"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. Pittstown 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.

We find that the Appellant was dismissed, that she was, and is, a professional employe, and that the Charleroi Area Board of School Directors failed to follow the dismissal procedures mandated by the School Code.

Accordingly, we make the following

## ORDER

AND NOW, to wit, this 29th day of May, 1974, it is ordered and decreed that the Appeal of Betty M. Higginbotham be and is hereby sustained and the Charleroi Area School District is hereby directed to reinstate Betty M. Higginbotham as a professional employe, without loss of pay, and to place her in a position for which she is qualified and certificated.

* * * *

Appeal of Eleanor McCormick, a Professional Employee, from a decision of the Board of School Directors of the Charleroi Area School District, Washington County, Pennsylvania

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

No. 230

## OPINION

**John C. Pittenger**
*Secretary of Education*

Eleanor McCormick, Appellant herein, has appealed from the action of the Board of School Directors of the Charleroi Area School District removing her from the position of Remedial Reading Supervisor and assigning her to regular classroom duties; which action she contends constitutes a demotion.

## FINDINGS OF FACT

1. On September 5, 1961, the Appellant was issued a professional employee's contract by the Board of School Directors of the Charleroi Area School District. The Appellant served as an elementary teacher in the district for five years.
2. On August 26, 1966, the Charleroi Area School Board appointed the Appellant to the position of Reading Specialist and Remedial Reading Supervisor. At the same meeting of the School Board, two persons were appointed as E.S.E.A. Remedial Reading Substitute Teachers.
3. A portion of the Appellant's salary was paid for out of Federal funds received under the

Elementary and Secondary Education Act of 1965 (E.S.E.A.).

4. The Charleroi Area School Board decided in June of 1973 to abolish the position of Reading Supervisor. The Appellant was notified of this decision by a letter dated June 29, 1973 from Mr. Albert E. Ferrara, Superintendent of Schools. The letter stated, in part:

> "If you want an opportunity to be heard, please advise us within ten (10) days of receipt of this notice. Your request for a hearing must be in writing."

5. By letter dated July 9, 1973, in response to Superintendent Ferrara's letter of June 29, 1973, the Appellant requested "an opportunity to be heard" before the Board of School Directors.

6. In a letter dated July 12, 1973, the Appellant was informed by Superintendent Ferrara that her letter "requesting a meeting" had been received by the School Board and that the meeting would be held on July 18, 1973. By agreement, this date was changed to July 25, 1973.

7. On July 25, 1973, the Appellant, with her counsel, appeared at a hearing before the Board of School Directors of the Charleroi Area School District to challenge her reassignment from the supervisory to the teaching position.

8. No public stenographer was present at the July 25, 1973 hearing to transcribe the testimony. The School Board, acting on advice of counsel, took the position that a public stenographer was not required. Instead, the substance of the hearing was summarized by the Acting Secretary of the School Board, Mr. William Cominsky.

9. The Appellant's counsel demanded a hearing in accordance with the provisions of the Public School Code of 1949. The School Board refused to provide such a hearing, contending that it was not required. Accordingly, the July 25, 1973 hearing was adjourned shortly after being convened. At that brief hearing, the Appellant did not present any testimony challenging her reassignment, and the School Board did not present any testimony defending or explaining its action.

10. On July 30, 1973, the Appellant filed an appeal in the Office of the Secretary of Education. A hearing on the appeal was held August 20, 1973. No testimony was offered at that hearing. However, at the hearing the Charleroi Area School Board filed its Answer to the Appellant's petition of appeal, and submitted certain exhibits requested by the Secretary of Education.

## DISCUSSION

The Appellant contends that she was demoted without her consent when the Board of School Directors of the Charleroi Area School District removed her from the position of Supervisor of Remedial Reading and assigned her to regular classroom teaching duties. The Appellant contends that she is entitled to reinstatement to her former position because the School Board failed to provide a hearing in accordance with the provisions of the Public School Code of 1949, in particular, Section 1151, which provides in part:

> ". . . but there shall be no demotion of any professional employe either in salary on in type of position, except as otherwise provided in this act, without the consent of the employe, or, if such consent is not received, then such demotion shall be subject to the right to a hearing before the board of school directors and an appeal in the same manner as hereinbefore provided in the case of the dismissal of a professional employe." 24 P.S. §11-1151.

We agree with both contentions. Although the record is sketchy, there is sufficient evidence present to conclude that the Appellant was demoted in type of position and that in demoting her the School Board failed to comply with the requirements of the School Code. In reaching these conclusions, we have reviewed as part of the record those factual averments in the pleadings which were not contested and those admissions against interest made by the School District in

its brief and argument. The record demonstrates that the Board of School Directors of the Charleroi Area School District completely misunderstood the provisions of the School Code dealing with demotions and the cases interpreting those provisions.

It is clear the Appellant has been demoted. The title of her former position was Supervisor of Remedial Reading. We view the Appellant's position according to the plain meaning of the term "supervisor". The Second Edition of Webster's Unabridged New International Dictionary defines "supervisor" in an educational context as:

> "An officer of a school system who has supervision over the courses and the teachers giving instruction in a special subject, as music or drawing."

When the Appellant was appointed Remedial Reading Supervisor, two persons were appointed as remedial reading teachers. We conclude that the Appellant supervised those teachers. Obviously, a person who supervises teachers enjoys a higher employment status than a teacher. This relationship is recognized in the salary provisions of Section 1143 of the School Code which provide a higher minimum salary for supervisors than for teachers. In **Smith v. Darby School District**, 388 Pa. 301, 130 A. 2d 661 (1957), the Court noted that the reassignment from one supervisory position to another with lesser authority was a demotion in type of position. Obviously an assignment from a supervisory to a teaching position is a demotion, also.

When a professional employee objects to a demotion – or what he or she believes constitutes a demotion – and requests a hearing, the employee is entitled to the type of hearing specified in Sections 1127 and 1128 of the School Code, **Board of School Directors of Abington School District v. Pittenger**, 9 Pa.Cmwlth. 62, 305 A. 2d 382 (1973). Section 1127 provides in part:

> "At such hearing all testimony offered, including that of complainants and their witnesses, as well as that of the accused professional employe and his or her witnesses, *shall be recorded by a competent disinterested public stenographer* whose services shall be furnished by the school district at its expense." 24 P.S. §11-1127. (Emphasis supplied).

If not satisfied with the school board's decision, the professional employee may appeal to this Office. Should such an appeal be taken, it is necessary that we have a proper transcript since it is the duty of the Secretary of Education to review the official transcript of the proceedings before the school board, **Smith v. Darby**, 130 A. 2d 661, 670.

The transcript of the July 25, 1973 meeting/hearing is completely inadequate. The Acting Secretary to the Charleroi Area School Board is not a disinterested public stenographer. The "transcript" of the July 25, 1973 hearing shows that "all testimony" was not recorded, it was summarized. The Charleroi Area School Board obviously was not prepared to provide the Appellant with the hearing to which she was entitled by law. The Appellant and her counsel quite properly refused to participate in a proceeding that was illegal from its inception.

The School Board contends that its action was justified, that it merely abolished a nonmandated position, citing **Smith v. Darby School District**, op cit., as authority for its action. The School Board should have read the rest of that case. Justice, now Chief Justice, Benjamin R. Jones of the Pennsylvania Supreme Court explained at great length in **Smith v. Darby** that Section 1151 of the School Code requires a hearing for the professional employee who is demoted or *who merely claims or alleges he has been demoted.* Further, if a demotion has occurred, the school board must justify its action. The Charleroi Area School Board fails to understand that its right to abolish a position or to reassign its employees does not extinguish the Board's duty under Section 1151 to explain and justify such action when a professional employee is demoted, **Smith v. Darby**, op cit; **Tassone v. School District of Redstone Township**, 408 Pa. 290, 183 A. 2d 536 (1962).

The School Board claims that this case is foursquare with the case of **Bilotta v. Secretary**

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.