

dismiss her, the School Board tried to achieve the same result -- termination of employment -- through the expedient of not renewing her employment. That action was beyond the School Board's authority. Accordingly, the Appellant must be reinstated.

Although we are not called upon to do so, we cannot leave this case without commenting on the reasons the School Board gave for seeking the Appellant's dismissal. Many School Districts have the problem before and after vacations of employees improperly extending the vacation. In some cases, the employee calls in sick, in others, the employee willingly forfeits his pay for the unexcused days missed. Should this practice become widespread, it would be impossible for the School District to maintain an effective educational program before and after vacations. We find that the concerns in this regard as expressed by the Appellant's principal in the April 30, 1973 "Less than Successful" rating are appropriate and represent a valid reason for taking disciplinary action.

Whether or not such action should be dismissal must be reviewed on a case by case basis. We would, however, have great reluctance to uphold a dismissal for a single offense of misuse of sick leave. Dismissal is a severe penalty; it is used in many cases for minor infractions where a demotion in salary would be more appropriate. We do not view demotion and dismissal as exclusive disciplinary tools that must be considered in separate proceedings.

Accordingly, we make the following

### ORDER

AND NOW, this 11th day of March, 1975, the Appeal of Lois V. Goodrich is hereby sustained, and the Board of School Directors of the Great Valley School District is hereby ordered to reinstate Mrs. Goodrich without loss of pay.

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Veronica M. George, Appellant

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

v.

Union Area School Board

No. 232

### OPINION

John C. Pittenger  
*Secretary of Education*

Veronica M. George, Appellant herein, has appealed from a decision of the Board of School Directors of the Union Area School District terminating her employment as a teacher in the district.

### FINDINGS OF FACT

1. Miss Veronia M. George served as a substitute teacher in the Union Area School District in September, 1972.
2. On October 10, 1972, Miss George was hired to replace an eighth grade English teacher who had resigned, and was tendered a standard professional employe's contract, duly signed by the president and secretary of the Union Area Board of School Directors.
3. Miss George did not have professional employe status prior to when she was hired by the Union Area School District.
4. Miss George received a satisfactory rating for the 1972-73 school year.
5. By letter dated July 18, 1973, Miss George was notified that her employment with the school district was terminated because a tenured employe on a military leave of absence was

returning to employment with the district in the English Department beginning with the 1973-74 school year.

6. The termination letter of July 18, 1973 was ratified by a full meeting of the Board of School Directors on August 7, 1973.

7. At Miss George's request, a hearing on her dismissal was held before the Board on August 16, 1973.

8. On August 28, 1973, the Board upheld the termination of Miss George's employment.

9. On September 13, 1973, an appeal from the Board's decision was filed with the Secretary of Education. A hearing was scheduled for October 15, 1973. Because of a continuance the hearing was held on October 29, 1973.

## DISCUSSION

The Union Area School Board objects that the Secretary of Education lacks jurisdiction to hear this appeal because Miss George is a temporary professional employe. Section 1131 of the Public School Code of 1949, as amended, only authorizes the Secretary of Education to hear appeals of *professional* employes. Appeals of temporary professional employes may not be decided by the Secretary.

The school district argues that Miss George is not a professional employe because: (1) She did not have Statewide professional employe status when the district hired her; (2) She did not serve as a temporary professional employe the two year probationary period required by the School Code. Miss George argues that she is a professional employe and that the Secretary of Education has jurisdiction to decide her appeal because the school district issued her a professional employe's contract when she was hired; instead of issuing her a different contract entitled "*Temporary Professional Employe's Contract*" which the school district used for temporary professional employes.

The school district contends that it acted contrary to law when it issued the professional employe's contract to Miss George, therefore, the contract is invalid in so far as it appears to grant Miss George professional employe status. We reluctantly must agree with the school district's contention and must find that Miss George is not a professional employe with the right to appeal her dismissal to the Secretary of Education.

Pennsylvania's School Code does not specifically grant a board of school directors the power to confer professional employe status on an employe prior to the completion of the two year probationary period; there are no court decisions in the Commonwealth on this question, either. Other states, New York for example, by specific statutory provision, have granted this power to the school boards. However, it is our understanding of the School Code that two years of probationary service is essential before an employe can receive professional employe status, even though the employe involved may be severely prejudiced by the school board's error.

The Teacher Tenure Act of 1937, April 6, P.L. 213, recognized only the category of professional employe, which included teachers. The Act gave professional employes the right to a hearing and the right to appeal dismissal decisions of the school boards to the common pleas courts. Teachers became professional employes when they were hired.

The category of temporary professional employe was created by the amendment of 1939, June 20, P.L. 482, to the Teachers' Tenure Act of 1937. The amendment changed the language of the standard professional employe's contract from:

"Each board of school directors . . . shall . . . enter in contracts, in writing, with each professional employe at or before the time the employe first enters the service of the district."

to:

"Each board of school directors . . . shall . . . enter into contracts, in writing, with each professional employe *who has*

*satisfactorily completed two years of service in any school district of this Commonwealth.*" Emphasis added. Act of 1939, June 20, P.L. 482, §2.

In addition, the amendment provided that:

"A temporary [professional] employe whose work has been certified by the county superintendent of schools or the district superintendent to the secretary of the school district, during the last four months of the second year of such service, as being satisfactory, shall thereafter be a 'professional employe' within the meaning of this act . . . . The employe shall then be tendered forthwith a regular contract of employment, as provided for professional employes . . . ." *ibid*, Section 1.

The amendment also provided that "professional employes" had the right of appeal to the Secretary of Education, and eliminated the right to appeal directly from the school board's decision to the common pleas court.

We do not feel, in light of the legislative history referred to above, that the two year probationary period for professional employe status can be disregarded by the deliberate or inadvertent action of a board of school directors.

We are greatly concerned, however, that the school district's error in issuing Miss George a professional employe's contract could have misled her to where she would lose important rights granted by the laws of this Commonwealth. While only professional employes may appeal dismissal decisions to the Secretary of Education, temporary professional employes may appeal to the common pleas courts under the provisions of the Local Agency Law of 1968, 53 P.S. §11301 et seq., see *Acitelli v. Westmont Hilltop School District*, 60 D. & C. 2d 712 (1973). But the Local Agency Law has a thirty day limit within which appeals must be filed. Those who appeal to the Secretary of Education in the belief that they are professional employes, but whose appeals are denied because they are not professional employes, would find that the time for filing under the Local Agency Law has passed. Those who were misled into believing they were professional employes by school board action would lose, therefore, their rights to appeal and to challenge their dismissals. Miss George is fortunate in that her attorney filed an appeal with the Secretary of Education and with the common pleas court.

We note that Miss George's performance with the Union Area School District was considered satisfactory, and that she was dismissed because of a decline in student enrollment and because an employ in another position was returning from a military leave of absence. These are reasons which justify a suspension, not a dismissal. The school district's temporary professional employe's contract does provide that the board of school directors reserves the right to terminate the services of temporary professional employes before suspending professional employes. There is no such provision in the contract issued to Miss George.

Accordingly, for the reasons stated above, we enter the following

#### ORDER

AND NOW, to wit, this 7th day of December, 1973, the Appeal of Veronica M. George from the decision of dismissal by the Board of School Directors of the Union Area School District is dismissed for the reason that the Secretary of Education lacks jurisdiction to hear the appeal.