

5. In December 2004, Margaret O. Brown was employed by the School District as the Program Officer for Safe Schools. (Tr. at 22).

6. In December 2004, the School District's Chief Academic Officer, Dr. King, developed a reorganization plan to reduce costs while still delivering efficient services to schools, students, families and staff. (Tr. at 16; Exhs. 1, 2, A).²

7. Part of Dr. King's proposed reorganization plan included the elimination of seven (7) Executive Director positions and the position of Program Officer of Safe Schools, and the creation of three (3) new Executive Director positions and four (4) new Lead Principal positions. (Tr. at 19-21).

8. On December 21, 2004, the Board approved Dr. King's proposed plan of reorganization. (Tr. at 35; Exh. A).

9. Dr. King met with Administrators Kemp, Mascari and Tyler prior to the Board's approval of the reorganization plan and Dr. King told the Administrators that he was recommending the closing of their positions. (Tr. at 46-47).

10. When the job descriptions for the new Executive Director positions were created, the new positions had a much higher level of responsibility, authority and oversight. Pursuant to the proposed reorganization; (a) the responsibilities and functions of the four executive directors for schools would be consolidated into one Executive Director of School Management; (b) the functions and responsibilities of the executive directors of student services and special education would be consolidated into one Executive Director of Support Services; and, (c) the functions and responsibilities of the Acting Director of Instructional Support would be consolidated into

² Exh. refers to exhibits admitted into evidence at the Board hearing on August 30, 2005.

the position of Executive Director of Academic Services, which would also oversee Dr. King's other direct reports in literacy, mathematics, and career development. (Tr. at 20-21; Exhs. 1, 2).

11. Thus, the most significant difference created by the reorganization was changing from seven Executive Director positions to three Executive Director positions, which would have more responsibility and authority and higher salary than the previous Executive Director positions. (Tr. at 19-25).

12. On February 10, 2005, the School District notified the Administrators in writing that their positions were being closed as of June 30, 2005. (Tr. at 50-52; Exhs. K, L). Further, the School District advised the Administrators of their right to apply for any of the new posted positions for which they were qualified and that any Administrator not selected for one of the new positions would be placed appropriately in the School District observing seniority and certification. (Tr. 50-52; Exhs. K, L).

13. At its February 23, 2005 meeting, the Board approved salaries for the new Lead Principal positions and for the new Executive Director positions that were higher than those for the previous Executive Director positions. (Tr. at 26; Exh. 3).

14. The process of filling the new Executive Director and Lead Principal positions began in March/April 2005 and was completed in May/June 2005. None of the Administrators were selected for the new Executive Director positions or for the Lead Principal positions. (Tr. at 52, 68).

15. Administrator Tyler was not qualified for the new Lead Principal positions. Administrators Mascari and Kemp were qualified the Lead Principal positions but did not apply. (Tr. 99-100).

16. The reorganization did not create any new positions for which Administrator Brown was qualified. (Tr. 64-65).

17. After the process of interviewing candidates for the newly created positions was completed and none of the Administrators were identified as candidates for the newly created positions, Dr. King recommended new positions for the Administrators to fill. (Tr. at 27, 68).

18. By letters dated June 3, 2005, the Board notified Administrators Kemp, Mascari and Tyler that, effective July 1, 2005, they were demoted to the positions of Principal of Allderdice High School, Principal of Brookline Elementary School, and Principal of Northview Elementary School, respectively. The Administrators were also told that they had the right to a hearing if they did not consent to their respective demotions. (Tr. at 32; Exh. 4A-C).

19. By letter dated July 7, 2005, Administrator Brown was notified that, effective July 1, 2005, she was demoted to the position of Social Worker and that she had a right to a hearing if she did not consent to the demotion. (Tr. at 32; Exh. 4D).

20. The new positions and the salaries of the new positions to which the Administrators were demoted were lower in status and lower in salary than the positions previously held by the Administrators. (Tr. 67, 72).

21. In December 1996, the School District had initiated a reorganization of, primarily, the curriculum division, which involved closing positions and creating new positions with new titles but with the same responsibilities and same salaries. (Tr. at 103-04, 109).

22. The Pittsburgh Administrators Association (“PAA”) represented some of the administrators who were demoted based on the 1996 reorganization, alleging that the reorganization was implemented improperly because seniority was not followed in making the

changes in position. For the administrators being represented by PAA, the 1996 reorganization involved lateral moves without changes in salary. (Tr. at 104, 109-11).

Discussion

Facing a \$17 million deficit, Dr. King, Chief Academic Officer, developed a reorganization plan that included closing the Administrators' Executive Director positions in the Office of the Chief Academic Officer and creating new Executive Director and Lead Principal positions. The newly created Executive Director positions involved greater responsibility, authority and salary than the previous Executive Director positions held by the Administrators. In December 2004, the Board approved the reorganization and by letters dated February 10, 2005, the School District advised the Administrators that their positions were closed effective June 30, 2005. By letters dated June 3, 2005, the Board advised Administrators Kemp, Mascari and Tyler that they were demoted, effective July 1, 2005, and that they had the right to a hearing if they did not consent to the demotions. By letter dated July 7, 2005, the Board notified Administrator Brown that she was demoted, effective July 1, 2005, and that she had the right to a hearing if she did not consent to the demotion.

The Administrators did not consent to the demotions and the Board held a hearing on August 30, 2005 regarding the demotions. Three people were called to testify at the hearing but the Administrators did not testify.

In the Administrators' Proposed Findings of Fact and Conclusions of Law filed with the Board after the August 30, 2005 hearing, the Administrators argued that sections 1124 and 1125.1 of the Public School Code were applicable to the District's reorganization because the Administrators were either suspended or subjected to a "realignment demotion" and, therefore,

had the right to be assigned to the new positions according to seniority.³ The Administrators further argued that their reassignments did not constitute “pure” demotions and, therefore, they were not subject to section 1151 of the Public School Code.

The Board held that the Administrators were demoted and that the School District demonstrated rational reasons to support the demotions and that these reasons were supported by substantial evidence. In addition, the Board held that the Administrators did not demonstrate that their demotions were arbitrary or otherwise for discriminatory reasons. Thus, the Administrators’ demotions were upheld.

The Administrators appealed the Board’s decision to the Court of Common Pleas of Allegheny County. The Court of Common Pleas held that the School District’s actions did not constitute “realignment-demotions” but constituted “pure” demotions of the Administrators. Therefore, the Court held that the Secretary of Education had exclusive jurisdiction, pursuant to section 1151 of the Public School Code, to hear the Administrators’ appeal from the Board’s actions, and transferred jurisdiction to the Secretary. 24 P.S. §11-1151.

The Administrators appealed the decision of the Court of Common Pleas to the Commonwealth Court. The Commonwealth Court upheld the Court of Common Pleas’ decision that the Administrators’ demotions fell within Section 1151 of the Public School Code, and affirmed the order transferring jurisdiction to the Secretary. The Administrators then filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court, which was denied.

³ If the Administrators had been suspended or subjected to a “realignment demotion” under section 1124, then positions would have had to have been filled based on seniority pursuant to section 1125.1. However, as discussed in the text of this decision, Commonwealth Court affirmed the decision of the Court of Common Pleas that these sections were not applicable to the School District’s reorganization.

Since the Commonwealth Court held that the Administrators were demoted and subject to the Secretary's jurisdiction, the issue to be decided by the Secretary is whether their demotions were arbitrary, discriminatory or founded upon improper considerations.⁴

The principles controlling the Secretary's inquiry in demotion cases were enumerated in *Brownsville Area School District v. Lucostic*, 6 Pa. Cmwlth. 587, 297 A.2d 516 (1972). The principles are as follows:

- (1) A Board of School Directors may demote a professional employee in position or salary or both without his or her consent;
- (2) the action of the Board in such case is presumptively valid; and
- (3) the demoted employee contesting the Board's action has the burden of proving it to be arbitrary, discriminatory or founded upon improper considerations.

Id., 6 Pa. Commw. at 590-91, 297 A.2d at 518 (citations omitted).

Case law addressing the issue of demotions of professional employees clearly shows that school districts possess broad discretion in personnel and administrative actions that result in demotions. Courts have been loathe to interfere with a district's exercise of discretion in a demotion case unless the court is satisfied that the petitioner has met his or her burden of proving that the demotion was arbitrary or based upon discriminatory considerations. *Piazza v. Millville Area School District*, 155 Pa. Cmwlth. 176, 624 A.2d 788 (1993). This burden to prove that the demotion was arbitrary or improper has been described as "a very heavy one" by the Commonwealth Court. *Williams v. Abington School Dist.*, 40 Pa. Cmwlth. 535, 537, 397 A.2d 1282, 1283 (1979). An arbitrary action is one "based on random or convenient selection rather

⁴ The term "demotion," within the context of 24 P.S. §11-1151, has been defined as "a reassignment to a position which has less importance, dignity, authority, prestige or salary." *Walsh v. Sto-Rox School District*, 110 Pa. Cmwlth. 421, 532 A.2d 547, 548 (1987). There is no dispute that the Administrators were demoted since the positions to which they were assigned were positions of less authority and salary than their previous positions.

than on reason.” *Board of Public Education of School Dist. of Pittsburgh v. Thomas*, 41 Pa. Cmwlth. 490, 494, 399 A.2d 1148, 1150 (1979). So long as it has some rational basis, a demotion is not arbitrary simply because it does not effectuate a policy in the most efficient or effective manner. *Id.*, 41 Pa. Cmwlth. at 494-95, 399 A.2d at 1150.

In determining whether the demoted employee has satisfied his or her heavy burden of proof, the Secretary must perform a *de novo* review of the record. *Belasco v. Board of Public Education of the School District of Phila.*, 510 Pa. 504, 510 A.2d 337 (1986). Accordingly, the Secretary is the ultimate fact finder in appeals involving demotions and is not obliged to give deference to the school board’s findings. *Shumaker v. Baldwin-Whitehall School District*, TTA No. 7-93 at 6. In other words, the Secretary re-decides the case. *Forrest Area School District v. Shoup*, 153 Pa. Cmwlth. 423, 429, 621 A.2d 1121, 1125 (1993); *Bollinger v. Curwensville Area School District*, TTA No. 9-94 at 4.

The Administrators take the position that their demotions “were effected so as to unlawfully circumvent §1124’s limited, distinct, situations allowing for reorganizations and realignments, [and therefore] they were *a fortiori* arbitrary, capricious, without valid cause, and thus unlawful under 24 P.S. § 11-1151.” The Administrators also argue that the newly created Executive Director positions were not promotions and that the selection process was arbitrary because one individual who was selected for one of the positions was not qualified and two positions were filled by recruiting individuals who had not applied for the positions, disregarding the Administrators’ seniority. In addition, the Administrators argue that they had more seniority than two of the individuals who filled two of the Lead Principal positions, and that the Administrators should have been recruited for these positions. Finally, the Administrators argue that a settlement agreement dated May 17, 2000 required the application and enforcement of the

terms of sections 1124 and 1125.1 of the Public School Code to the current reorganization. Thus, in summary, the basis of the Administrators' position that their demotions were arbitrary, discriminatory, and without valid cause is their belief that the closing of their positions and their demotions were done to circumvent sections 1124 and 1125.1 of the Public School Code and were done in violation of the terms of the May 17, 2000 settlement agreement.

The issue of whether the closing of the Administrators' positions and their reassignments implicated sections 1124 and 1125.1 of the Public School Code has already been addressed and answered by the courts. The Commonwealth Court affirmed the decision of the Court of Common Pleas of Allegheny County that the closing of the Administrators' positions and their reassignments constituted demotions that implicated section 1151 of the Public School Code and not sections 1124 and 1125.1. Thus, there is no basis for the Administrators' continuing argument that the School District should have adhered to sections 1124 and 1125.1 when implementing its reorganization and that the demotions were done in a manner to circumvent sections 1124 and 1125.1.

The only relevant issue is whether the Administrators have met their burden of proving that their demotions were arbitrary, discriminatory or based upon improper considerations. The Administrators' bald statement that their demotions were done to circumvent sections 1124 and 1125.1 and were, therefore, *a fortiori* arbitrary, capricious, without valid cause and unlawful under section 1151 is not supported by any evidence.

The evidence shows that because of a \$17 million deficit, Dr. King, as Chief Academic Officer, developed a reorganization plan for the academic office that eliminated certain positions, including the Administrators' Executive Director positions. (Tr. at 16-18). The most significant change that occurred due to the reorganization was that the seven Executive Director positions in

the Academic Office were reduced to three Executive Director positions with each new position having much more responsibility, authority and staff oversight. (Tr. at 19-21). The new Executive Director positions were at a higher level with a higher salary because of the increased responsibility and authority. (Tr. at 25).

Dr. King met with Administrators Mascari, Kemp and Tyler prior to presenting the proposed reorganization plan to the Board in December 2004 and explained that he was going to recommend a reorganization that would reduce the number of Executive Directors. (Tr. at 46-47). When the new job descriptions were built, the new Executive Director positions had a much higher level of responsibility, authority and supervisory oversight. Therefore, with the new Executive Director positions at a higher level, the new positions would have been promotions for the Administrators. (Tr. at 21-25; 92).

Although Administrators Mascari, Kemp and Tyler would have qualified for some of the newly created positions, the School District was not required to place them in these new positions. (Tr. at 61-63). There is no evidence that the School District's decision to place qualified persons other than the Administrators in these positions was arbitrary, discriminatory or based upon improper considerations. In addition, even though Administrators Mascari and Kemp were asked to apply for the Lead Principal positions they did not do so because they were not interested in these positions. (Tr. at 99-100). Because people in the Lead Principal positions would have the responsibility of supporting and working with principals Dr. King believed it was critical that the people placed in these positions have a real interest in the Lead Principal positions. Therefore, Dr. King wanted people who were optimistic, enthusiastic and excited about accepting these positions. (Tr. at 99-100).

Administrators Mascari and Kemp did not apply for the Lead Principal positions because they were not interested in the positions and the School District was not obligated to recruit them for the positions. Administrators Tyler and Brown were not qualified for the Lead Principal positions. (Tr. at 64-65, 99). Thus, the School District's decision to place other people in the Lead Principal positions and to place the Administrators in other positions was not arbitrary, discriminatory or founded upon improper considerations.

Once the process of interviewing all the candidates for the newly created positions was completed and the Administrators were not identified as candidates to fill those positions, Dr. King recommended positions for each Administrator, which were lower positions than the Executive Director positions they previously held. (Tr. at 68). Administrators Mascari, Kemp and Tyler were placed as building principals and Administrator Brown was placed in a social worker position because those were the highest positions available for which they were qualified. (Tr. 31-32). All the Administrators were placed on the highest step of the salary schedule for their positions. (Tr. at 32-33). The Administrators were demoted on July 1, 2005 because that was the day when Mascari, Kemp and Tyler became building principals, and when Brown became a social worker. (Tr. 72).

As another attempt to inject sections 1124 and 1125.1 into their demotions, the Administrators provided evidence of a settlement agreement that settled previous disputes involving the Pittsburgh Administrators Association ("PAA"), the Board, and certain administrators ("Prior Administrators"). (Exh. H). One of the provisions of the settlement agreement was that the "Board and Office of Human Resources agree to comply with all relevant laws, including Sections 1124 and 1125.1 of the School Code, regulations, policies; the administrator compensation plan, during any future reorganizations of administrators." The

Administrators argue that this provision required the application and enforcement of the terms of sections 1124 and 1125.1 to the current reorganization and that their demotions were done in violation of the terms of the settlement agreement.

As stated previously, the Court of Common Pleas of Allegheny County and the Commonwealth Court held that sections 1124 and 1125.1 were not applicable to the 2004 reorganization. These courts further held that the School District's actions constituted demotions of the Administrators and that section 1151 was the applicable School Code provision. In addition, the settlement agreement required that any future reorganizations of administrators comply with all relevant laws, including sections 1124 and 1125.1. Because the courts held that these sections were not relevant to the 2004 reorganization, the quoted provision of the settlement agreement has no relevance to the 2004 reorganization and the reorganization was not in violation of the settlement agreement.

In addition, there are differences between the reorganization that ended with the settlement agreement and the 2004 reorganization. The 2004 reorganization, as discussed previously, involved closing the Administrators' Executive Director positions and creating new Executive Director positions that were promotions and not lateral moves. In addition, the 2004 reorganization created new Lead Principal positions for which the Administrators were either not qualified or not interested. In the reorganization that ended with the settlement agreement, the Prior Administrators' positions were closed and new positions were created but they retained the same responsibility and pay scale and did not involve promotions for the individuals the PAA were representing. These were simply lateral moves and the Prior Administrators were just trying to keep the same positions that they held previously. Thus, sections 1124 and 1125.1 were applicable to the prior reorganization and seniority had to be considered in placing the Prior

Administrators. However, the prior settlement agreement is not relevant to the 2004 reorganization and does not support any finding that the Administrators' demotions were arbitrary, discriminatory or based upon improper considerations.

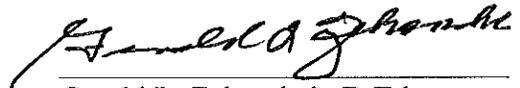
The Administrators have not provided any evidence to carry their heavy burden of proving that their demotions were arbitrary, discriminatory or based upon improper considerations. The reorganization eliminated the Administrators' Executive Director positions and created new Executive Director positions that involved more responsibility, authority, supervisory oversight and were on a higher salary scale than the Administrators' old Executive Director positions. Therefore, the new Executive Director positions would have been promotions for the Administrators. In addition, two of the Administrators were not qualified for the newly created Lead Principal positions and two other Administrators, even though asked to apply, did not apply because they were not interested in those positions. Therefore, Administrators Mascari, Kemp and Tyler were placed in Principal positions and Administrator Brown was placed in a social worker position, all of which were the highest level positions available in the Administrators' respective areas of certification. The Administrators were also placed at the highest level of the salary range for their respective positions. The School District's decision to place other qualified people in the newly created positions and to demote the Administrators was not arbitrary, discriminatory or based upon improper considerations.

Conclusion

The Administrators failed to meet their heavy burden of proving that the Board's decision to demote them was arbitrary, discriminatory or founded upon improper considerations. Accordingly, the following Order is entered:

ORDER

Appellants, Cassandra Richardson Kemp, Richard Mascari, Lorraine Eberhardt Tyler, and Margaret O. Brown, failed to meet their burden of establishing that their demotions were arbitrary, discriminatory or founded upon improper considerations. The decision of the Board of School Directors of the Pittsburgh Public School District is affirmed.



Gerald L. Zahorchak, D.Ed.
Secretary of Education

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