of Education, 8 Pa. Cmwlth. 631, 304 A. 2d 190 (1973). In **Bilotta** we upheld the demotion of a professional employee which occurred when the school board, in an administrative reorganization, eliminated the nonmandated position of Director of Title I and Reading Coordinator, and assigned the professional employee to teaching duties. In this case, the Charleroi Area School Board claims it has assigned the Appellant to teaching duties because of a reduction in Federal funds and because the district now receives remedial reading services from its intermediate unit. There are marked differences between this case and the **Bilotta** case, however. In **Bilotta**, the school board recognized it was demoting the program director, provided a hearing as required by the School Code, and explained and justified its action at the hearing. The Charleroi Area School Board did not do any of these things. Rather than supporting the actions of the Charleroi Area School Board, the **Bilotta** case illustrates the impropriety of those actions.

The Charleroi Area School Board offered the Appellant a hearing, but instead provided her with a meeting before the Board on July 25, 1973, not the hearing to which she was entitled and which she had the right to expect. Because the School Board failed to satisfy the requirements of the School Code for a nonconsensual demotion, its action assigning the Appellant to teaching duties must be reversed, **Tassone**, op cit.; **Board of School Directors of Abington School District V. Pittenger**, op cit.

Accordingly, we make the following

ORDER

AND NOW, this 5th day of December, 1974, it is Ordered and Decreed that the Appeal of Eleanor McCormick be and hereby is sustained, and the Board of School Directors of the Charleroi Area School District is hereby ordered to reinstate Eleanor McCormick to the position of Supervisor of Remedial Reading without loss of pay.

* * * *

Appeal of Lois V. Goodrich, a Professional Employee, from a decision of the Board of School Directors of The Great Valley School District, Chester County Pennsylvania

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

No. 231

OPINION

John C. Pittenger
Secretary of Education

Lois V. Goodrich, Appellant herein, has appealed from the decision of the Board of School Directors of the Great Valley School District not to renew her contract of employment as a teacher.

FINDINGS OF FACT

1. On May 27, 1970, the Appellant entered into a temporary professional employee's contract with the Great Valley School District. She began her service with the District as a home economics teacher in September, 1970 and worked in that capacity until her employement was terminated on July 17, 1973.
2. In August, 1970, the Department of Education issued the Appellant an Interim teaching certificate for home economics. The Interim certificate was issued because the Appellant lacked six college credits at Immaculata College in student teaching, which were necessary before the College could approve her for an Instructional I (Provisional) teaching certificate.
3. By the end of December, 1970, the Appellant had completed all the required college work necessary for the Instructional I certificate. However, Immaculata College did not inform the Department of Education of this fact until approximately April 12, 1971.

4. The Department of Education subsequently issued the Appellant an Instructional I teaching certificate for home economics. The date the certificate was issued is recorded as April, 1971.
5. The Appellant received satisfactory performance ratings for her service in the Great Valley School District on February 1, 1971, June 11, 1971, February 18, 1972 and June 9, 1972, as recorded on the State approved rating form, (DEBE-333).
6. On March 22, 1973 the Appellant was rated "Less than Successful" on the "Classroom Observation Summary" report form prepared by the Great Valley School District. This was the lowest rating possible on that form. This rating was based on what the observer saw as the general uncleanliness of the Appellant's home economics classroom.

7. From April 16, 1973 up to and including April 23, 1973, the Great Valley School District was on Spring vacation.
8. On April 11, 1973, the Appellant reported to the School District that she would be absent due to illness on that day and also the next two days, that is the Wednesday, Thursday and Friday preceding the vacation.
9. On Thursday, April 12, 1973, in the evening, the Appellant left with her family for a vacation in Florida.
10. When she reported back to the School District after the Easter vacation, on April 24, 1973, the Appellant submitted, to her principal, a standard form Disability Certificate from her physician, dated April 12, 1973. That certificate stated that the Appellant was under the physician's care from April 11 to April 13, 1973, and that she would be able to resume her regular duties on Monday, April 16, 1973. When the physician examined the Appellant on Thursday, April 12, 1973, he was not aware she was leaving later that day for Florida.
11. On April 30, 1973, the Appellant was rated by her principal "Less than Successful", the lowest posible rating, on the School District's "Professional Personnel Evaluation" report form. The reasons for the rating were explained by the principal as follows:

> "This rating is based upon the extension to vacation time taken by Mrs. Goodrich after she informed the district she was ill. The misrepresentation of the facts took place at a time when regular, experienced teaching personnel were most important to orderly school functioning. Mrs. Goodrich's performance has been rated less than successful for the improper care of equipment, also."

Prior to this rating, she had been suspended from her teaching duties and remained suspended for the rest of the semester.
12. Based on that report, the Superintendent of Schools rated the Appellant unsatisfactory on the State form on April 30, 1973.
13. By letter dated May 1, 1973, from the President of the State Board, attested by the Secretary to the Board, the Appellant was notified that the School Board proposed to dismiss her. This dismissal action was based on the reasons for the April 30, 1973 "Less than Successful" rating made by her principal.
14. Hearings were held before the School Board on May 16, May 31, and June 18, 1973. At the May 16, 1973 hearing, the Appellant was informed the solicitor had ruled that she was a temporary professional employee.
15. By letter dated June 21, 1973, from the President of the School Board, the Appellant was informed that less than two-thirds of the Board members had voted in favor of her discharge and, accordingly, the charges against her were dismissed Under Section 1129 of the School Code. It has been reported to us that the vote was five (5) in favor of discharge and two (2) against.
16. At its July 17, 1973 meeting, the School Board voted not to renew the Appellant's contract of employment due to her unsatisfactory rating for the 1972-73 school year. That rating was the one issued April 30, 1973, which was the basis for the dismissal charges that had been brought against the Appellant. The vote was six (6) in favor of non-renewal, and (1) against.
17. On August 15, 1973, the Appellant filed her appeal in the Office of the Secretary of

Education. A hearing on the appeal was scheduled for September 14, 1973. As a result of requests for continuances, that hearing was not held until October 25, 1973. Both parties requested time to file briefs; the Appellant's was filed September 25, 1974. The School District requested additional time for its brief, but as yet, has not filed one.

DISCUSSION

The deciding issue in this appeal is whether or not the Appellant, Mrs. Lois Goodrich, is a professional employee. If she is, her appeal must be sustained. The record clearly shows that when the Board of School Directors of the Great Valley School District terminated the Appellant's employment, it did not follow the mandated procedures of the Public School Code of 1949 for the termination of employment of professional employees. Our courts have repeatedly held that compliance with these procedures is essential if the termination is to be upheld, **Jacobs v. School District of Wilkes-Barre Township**, 50 A. 2d 354, 355 Pa. 449 (1947), **In re Swink**, 200 A. 200, 132 Pa. Super 107 (1938). The School Board argues that it did not have to follow those procedures because, it contends, the Appellant was not a professional employee, she was a temporary professional employee, instead. We disagree. We find that the Appellant is a professional employee, and accordingly, must order her reinstatement.

To be a professional employee, one must satisfactorily complete the last four months of a two year probationary period as a temporary professional employee, Section 1108(b) of the School Code, 24 P.S. Sec. 11-1108(b). A temporary professional employee is defined in Section 1101(3) as being a person employed to fill a vacant position for a limited period of time, (i.e. the probationary period), 24 P.S. Sec. 11-1101(3). The person employed as a temporary professional employee must be properly certificated for the position he holds, Sections 1101(1), 1106, 1201, 1202 of the School Code, 24 P.S. Sections 11-1101(1), 11-1106, 12-1201, 12-1202; and, the Act of December 12, 1973, Section 2, 24 P.S. Sec. 12-1252.

The Appellant has met these requirements. She began her employment in the Great Valley School District in September, 1970, as a home economics teacher and worked in that capacity until her suspension in April, 1973, nearly three years later. During the Fall, 1970 semester, she taught on an interim certificate for home economics. By the end of December, 1970, she had completed the necessary college work for the Instructional I (Provisional) certificate in home economics; that certificate was issued to her in April, 1971. The Appellant was rated satisfactory four times. Her last satisfactory rating came when she had completed her second year of service with the district. It was dated June 9, 1972.

In our opinion, the Appellant became a professional employee with that last rating. Section 1108(b) of the School Code leaves a School Board no discretion; if the last four months of the second year of service are satisfactory, then the person thereafter shall be a professional employee.

The School Board contends that the time the Appellant spent teaching on the Interim certificate should not be included in the two year probational period required for temporary professional employees. Instead, the probational period should begin when she received the Instructional I certificate, in April, 1971. This, the School Board contends, means that the Appellant was still a temporary professional employee when her employment was terminated. In raising this issue, the School Board relied on an informal opinion from the Pennsylvania Department of Justice. As will be pointed out later, even if we accepted the School Board's contention, we would still have to conclude that the Appellant was a professional employee. Nevertheless, the issue raised is an important one. To resolve it, we requested a formal opinion from the Attorney General.

In his opinion, dated October 8. 1974, (Official Opinion Number 51 of 1974), the Attorney General held that person teaching on Interim or Intern certificates are, depending on the circumstances, either professional or temporary professional employees. The Attorney General noted that the attainment of professional or temporary professional employee status under Article XI of the School Code was not linked with or dependent upon the obtaining of any particular certificate under Article XII. All that is required is that the person be properly certificated for the position he holds. The possession of an Intern or Interim certificate for a particular position satisfies this requirement; the certificate signifies that holder has the necessary minimum qualifications to work as a teacher in the public schools.

The Attorney General's opinion on the employment rights of holders of Intern or Interim certificates reflects our own views on the subject. Professional employee status was created under the Teacher Tenure Act of 1937, Act of April 6, 1937, P.L. 213, as amended by the Act of June 20, 1939, P.L. 482. The purpose of that act was stated in **Jacobs v. School District of Wilkes-Barre Township,** op cit:

> "The purpose of [the Teachers'] Tenure Act is to secure the greatest educational opportunities possible for children of the Commonwealth by assuring capable and competent teachers security of employment, thus tending toward a more efficient performance of their duties of instruction." 50 A. 2d at 356.

Holders of Intern or Interim certificates come within that class of employees the Teachers' Tenure Act was designed to protect. If these persons were not capable, they would not have been issued the certificates that allow them to work as teachers in the public schools. Whether or not they are competent is for their employer, the School District, to judge. If incompetent, the School District should dismiss them -- this holds true regardless of the employee's certification, whether it be Intern, Provisional or Permanent. With the exception of the certificate, teachers with Intern or Interim certificates are virtually indistinguishable from other teachers; they do the same type of work, have the same type of responsibilities.

Professional employee -- or tenure -- status is given to most teachers before they possess the educational qualifications required by the General Assembly and the State Board of Education for career teachers. Most teachers earn their professional employee status while teaching on Instructional I (Provisional) certificates. The Provisional certificate expires after three years; but, on the completion of twelve (12) additional semester hours of college level education, it may be renewed for one additional three year period, Section 1204 of the School Code, 24 P.S. Sec. 12-1204, 22 Pa. Code Sec. 49.82. To get permanent certification, the teacher must obtain twenty-four (24) semester credit hours above what is needed for the Provisional certificate, 22 Pa. Code Sec. 49.83. Thus, it is possible that a person could work as a teacher on a Provisional certificate for six years before obtaining the qualifications required of a career teacher. Professional employee status, however, is earned after only two years.

If the time the Appellant spent in the Great Valley School District while on the Interim certificate did not count as part of the probational period, she would still be entitled to professional status. The Appellant completed the necessary course work for the Instructional I certificate by the end of December, 1970. As of that time, the Appellant had done all that was required of her for the certificate. The delay until April, 1971 in issuing the certificate to her was not due to any fault on her part; it was due to the failure of Immaculata College to give prompt notification to the Department of Education that she had successfully completed the necessary courses. Technically speaking, the Appellant was entitled to the Provisional certificate as of January, 1971. We do not believe it proper to hold the Appellant responsible for delays beyond her control.

Even if we accepted the School District's argument that the Appellant did not attain temporary professional employee status until April, 1971, the date of issue for her Provisional certificate, we would still find that she was a professional employee. Her certificate was issued "April, 1971". We construe that to mean effective as of April 1, 1971 since the Appellant would have had until March 31, 1974 to obtain her Permanent certificate or to get her Provisional

certificate renewed. The Appellant's unsatisfactory rating was dated April 30, 1973, approximately one month after she had completed two full years of service on her Provisional certificate. Applying the School Board's interpretation of the law, the Appellant would have earned professional status March 31, 1973.

Having decided that the Appellant is a professional employee, the only other question before us is whether the School Board's July 17, 1973 decision not to renew the Appellant's contract of employment is legal. A review of the School Code's provisions on the subject clearly shows that the School Board acted improperly. The Teacher Tenure Act of 1937, as amended, op. cit. denied school boards the discretionary power the Great Valley School Board seeks to assert here. The Teacher Tenure Act provided that the teaching contracts of professional employees were automatically renewed from year to year. If a School Board wanted to terminate a teacher's employment, it could only do so by following the dismissal procedures outlined in the Act; it could not refuse to renew the teacher's contract of employment.

The provisions of the Teacher's Tenure Act have been adopted in Article XI of the Public School Code of 1949. Section 1121, which is the mandated contract for professional employees, provides in part:

> "AND IT IS FURTHER AGREED by the parties hereto that none of the provisions of this act may be waived either orally or in writing, *and that this contract shall continue in force year after year, . . .*unless terminated by the professional employee: by written resignation presented sixty (60) days before resignation becomes effective, or by the board of school directors (or board of public education) by official written notice to the professional employee: Provided, that the said notice shall designate the cause for the termination and shall state that an opportunity to be heard shall be granted if the said professional employee, within ten (10) days after receipt of the termination notice, presents a written request for such hearing." 24 P.S. Sec. 11-1121 (Emphasis added)

As the underlined portion of this provision clearly indicates, it was error for the Great Valley School Board to decide not to renew the Appellant's employment; School Board did not have that discretion. If it wanted to terminate her employment, the School Board should have followed the School Code's procedures for the dismissal of professional employees, Section 1127, 24 P.S. Sec. 11-1127.

As of July 17, 1973, the School Board, however, was estopped from pursuing those procedures, at least, in so far as the Appellant's April 30, 1973 unsatisfactory rating was concerned. It had already tried to dismiss the Appellant because of that rating, but failed after the June 18, 1973 hearing to obtain the two-thirds vote required for dismissal. Section 1129 of the School Code provides in part:

> "If less than two-thirds of the members of the board vote in favor of discharge, the professional employee shall be retained and the complaint shall be dismissed." 24 P.S. Sec. 11-1129.

Having failed to dismiss the Appellant after the hearings, the School Board could not try to dismiss the Appellant again for the same reasons. Section 1130 of the School Code provides in part:

> "In all cases where the final decision is in favor of the professional employee, the charges made shall be physically expunged from the records of the board of school directors. . . " 24 P.S. Sec. 11-1130

Nevertheless, the reasons given by the Board for not renewing the Appellant's contract of employment were the same as the reasons for initially trying to dismiss her. Having failed to

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.

* * * *

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