating for the Appellant was submitted.

7. On June 15, 1972, the Appellant attended a conference with Dr. Vaul and Mr. Gagliardi, at which her unsatisfactory rating was discussed. Also present, among others was Mr. Clarence Roberts, President of the School Board.

8. On or about June 15, 1972, Dr. Vaul sent a letter to the Appellant which reads in part:

"Dear Mrs. Burns:

As per our conference of June 15th, 1972, ... I rendered my decision on your case to terminate your services as of June 30th, 1972. In compliance with the provisions of the State Code, I am herewith attaching a copy of the anecdotal record as required."

Neither the letter nor the anecdotal record was introduced into evidence. However, the contents of the letter were read into the record by Dr. Vaul.

9. On June 27, 1972, Dr. Vaul informed the Appellant by letter that the Board of School Directors, at its June 26, 1972 meeting, had approved the termination of her services, effective June 30, 1972.

10. On July 25, 1972, Dr. Vaul informed the Appellant by letter that the Board of School Directors, at its July 24, 1972 meeting, rescinded its action terminating her services.

11. On July 25, 1972, the Appellant was sent a letter, signed by the president and the secretary of the Chester Upland School Board, informing her that a hearing would be held on charges brought against her by her principal, Mr. Gagliardi. The letter reads, in part, as follows:

"Attached hereto is a list of charges lodged against you by your principal, Mr. Alfred A. Gagliardi. These charges are serious enough to be reviewed before the School Board.

"Should the School Board decide against you, it could lead to possible dismissal from the district."

Attached to the letter was a copy of Mr. Gagliardi's letter of June 15, 1972 to Dr. Vaul. 12. Hearings were held before the Chester Upland Board of School Directors on August 21, 1972 and August 30, 1972. At the end of the second hearing, the dismissal of the Appellant was approved by a roll call vote of 6 to 0, which vote was read into the record in the Appellant's presence.

13. On September 29, 1972, the Petition of Appeal on behalf of the Appellant was filed in the Office of the Secretary of Education. A hearing was scheduled for, and was held on, October 30, 1972. Briefs were requested; the brief for the School District was not received until June 1973.

14. The Appellant first saw the official Department of Education rating card (DEBE-333) on which she was given the unsatisfactory rating at the hearings held before the School Board in August, 1972. The official rating card was not signed by the Superintendent, Dr. Vaul.

15. Teachers at Showalter Junior High School were required to be in the building at 8:15 a.m. Students were not admitted into the building until 8:20 a.m. Classes did not begin until 8:30 a.m. On most of the occasions the appellant was late during the 1971-72 school year, she arrived at school by 8:21 a.m. or earlier.

16. The circumstances of the incident that resulted in the Appellant's unsatisfactory rating are as follows: By June 13, 1972, the ninth grade students had graduated, but the seventh and eighth grade students were still in attendance. As a result, some teachers had reduced work loads; in a few cases, teachers were not required to perform any work. The Appellant had a reduced work load. Mr. Gagliardi requested her to perform some additional work. The Appellant objected to this request and stated that the principal should assign the work to one of the teachers who had nothing to do. The principal became mad and stated, in effect, that he was fed up with the Appellant's attempts to run the school. The Appellant thought the principal's reply was abusive in tone, and responded in kind. The Appellant, nevertheless, did the work she was requested to perform.

17. The principal testified that he has no complaints about the Appellant's abilities as a teacher.

DISCUSSION

The dismissal of the Appellant, Beulah Burns, must be reversed for two basic reasons: the Chester Upland Board of School Directors failed to follow the procedures stated in the Public School Code of 1949 for the dismissal of professional employees; the evidence does not justify a dismissal.

The procedure for the dismissal of professional employees is spelled out in Section 1127 of the School Code, 24 P.S. §11-1127, wherein it is stated:

"Before any professional employe having attained a status of permanent tenure is dismissed by the board of school directors, such board of school directors shall furnish such professional employe with a detailed written statement of the charges upon which his or her proposed dismissal is based and shall conduct a hearing. A written notice signed by the president and attested by the secretary of the board of school directors shall be forwarded by registered mail to the professional employe setting forth the time and place when and where such professional employe will be given an opportunity to be heard either in person or by counsel or both, before the board of school directors and setting forth a detailed

statement of the charges. Such hearing shall not be sooner than ten (10) days nor later than fifteen (15) days after such written notice. At such hearing all testimony offered, including that of complainants and their witnesses, as well as that of the accused professional employe and his or her witnesses, shall be recorded by a competent disinterested public stenographer whose services shall be furnished by the school district at its expense. Any such hearing may be postponed, continued or adjourned."

Compliance with these procedures is mandatory. Failure to comply renders the dismissal null and void. This principle was stated in *Swink's Case*, 132 Pa. Super. 107, 200 A. 200 (1938), wherein the Court said:

"Nevertheless, the procedure for the dismissal of a professional employee of a school district is established by statute. There may be no material deviation from these procedural requirements ... The burden [at the initial hearing] was on the board to show a proper dismissal of the appellant; and she was entitled to the benefit of every right secured by her by the School Code ... Unless she was dismissed in the prescribed manner, having been accorded every right secured to her by statute, her dismissal was illegal." 132 Pa. Super. at 111, 200 A. at 202, 203.

"Likewise, in dismissing a teacher, an observance of the procedure prescribed is mandatory." 132 Pa. Super. at 115, 200 A. at 204.

Swink's Case was one of the first to arise under the Teachers' Tenure Act of 1937, Act of April 6, 1937, P.L. 213. That act established the procedures for the dismissal of professional employes that are a part of our present School Code. The Court in the *Swink* case considered compliance with those procedures to be so important that it ordered the reinstatement of a teacher, whose dismissal would have been supported by the evidence, because the school board failed to render compliance. The principle established in *Swink's Case* that compliance with the School Code's dismissal procedures is mandatory has been followed by the Courts over the years with such rigidity that it is recognized as a legal maxim. *Jacobs v. School District of Wilkes-Barre*, 50 A. 2d 354, 355 Pa. 449 (1947); *Appeal of Board of School Directors of Cass Township*, 30 A. 2d 628, 151 Pa. Super. 543 (1943); *Board of School Directors of Abington School District v. Pittenger*, 305 A. 2d 382, 9 Pa. Cmwlth. 62 (1973).

In the case now before us, the Appellant has the distinction of having been dismissed twice. In the first dismissal, there was not even a remote attempt by officials of the Chester Upland School District to comply with the dismissal procedures of the School Code. The School Board did attempt to correct the errors made in the first dismissal by reinstating the Appellant, so that it could dismiss her again, but this time in what the School Board thought was compliance with those procedures.

The School Board would like us to forget that initial dismissal as we review the appeal. The School Board contends that it recognized it had erred, and accordingly gave the Appellant the relief to which she was entitled -- reinstatement. Having reinstated her, the Board contends that it was free to initiate a second dismissal proceeding which would not be tainted by the errors of the first.

There are a number of reasons why we cannot ignore the errors of the first dismissal proceeding. First, it is obvious that both dismissals are closely related -- on the day the School Board reinstated her, it decided to conduct a hearing on "charges" lodged against her by her principal, Mr. Gagliardi, which "...could lead to [her] possible dismissal from the district." Those "charges" were the reasons she was dismissed the first time. Rather than being a completely separate proceeding, the second dismissal was an outgrowth of the first.

Second, the School Code requires more of a school board than just the appearance of compliance with the dismissal procedures -- the attitude of the school board in the dismissal proceeding is important. Section 1129 of the State Code provides in part:

"After fully hearing the charges or complaints and hearing all witnesses produced by the board and the person against whom the charges are pending, *and after full, impartial and unbiased consideration thereof*, the board of school directors shall by a two-thirds vote of all the members thereof, to be recorded by roll call, determine whether such charges or complaints have been sustained and whether the evidence substantiates such charges and complaints, and if so determined shall discharge such professional employe." Emphasis added. 24 P.S. §11-1129.

All actions by school officials and members of the school board that concern the Appellant are important in determining whether the Appellant received a fair hearing and whether the board gave "full, impartial and unbiased consideration" to the evidence.

Third, no professional employe should ever be in the position of having to threaten legal action before a school board is willing to recognize the extremely fundamental rights the School Code grants to one facing dismissal action. A policy of complying with the School Code's dismissal procedures only for those professional employes who effectively challenge improper dismissals will not be tolerated. The school board has the duty to follow the law and should not have to be compelled to do so. Apparently, if the Appellant had not retained legal counsel, the initial dismissal action would not have been rescinded by the Chester Upland Board of School Directors.

Fourth, violations of the School Code as flagrant as those which occurred in the first dismissal action will not be ignored because the School Board took the simple expedient of reinstating the Appellant when it is apparent that the sole purpose for reinstating her was to dismiss her again. These violations were not minor or inadvertent; instead, they are of such a magnitude that complete and total disregard for the requirements of the School Code is indicated.

In reviewing both dismissals, we find many procedural errors, any one of which would require the Appellant's reinstatement. It was error for the Superintendent, Dr. John Vaul, to dismiss the Appellant on June 15, 1973 -- the Superintendent may recommend to the school board that a particular professional employe be dismissed, but he has no authority to dismiss that employe himself. Only the school board can dismiss a professional employe; this is an exclusive power of the school board which cannot be delegated to the Superintendent. See Sections 508, 1127, and 1129 of the School Code, 24 P.S. §§5-508, 11-1137, 11-1129; *Appeal of Avoca Borough School District*, 85 D. & C. 18 (1953). From the letter which Dr. Vaul sent to the Appellant in mid June, 1972, and which he read into the record, (see Finding of Fact No. 8), it is quite clear that he dismissed the Appellant: "As per our conference of June 15, 1972, ... I rendered my decision on your case to terminate your services as of June 30th, 1972."

The Superintendent's error was compounded by the School Board when it ratified or approved his action at its June 26th meeting. After that meeting, as far as the officials of the Chester Upland School District were concerned, the Appellant was no longer an employe of the District. Even though she had the status of a professional employe, her services had been terminated without any charges being filed against her and without a hearing before the Board of School Directors -- clear and inexcusable violations of the provisions of Section 1127 of the School Code.

In the second dismissal action, the statement of charges upon which the dismissal was based is inadequate and does not justify the action taken by the School Board. Section 1127 requires that the School Board furnish the professional employe "with a detailed written statement of the charges upon which his or her proposed dismissal is based and shall conduct a hearing." Since professional employes cannot be dismissed except for one or more of the "causes" specified in Section 1122, the charges must state a cause for dismissal that is recognized in Section 1122.

In addition, the statement of charges must describe the condition, action or offense that is the reason for the proposed dismissal. A statement that an employe is being dismissed for

negligence is not sufficient without a description of the conduct that the School Board believes demonstrates negligence. A vague or incomplete description would make it difficult for the employe to prepare a defense or respond to the charges, and would thereby raise questions about whether the employe received a fair hearing. While it is not necessary that the charges specifically cite one or more of the causes for dismissal listed in Section 1122, it is necessary that the description clearly indicate a cause for the proposed dismissal that is authorized by Section 1122, *Appeal of Batrus*, 26 A. 2d 121, 148 Pa. Super. 587 (1942).

A school board should carefully consider the charges it furnishes to the professional employe, since the employe cannot be dismissed for a reason that is not included in the statement of charges.

In the statement of charges furnished by the Chester Upland School Board to the Appellant, not one of the causes for dismissal listed in Section 1122 is cited. Instead, the charges essentially comprise statements of negative incidents or matters involving the Appellant. Actually, the School Board did not furnish the Appellant with a true statement of charges; instead, she received a copy of the letter Mr. Gagliardi sent to Dr. Vaul. Mr. Gagliardi's testimony clearly indicates, and it is apparent from the document itself, that the letter was intended to be an anecdotal record, not a statement of charges that Mr. Gagliardi was personally bringing against the Appellant as was stated in the notice of the hearing sent to the Appellant.

Some of the negative incidents "charged" against the Appellant clearly are causes for dismissal. For example, she was late forty-seven times in 1969-70, and forty times in 1970-71 - habitual lateness would constitute persistent negligence or persistent and wilful violation of the School Laws. However, we note that during three-fourths of this period, the Appellant was a probationary employe. If her lateness was serious enough to warrant dismissal action, the School Board should not have given her tenure. She should have been rated unsatisfactory and dismissed in accordance with the provisions of Section 1108 concerning temporary professional employes. The School Board's action in granting tenure to the Appellant indicates to us that the School Board did not consider her lateness to be an important problem at a time when the Board should have seriously considered whether or not to continue her employment. In any event, the "charges" indicate that the lateness problem was resolved at the end of the 1970-71 school year since her principal decided not to take any action.

There was testimony that the Appellant was late during the 1971-72 school year. However, that offense was not included in the charges and therefore cannot be a basis for dismissal. In any event, on most of the occasions the Appellant was late, we note that she arrived at school before students were allowed into the building, and also, that she was late by only a couple of minutes. While the record shows that the Appellant needs to make a better and more successful effort to be on time, it does not show such negligent or improper conduct as would justify a dismissal.

Another offense "charged" against the Appellant which occurred while she was a probationary employe involved the injury of a student when the Appellant was out of the classroom. This "charge" and the one for lateness are dismissed because the School Board subsequently granted the Appellant tenure, and by such action apparently felt the problems had been resolved, and because the Appellant was rated "satisfactory" during this period. Further, offenses which are not recent should not be the basis for a dismissal unless those offenses are cited to demonstrate a continuing pattern of conduct. After the passage of at least one year from the date of a particular offense, during which time the School Board has taken no action, there is a presumption that the problem with the professional employe has been resolved. Therefore, that offense, by itself, will not be sufficient to justify dismissal. The School Board has a heavy burden to demonstrate the relevancy of offenses occurring more than a year prior to when charges were filed if such offenses are to support a dismissal action. That burden has not been met in this case.

During the Appellant's last year with the School District, she was charged with six different offenses. She was charged with knitting in the classroom. However, the principal testified that several other teachers did the same thing. He also testified that when she was asked to stop, she did. In the absence of testimony about what the Appellant's students were supposed to be doing in the classroom at the time - was it a rest or reading period?, were the students taking

a test?, were the students even present? – we find that the evidence on the knitting offense is not adequate to justify a dismissal. We note that the Appellant was not charged with: "Knitting in the classroom in violation of the principal's orders not to do so", which would constitute a wilful violation of the School Laws.

The School Board apparently wants to dismiss the Appellant because her students performed in a play under her supervision in which certain swear words were part of the dialogue, i.e., shit, damn, hell. The play, which deals with segregation in the South, was taken from a book in the school library which, apparently, any student could have taken out. We are not certain which one of the causes for dismissal listed in Section 1122 the School Board considers this offense to come under; however, we find none that appear to be applicable. Accordingly, the "charge" is dismissed.

Rather than being a reason for censure, we find that the performance of the play is reason for commending the Appellant. Since there was only one copy of the book containing the play, the Appellant typed up a copy of the script, which, with carbons, enabled each of the performers to have a copy. The Appellant testified that she did edit some words from the original because she did not think they were appropriate for the children. In addition, the Appellant asked the person in charge of the program at which the play was presented whether the words which were later objected to should be left in the play. That person's response was apparently yes, for the reason that the words were ones the students came in contact with every day.

The next charge is quoted from the principal's letter.

"When touring the building I stopped in her room, her class was very noisy, I told the class to be seated, they obeyed. The following Monday at the faculty meeting, Mrs. Burns questioned me in the presences of the entire faculty. Why did I tell her class to sit down and be quiet, as she wanted me to call her out of the room and tell her personally."

The Appellant testified that when the principal entered the classroom, her students were engaged in a mock trial where she was trying to demonstrate how a court functions. She recognized that her students had become noisy. However, she felt that the principal should have called her to the hall and asked her to ask the students to be quiet, instead of acting in a manner that undercut her authority with her students and totally disrupted the students' activities.

We are not certain what the Appellant's offense is in this incident: Is it the fact that her students were noisy while engaged in an activity where the teacher needs to constantly remind them to speak softly, or is it the fact that she had the temerity to question the principal about his conduct. In either case, we fail to find a cause for dismissal that is recognized in Section 1122.

The next charge is that the Appellant allowed her students to give her a birthday party after school, in defiance of the principal's general orders that no parties were to be held in school. The testimony indicates that while this party was not a complete surprise to the Appellant, her students wanted it to be a surprise and had already made preparations when the Appellant learned of their plan. In an effort to avoid disrupting classes, the Appellant suggested that the students hold their party after school. The principal learned of the party when he received a piece of birthday cake from the students. He then went to the party and ordered it ended immediately.

While there is a violation of a school rule in this charge, we feel that there were mitigating circumstances present. Also, we question dismissing a teacher because her students love and respect her enough to give her a birthday party, *after school*, no less.

According to the next charge, the Chester Upland School Board dismissed the Appellant because, at her initiative, the students of the ninth grade class took a collection for trophies of "thanks" and a plaque to the outstanding teacher of the year, obtained for them by the Appellant for them to give to persons of their choice. Mr. Gagliardi received a trophy of thanks. The Appellant, however, was selected for the outstanding teacher of the year award. There is no evidence that she solicited the award for herself.

The final charge is as follows: "6/14/72 Letter to Dr. Vaul, submitting unsatisfactory rating bringing the anecdotal records to date." That letter concerned the incident which was discussed in Findings of Fact No.'s 5 and 16. Section 1123 of the School Code provides that no unsatisfactory rating shall be valid unless approved by the district superintendent. On the official rating card prepared by the Department of Education there is a place where the district superintendent is required to indicate with his signature his approval of an unsatisfactory rating. No such signature appeared on the unsatisfactory rating given to the Appellant.

In addition, our review of the incident which led to the rating indicates that both the principal and the Appellant were at fault. We do not approve of the Appellant's language in that incident. However, it appears she was provoked by the principal who, it appears, has a strong bias against her. As evidence of this bias, we have only to review the principal's statement of charges.

We have reviewed the adequacy of the charges and the evidence in support of those charges for one basic reason: when the dismissal of a professional employe is reversed because of due process violations, the thought remains in the minds of some that the evidence would have justified the dismissal had the School Board followed the proper procedures. Such an inference is not justified in the Appellant's case. While we find some areas where she needs improvement, according to the record she is an effective teacher who is loved and respected by her students and who has made an effort to build up school spirit.

As mentioned, the School Board has asked us to review the second dismissal action independently of the first. Even if we were willing to do so, the Appellant would still be entitled to reinstatement. She did not receive a fair hearing because the first time she saw the official rating card on which she was marked unsatisfactory was at the hearing. Also, the School Board did not give full, impartial and unbiased consideration of the testimony presented at the hearing since the president of the Board participated in the June 15th meeting at which the superintendent announced his decision to dismiss the Appellant; a decision apparently made with the Board president's approval. The Board president's participation in that meeting disqualified him from participating in the hearing proceedings - in which case the vote would be 5 - 0 for dismissal, which is not enough to uphold a dismissal since a two-thirds vote is required. And, as noted, the charges are poorly drafted and the evidence in support of those charges is not adequate to support a dismissal.

However, because of the considerations already mentioned, we cannot ignore the significance of the first dismissal action. That first, completely improper dismissal reaffirms our conclusion that the Appellant did not receive a fair hearing and that the School Board failed to give full, unbiased and impartial consideration to the evidence. The outcome of the hearing held in August was determined in June.

The second dismissal action was "void ab initio" because of the flagrant and unexcusable violations of the School Code committed by the School Board and the school administration in the first dismissal. The facts of this case are similar to those in *Board of School Directors of Abington Township v. Pittenger*, 305 A. 2d 382, 9 Pa. Cmwlth. 62 (1973), where the administrative staff, not the board of school directors, demoted a professional employe. After this demotion was implemented, the school board, as a result of the employe's protests to that action, held a hearing. On appeal, the Secretary of Education ruled that the procedure followed by the school board was "void ab initio." In his opinion upholding the Secretary's decision, Judge Kramer of Commonwealth Court said:

"In this case, the administrative staff of the school district had already accomplished the demotion before the Board had any notice or knowledge of same. To permit the Board to follow the procedure it utilized in this case, is to permit the Board to circumvent the very intent of the teacher tenure provisions of the School Code. It certainly could not be argued that the legislative intent permits the school district to demote teachers without Board action, so long as the teacher does not ask for a hearing. Quite to the contrary, the statute evidences a legislative intent for Board action, even where

there is consent by the professional employe. Further, if there is no consent, then perforce the Legislature has required Board action. We find no specific provision, or even implied provision, which would permit ratification by the Board of administrative staff directed demotions." (Emphasis added.) Board of School Directors of Abington Township v. Pittenger, 305 A. 2d 382, 386.

"[The Board] permitted its administrative staff to demote Albrecht without Board action, and only after Albrecht's demand for a hearing, set the wheels in motion for a hearing several months later." *ibid*, 305 A. 2d 382, 387.

The holding of the Abington case applies in this case as well. It is our conclusion that the Chester Upland Board of School Directors ratified the action of Dr. Vul in which he dismissed the Appellant. This was improper and violated the Appellant's rights.

Accordingly, we make the following

ORDER

AND NOW, this 27th day of June, 1974, it is ordered and decreed that the Appeal of Beulah L. Burns be and is hereby sustained, and the Board of School Directors of the Chester Upland School District is ordered to reinstate Beulah L. Burns to her teaching position as professional employe with said District without loss of pay.

* * * *

Appeal of Miller G. McDowell, Jr. a Professional Employee, from a decision of the Board of School Directors of the Oxford Area School District, Chester County Pennsylvania

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

No. 217

OPINION

John C. Pittenger
Secretary of Education

Miller G. McDowell, Appellant herein, has appealed from the decision of the Board of School Directors of the Oxford Area School District, dismissing him as a professional employe on the grounds of incompetency.

FINDINGS OF FACT

1. From 1956 to 1962, the Appellant was employed by the Oxford Area School District as a fifth grade elementary teacher. His only certification during that period was an emergency certificate.
2. From 1962 until 1966, the Appellant was employed by the Octorara Area School District as a junior high school mathematics teacher. That School District issued a professional employe's contract to him on September 14, 1964.
3. In February, 1963, the Appellant was issued a State Standard Limited Certificate for elementary school curriculum, which was valid for three years.
4. In August, 1965, the Appellant was granted a provisional certificate in social studies, valid for three years.
5. From 1966 until 1968, the Appellant taught general mathematics for junior and senior high schools in the public schools of Maryland.