Appeal of JoEllen Lipperini, a Professional Employe, from a decision of the Board of School Directors of the Wayne Highlands School District, Wayne County, Pennsylvania

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

No. 235

OPINION

John C. Pittenger
Secretary of Education

JoEllen Lipperini, Appellant herein, has appealed the termination of her employment as a kindergarten teacher with the Wayne Highlands School District.

FINDINGS OF FACT

1. The Appellant was issued an Instructional I Certificate in Elementary Education in July of 1970, which qualifies her to teach kindergarten.
2. The Appellant served as a temporary professional employe in the Philadelphia School District from September 1, 1970 until her resignation, effective June 30, 1972. During that period she taught second grade.
3. The Appellant has earned professional employe status because she successfully completed two years as a temporary professional employe with the Philadelphia School System. Her professional employe status was confirmed by Martin K. Ferrier, Director of Professional Personnel, Philadelphia School System, in his letter of September 27, 1972 to Dr. John P. Sutton, Superintendent of Schools, Wayne Highlands School District.
4. By unanimous vote of the Board of School Directors of the Wayne Highlands School District on September 19, 1972, the Appellant was appointed to teach kindergarten classes at Beach Lake School on a half-day basis, five days a week.
5. The Appellant served in the capacity of a kindergarten teacher at Beach Lake School for the remainder of the 1972-73 school year. During the Summer of 1973, the Appellant was informed that her services would no longer be needed.
6. Prior to the 1972-73 school year, the Wayne Highlands School District had four kindergarten teachers who taught a total of eight sessions of kindergarten at Strawbridge School. However. because of an increase in enrollment in the first grade, one of those four kindergarten teachers had to be reassigned to teach the first grade for the 1972-73 school year. A larger than anticipated enrollment for that school year in the kindergarten level resulted in the creation of the kindergarten class at Beach Lake School that the Appellant was appointed to teach.
7. The kindergarten class at Beach Lake School was discontinued after the 1972-73 school year. The kindergarten teacher at Strawbridge School who had been assigned to teach the first grade for the 1972-73 school year was reassigned to teach kindergarten for the 1973-74 school year. Both actions were taken without formal Board approval.
8. The reason given by the School District for terminating the Appellant's services is that the kindergarten class at Beach Lake School was cancelled.
9. Persons were appointed to positions in the Wayne Highlands School District for the 1973-74 school year that the Appellant was qualified to hold in accordance with her certification.
10. The Appellant was not issued a professional employe's contract when hired. The School District contends that the Appellant is not a professional employe because she was hired on what was clearly intended to be a temporary basis.
11. During her service as a kindergarten teacher in the Wayne Highlands School District, the Appellant was rated twice. Each rating was satisfactory.
12. No formal action was taken by the School Board to terminate the Appellant's services. No hearing was held before the School Board; no charges were filed aginst the Appellant.
13. By letter dated July 2, 1973, sent to the principal of the Strawbridge School, the Appellant

It is clear from the above definitions that the Appellant was not serving as a substitute employe when she taught kindergarten at the Beach Lake School. She was not replacing anyone. The definition of "temporary professional employe" would appear to be the most applicable since the Appellant was " . . . employed to perform, for a limited time, the duties of a newly created position" -- namely, the kindergarten class at Beach Lake School. However, since the Appellant attained professional employe status with the Philadelphia School District, she would be a professional employe with the Wayne Highlands School District, not a temporary professional employe. Section 1108(b) of the School Code provides in part:

> "No professional employe who has attained tenure status in any school district of this Commonwealth shall thereafter be required to serve as a temporary professional employe before being tendered such a contract when employed by any other school district." 24 P.S. §11-1108(b).

In accordance with the provisions of Section 1108(b), we find that the Appellant is a professional employe. The Appellant's appointment to a half-time position does not prevent her from serving as a professional employe. Section 1147 of the School Code provides in part:

> "Teachers, who may be employed in giving instruction for only part of a day, shall render such other service for such period of time per day as the board of school directors may direct, but if such service cannot be assigned to such teacher by the board of school directors, the salary paid to such teacher shall be proportioned to the number of hours of service rendered." 24 P.S. §11-1147.

The Supreme Court of the Commonwealth of Pennsylvania in the **Appeal of Spano**, 267 A. 2d 848, 439 Pa. 256 (1970), cited the provision of §1141 of the School Code which states "'Teacher' shall include all professional employes . . . who devote fifty per centum (50%) of their time, or more, to teaching or other direct educational activities. * * *" The Court held as follows:

> "Construing Sections 1101 and 1141 together, an individual is a teacher for purposes of §1141 if he holds the necessary certificate and devotes at least half his time to teaching or direct educational activities, and he is a professional employe under §1101 if he is a teacher under §1141." **Appeal of Spano**, 267 A. 2d 848, 850.

A teacher who is properly certified who is not required to work on a full-time basis can be a professional employe if that person devotes at least fifty per centum of a normal working week to direct educational activities. There are no provisions in the School Code stating that teachers must serve on a full-time basis in order to hold professional employe status; in fact, the General Assembly specifically recognized in §1147 that some teachers would serve less than full-time. Accordingly, we find a kindergarten teacher who works only half-time can be a professional employe. In this case, since the Appellant had already earned professional employe status, her appointment to teach kindergarten at the Beach Lake School made her a professional employe of the Wayne Highlands School District, with all the rights and privileges granted under the School Code to professional employes.

Since the Appellant had earned professional employe status as a result of her service with the Philadelphia School District, the Board of School Directors of the Wayne Highlands School District was required by Section 1121 of the Public School Code of 1949 to issue to her a professional employe's contract when she was hired. However, the failure of the School District

to do so does not jeopardize the Appellant's professional employe status. The Supreme Court of Pennsylvania held in **Mullen vs. DuBois Area School District**, 259 A. 2d 877, 436 Pa. 211 (1969), that a teacher was entitled to professional employe status even though no contract had been issued. The Court said:

> "Our teachers ought not have the burden of being required to know all the statutes relative to their employment. Neither should they have to carefully examine the minutes of the hiring board in order to ascertain that each and every requirement was complied with. The burden of complying with the statute rests with the school boards; should they fail to conduct their business as required, the consequences ought to be at their door, not at the door of their victims. They must not be permitted to advantage themselves of their own failures to the detriment of their employes." **Mullen v. DuBois Area School District**, 436 Pa. 211, 217.

A professional employe has the right to continued employment unless his services are terminated for one of the following reasons: resignation, suspension, or dismissal. Professional employes cannot be dismissed unless the procedures required by the School Code are complied with, **In re Swink**, 200 A. 2d 200, 132 Pa. Super. 107 (1938). Among the requirements that must be met are: the reasons for dismissal must be authorized by Section 1122 of the School Code; charges must be sent to the professional employe concerned, signed by the president of the school board and attested to by the secretary; a fair and impartial hearing must be held before the full school board; and, the vote for dismissal must be at least two-thirds of the members of the board.

The Board of School Directors of the Wayne Highlands School District did not follow the procedures prescribed for the dismissal of professional employes when it terminated the Appellant's employment because it did not believe she was a professional employe.

It is clear that the Appellant was dismissed – she did not resign, she was not suspended. The termination of the Appellant's position was not, by itself, sufficient to terminate the Appellant's professional relationship with the School District; the School Board should have reassigned her to another position or else suspended her in accordance with §§1124 and 1125. In either case, the Appellant's professional relationship with the School District would have remained intact; as a suspended employe she would have the right to reinstatement should the district at some later time need an additional kindergarten teacher, or, if qualified, she would have had the right to fill any new or vacant position with the district before a new appointment could be made, 24 P.S §11-1125(c). However, it is apparent that as far as the School District is concerned, the Appellant's relationship with the School District ended when the kindergarten class at Beach Lake School was cancelled. Under the facts of this case, the termination of that relationship constitutes a dismissal.

In **Bragg v. School District of Swarthmore**, 11 A. 2d 152 (1940), the school board suspended and then terminated the employment of a teacher of a one room schoolhouse after reassigning her students to other classes. In ordering the teacher reinstated, the Supreme Court of Pennsylvania said:

> "The Appellant's contract assured her a permanent position, unless her employment was suspended or terminated in accordance with the provisions of the Tenure Act, as amended. Ibid p. 154.
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> "The attempt to suspend complainant was unlawful, since it was not prompted by any one of the causes specified in the Act. Furthermore, it is averred that four teachers of the same status as Appellant were appointed subsequently to her and are still under contract with the District. Her alleged suspension, therefore, completely disregarded the seniority rights guaranteed her by the Act of 1939." Ibid p. 154.
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"In the resolution dismissing Appellant, none of the statutory grounds were mentioned as the reason for terminating her contract. Instead, the Board loosely characterized the move as being 'economical, efficient, productive * * *.' This amounts to saying that whenever the Board deems a teacher unnecessary for any reason whatever, the contract may be successfully terminated. In **Langan v. Pittston School District**, 335 Pa. 395, 399, 6 A. 2d 772, 774, we answered such a contention by saying: 'This, of course, was not the intention of the Act; it is directly opposed to it. The purpose of the Tenure Act, reiterated often in our opinions, was *"the maintenance of an adequate and competent teaching staff, free from political* [and personal] *or arbitrary interference, whereby capable and competent teachers might feel secure, and more efficiently perform their duty of instruction."'"* Ibid p. 155.

In this case, we find that the Appellant was improperly dismissed and that she is therefore entitled to reinstatement without loss of pay, in accordance with §1130 of the School Code.

The objections of the School District to the Secretary of Education's jurisdiction in this appeal are overruled; the appeal was filed within thirty days of Dr. Sutton's letter of September 26, 1973, informing the Appellant that she would not receive a hearing before the School Board in accordance with §1127 of the School Code.

Accordingly, we make the following

ORDER

AND NOW, to wit, this 20th day of May, 1974, it is ordered and decreed that the Appeal of JoEllen Lipperini be and is hereby sustained and the Wayne Highlands School District is hereby directed to reinstate JoEllen Lipperini as a professional employe, without loss of pay, and to place her in a position for which she is qualified and certificated.

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In re the Amount of Sick Leave Days accumulated by Frank W. Marra, a professional employe of the Mid-Valley School District, Lackawanna County, Pennsylvania

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

No. 238

OPINION

John C. Pittenger
Secretary of Education

Frank W. Marra, Appallant herein, has appealed from the decision of the Board of School Directors of the Mid-Valley School District that he is entitled to sixty-two (62) days of unused, accumulated sick leave.

FINDINGS OF FACT

1. Mr. Frank W. Marra has been an employe, through merger, of the Mid-Valley School District from the 1947-48 school year up through the present.
2. Mr. Marra became a professional employe at the beginning of the 1949-50 school year.
3. Mr. Marra filed his appeal in the Office of the Secretary of Education on February 15,