In **Ambridge Borough School District vs. Snyder**, 346 Pa. 103, citing **Ganaposki's Appeal**, 332 Pa. 550, the court held that:

> "Disobedience of reasonable orders of the Board of Education is an act of negligence...Such conduct may also be classed as persistent and wilful violation of the school laws."

Also **Johnson vs. United School District**, 201 Pa. Sup. 375.

We are bound by the Board's conclusions unless we find them to be manifestly erroneous, arbitrary or capricious.

Comm. ex rel. Harvey vs. Eastridge, 374 Pa. 172

Wilbert vs. Pittsburgh Con. Coal Co., 385 Pa. 149

As we study the testimony in this Appeal, and analyze the within quotes of Professor Phelps and the pamphlet issued by the Department of Education, the basis for the School Board's decision becomes clear, logical and reasonable.

In view of the foregoing, we find that the decision of discharge of the Appellant was reasonably and logically based on the evidence submitted and we, therefore, make the following

ORDER

AND NOW, to wit, this 2nd day of June, 1972, the Appeal of Mary D. Stroman from her dismissal as a professional employe in the Harrisburg School District is hereby dismissed, and the said dismissal of Mary D. Stroman by the Ha risburg School Board on charges of persistent negligence and persistent and wilful violation of the School Laws of the Commonwealth is hereby sustained.

* * * *

Appeal of John M. Fino, a professional Employe, from a decision of the Board of School Directors of the Colonial School District, Montgomery County, Pennsylvania

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

No. 208

OPINION

John C. Pittenger
Secretary of Education

John M. Fino, Appellant herein, has appealed from a decision of the Board of School Directors of the Colonial School District, Montgomery County, Pennsylvania, terminating a yearly contract as Chairman of the Music Department in the Whitemarsh Junior High School. Appellant further avers that the action of the School Board constituted an improper demotion in position and salary.

FINDINGS OF FACT

1. John M. Fino, Appellant, is a professional employe and is employed as a teacher of music in the Whitemarsh Junior High School of the Colonial School District.
2. In September, 1969, in addition to his teaching position, he was appointed for a one year term as Chairman of the Music Department of said School at a salary of $300.00 per year, payable semiannually.
3. By reason of said appointment, he was also assigned extra work for a two week period, for which he would receive payment based on a percentage of his teaching salary.

4. Said annual appointment and extra work was renewed for the school year 1970-71.
5. On July 1, 1971, the chairmanship appointment was terminated.
6. By reason of said nonrenewal of appointment, Appellant notified the School Board of his demand for a hearing, averring that the action of nonrenewal constituted a demotion and loss of salary for the position plus the loss sustained by reason of termination of the two week extra work assignment.
7. In compliance with the Appellant's request, a hearing before the School Board was scheduled for November 29, 1971.
8. On December 20, 1971, the Appellant was notified of the decision of the Board of School Directors of the Colonial School District sustaining the action of termination of appointment and extra work assignment and that the Appellant was not demoted within the meaning of the Public School Code.
9. On January 19, 1972, the Appellant filed an appeal from said decision with the Secretary of Education.
10. On February 23, 1972, a hearing was held on the appeal, said hearing having been originally scheduled for February 14, 1972 and continued by agreement.

TESTIMONY

At the hearing before the School Board, testimony was given on behalf of the School Board and the Appellant, and was substantially as follows:

Dr. G. Hottenstein, Superintendent of the Colonial School District, testified that Mr. Fino has been a teacher of music in the Whitemarsh Junior High School and, in addition to his teaching assignment, was chosen as Chairman of the Music Department in said school for a one year term. He was appointed to this extra assignment by the Principal with the approval of the witness. For the school year 1971-72, Mr. Fino was not reappointed as Chairman and the position remains unfilled. The functional duties of the office are being performed by the Principal's office and the instructional relationship by Mr. Ronald Holly, the District Music Coordinator. There was an absence of a harmonious relationship between the Appellant and the one other teacher of music in the same school. The efforts of Mr. Webb, the Principal, and Dr. Dyson, the Assistant Superintendent, to resolve the differences were unsuccessful. The witness, at a conference with the Appellant, urged him to resolve the situation, but despite this request, the hostility continued. Because of the situation that developed, it was having an effect upon the school, in the classroom and in the teaching. It was Mr. Fino's responsibility as Chairman to resolve the problem.

Alfred R. Webb, the Principal of the Whitemarsh Junior High School, stated that Mr. Fino teaches general music. He appointed him, for a one year term, as Music Chairman for 1970-71, with additional pay of $300.00 for this particular activity. He held several conferences with the Appellant concerning the friction between Mr. Fino and the other Teacher (Mrs. Walia Triolo). There was no rapport between them. Because of the tension that was created, he met separately with her and Mr. Fino, and then met with both of them, but without success. The trouble began in the spring of 1970.

John M. Fino, the Appellant, testified that he has been teaching music in the district since 1966 and has been serving as Chairman of the Music Department in this school for the past two years. He admitted that there was no harmony between him and Mrs. Triolo, the other music teacher in his department. He met with Dr. Dyson and Mr. Webb to discuss the problem and lines of responsibilities within his department were issued on October 13, 1970. This reduced his former control of the department and he complained both to Mr. Webb and Dr. Dyson about the unfairness of this new memorandum. As a result, no further meetings of his department were held. He met with Dr. Hottenstein before Easter, 1971, and had a second meeting with him after Easter. In June, 1971, he was advised that his appointment as chairman for 1971-72 would not be renewed. The music department, with Mr. Kottmeyer, the Assistant Principal of the school, supervising, is now harmonious.

DISCUSSION

The Appellant in his petition of appeal contends that the action of the Colonial School District, in failing to reappoint him to the position of Chairman of the Music Department in the Whitemarsh Junior High School, was a demotion, both in position and in salary.

The Appellant was a professional employe, teaching music in the junior high school, and in 1969 was appointed Chairman of the Music Department of said school for a one year term at a salary of $300.00 in addition to his regular salary as a teacher. He was also assigned to an additional two week schedule for which he would be paid 1/20th of base pay. The chairmanship and the extra two week assignment was renewed for the year 1970-71. The Music Department in the Whitemarsh Junior High School consisted of the Appellant and one other teacher. In the spring of 1970, tension developed between the two teachers and, because of complaints to the Principal, several conferences were held between the Appellant, the Principal and the Assistant Superintendent. Finally, the District Superintendent met with the Appellant, but nothing was accomplished. The hostility and lack of rapport continued. In order to ease the situation, new lines of responsibilities were issued on October 13, 1970, resulting in a reduction of the Appellant's control of the Department. Dr. Hottenstein, the District Superintendent, after several meetings with the Appellant, realized that the dissension was having an effect upon the school, the classroom and the teaching, and decided not to fill the position for the year 1971-72. The administrative functions of the office were delegated to the Principal's office and the curriculum and instructional functions to the District Music Coordinator. The Appellant admitted that the Department was now operating harmoniously.

The averment of demotion by the Appellant is based on the termination of his yearly appointment as Chairman of the Music Department and the corresponding loss of salary. It has no relationship to the continuation of his teaching assignment under his professional employe's contract. The chairmanship was an extra curricular assignment, a nonmandated position, and the payment of the salary thereof was made semiannually.

In **Smith vs. Darby**, 388 Pa. 301, 304, the Court stated:

> "School authorities must be given broad discretionary powers to ensure a better education for the children of this Commonwealth and any restrictions on the exercise of these powers must be strictly construed on the basis that the public interest predominates and private interests are subordinate thereto. Walker vs. Scranton Sch. Dist., 338 Pa. 104....The school board having exercised its discretion and having organized the departments, positions and offices, it does not follow that all of the positions established become sacrosanct because the board may find, at a later time and as conditions change, that the welfare of the school system requires that a particular department, position or office must be abolished. No position or office or department is indispensable under the school system."

The Appellant has argued that the demotion was a removal from one position and appointment to a lower position. The facts in this case do not warrant such a conclusion. The removal was the nonrenewal of a yearly appointment as a chairman of a department. His contract of employment was as a professional employe and the position as a teacher of music that he had been engaged in continued in full force and effect. This position was not a new appointment. It did not constitute a reduction in rank. He was not demoted from his position as a professional employe. The only change in his status was the termination of his nonmandated extra yearly appointment as a department chairman. Any loss in salary resulting therefrom is not a demotion in salary within the meaning of Section 1151 of the Public School Code. **Ritzie Appeal**, 372 Pa. 588.

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.

* * * *

Appeal of Frank Bilotta, a Professional Employe, 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.