there is consent by the professional employe. Further, if there is no consent, then perforce the Legislature has required Board action. We find no specific provision, or even implied provision, which would permit ratification by the Board of administrative staff directed demotions." (Emphasis added.) **Board of School Directors of Abington Township v. Pittenger**, 305 A. 2d 382, 386.

"[The Board] permitted its administrative staff to demote Albrecht without Board action, and only after Albrecht's demand for a hearing, set the wheels in motion for a hearing several months later." ibid, 305 A. 2d 382, 387.

The holding of the Abington case applies in this case as well. It is our conclusion that the Chester Upland Board of School Directors ratified the action of Dr. Vaul in which he dismissed the Appellant. This was improper and violated the Appellant's rights.

Accordingly, we make the following

ORDER

AND NOW, this 27th day of June, 1974, it is ordered and decreed that the Appeal of Beulah L. Burns be and is hereby sustained, and the Board of School Directors of the Chester Upland School District is ordered to reinstate Beulah L. Burns to her teaching position as professional employe with said District without loss of pay.

* * * *

Appeal of Miller G. McDowell, Jr. a Professional Employee, from a decision of the Board of School Directors of the Oxford Area School District, Chester County Pennsylvania

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

No. 217

OPINION

John C. Pittenger
Secretary of Education

Miller G. McDowell, Appellant herein, has appealed from the decision of the Board of School Directors of the Oxford Area School District, dismissing him as a professional employee on the grounds of incompetency.

FINDINGS OF FACT

1. From 1956 to 1962, the Appellant was employed by the Oxford Area School District as a fifth grade elementary teacher. His only certification during that period was an emergency certificate.
2. From 1962 until 1966, the Appellant was employed by the Octorara Area School District as a junior high school mathematics teacher. That School District issued a professional employee's contract to him on September 14, 1964.
3. In February, 1963, the Appellant was issued a State Standard Limited Certificate for elementary school curriculum, which was valid for three years.
4. In August, 1965, the Appellant was granted a provisional certificate in social studies, valid for three years.
5. From 1966 until 1968, the Appellant taught general mathematics for junior and senior high schools in the public schools of Maryland.

6. In 1968, the Appellant returned to the Oxford Area School District, and taught seventh and eighth grade mathematics in the intermediate school. He was employed as a substitute, replacing a professional employee on sabbatical leave.
7. On July 14, 1969, the Appellant was issued a professional employee's contract by the Oxford Area School District. He was assigned to teach ninth grade mathematics in the high school and served in that capacity until his discharge in September, 1972.
8. In July, 1969, the Appellant received an emergency certificate in mathematics valid for one year. In September, 1969, he was issued an Interim certificate in mathematics, valid for up to five years. The Interim certificate was the only certification in mathematics held by the Appellant during his employment in the Oxford Area School District.
9. The Appellant was given an overall rating of satisfactory for the 1969-70 and 1970-71 school terms. However, it became apparent during the 1970-71 school term that the Appellant was having serious problems in his classroom. His principal, Mr. Topping, who retired at the end of the term, rated the Appellant unsatisfactory in a Performance Evaluation Report dated March 31, 1971 on his ability to maintain class control and on his maintenance of the classroom environment. Subsequently, Mr. Topping formally reprimanded the Appellant because of a serious incident where he failed to maintain proper supervision in the classroom. Dr. Jason F. Driebelbis, who was completing his first year as Superintendent, reluctantly gave the Appellant an overall rating of satisfactory, but marked him unsatisfactory in "Habits of Conduct".
10. Dr. Wilfred L. Ottey, III, served as the Appellant's principal during the 1971-72 school year. Dr. Ottey conducted formal evaluations of the Appellant for four separate occasions – two each semester – in addition to a number of informal visits to the classroom. As a result of these evaluations, Dr. Ottey rated the Appellant unsatisfactory for the Fall and Spring semesters. These ratings were accompanied by anecdotal records. After three of the four evaluations, Dr. Ottey met with the Appellant and discussed those areas where the Appellant was found deficient.
11. In his December 6, 1971 evaluation, Dr. Ottey rated the Appellant unsatisfactory in classroom environment; Dr. Ottey noticed graffiti on the desks, walls and bulletin boards. When students entered the classroom, they sat where they pleased. Dr. Ottey recommended that the Appellant establish a formal seating chart to maintain classroom control.
12. In the January 27, 1972 evaluation, Dr. Ottey rated the Appellant's instruction unsatisfactory; the Appellant's presentation of subject matter was not directed towards the attainment of any specific objectives or goals. He failed to convey an enthusiasm for his subject to his students. The Appellant was also rated unsatisfactory on teacher-pupil relationships; students arrived late and did as they pleased or moved around the classroom at will during the period of instruction. One student exclaimed: "We are being quiet to save your neck. Don't try to embarrass us." The Appellant was also rated unsatisfactory on classroom environment; Dr. Ottey noted that the damage to the classroom had not abated, but continued.
13. In the unsatisfactory rating for the Fall semester, Dr. Ottey cited the Appellant's inability to demand the respect necessary in order to properly instruct his students. This was evidenced by the deplorable physical condition of the room and by the number and severity of misbehavior problems the Appellant was having with his students. Dr. Ottey noted that the Appellant needed improvement in his educational background; he had not pursued an adequate college level program to upgrade his skills in mathematics or to obtain permanent certification in that area. A graphic change was necessary in the Appellant's performance if he was to obtain a satisfactory rating; Dr. Ottey made a number of recommendations on how improvement could be achieved.
14. In the March 16, 1972 evaluation, the Appellant was rated unsatisfactory on instruction; the presentation was acceptable, but the students were not paying attention. The classroom environment was also rated unsatisfactory. Dr. Ottey noted that the classroom continued to be destroyed by the students. Obscenities were still being written on the desks. The Appellant was also rated unsatisfactory for teacher-pupil relationships, based on the following incidents observed during the evaluation which showed the students' lack of respect for the Appellant. While the Appellant was attempting to instruct the class, four students in one part of the room were talking with one another, one of whom was cracking her knuckles, (these students were sitting at desks with no lids). The Appellant asked the students to cease talking, but they ignored him and

continued on with their conversation. One girl, in a fit of giggling, left her desk and walked to the front of the room to drop a piece of paper in a wastebasket near the Appellant.

15. In the May 5, 1972 evaluation, Dr. Ottey rated the Appellant unsatisfactory in thearea of teacher-pupil relationships, noting the continuing poor rapport between the Appellant and the students, and also the students' lack of respect for the Appellant. The Appellant was also rated unsatisfactory on classroom environment. Dr. Ottey noted that desktops had been ripped off; vinyl had been torn from the walls, desks and bulletin boards; heater grates had been ripped off. The Appellant had also been rated unsatisfactory on control of students; students still sat where they pleased even though the Appellant had been told to use a seating plan as a tool of control. Students moved in and out of the classroom at will.

16. There were many disciplinary problems of a serious nature which kept occurring in the Appellant's class. On February 18, 1972, a student ripped a hinge off of the desk and threw it at the Appellant. On February 19, 1972 students were sent to the office for tampering with and damaging the heater control. During the 1971-72 school year, Dr. Ottey talked to students on about 30 or 40 different occasions about their discipline problems in the Appellant's class or their complaints about that class.

17. Mr. Charles A. DeFrees, Business Manager for the Oxford Area School District, testified that, in comparison with the other classrooms, the Appellant's classroom required an excessive amount of maintenance. It was not unusual upon entering the classroom to find six to eight desktops piled on or next to the teacher's desk. Mr. DeFrees estimated that serious damage was done to one or two desks each day. Floor molding had been ripped off all the way around the room. Walls were kicked in, leaving large holes. Airconditioners and heaters were damaged or destroyed. Chewing gum had to be scraped off the walls every night. The maintenance staff had to spend at least an extra hour each day to clean and repair the Appellant's classroom. Even so, the damage occurred at such a rapid rate that the staff could not keep up with the work. Accordingly, in mid-year, the school district had a rehabilitation program for the building, but devoted primarily to this one classroom. Mr. DeFrees noted that the repairs to the Appellant's classroom cost $2,200.00 more than the cost of maintaining the identical classrooms alonig side it.

18. During the 1971-72 school year, the Appellant taught five different classes in the room in question; two additional classes were instructed by other teachers. Teachers of other subjects who taught the same students as the Appellant did not have similar problems.

19. On May 24, 1972, Dr. Ottey recommended to Dr. Driebelbis, Superintendent of Schools, that the Appellant be rated as unsatisfactory for the 1971-72 school year. Dr. Ottey stated, he could not recommend that the Appellant be offered a contract for the coming year. Dr. Driebelbis accepted the recommendation.

20. At the June 8, 1972 School Board meeting, Dr. Driebelbis recommended to the Board that the Appellant not be employed for the 1972-73 school year because of the unsatisfactory rating.

21. By letter dated August 9, 1972, from Mr. Fred Reburn, President of the Oxford Area School Board, the Appellant was informed that a hearing would be held on August 21, 1972 for the purpose of determining whether or not the Appellant should be dismissed for incompetency, in that he had failed to maintain a proper learning atmosphere and displayed an inability to control his pupils.

22. Due to a continuance, the hearing was not held until September 5, 1972. At its conclusion, the Board voted seven to one to dismiss the Appellant. Notice of the Board's decision was received by the Appellant on September 12, 1972.

23. On October 11, 1972 the Appellant's Petition of Appeal was received in the Office of the Secretary of Education. On November 6, 1972 the Oxford Area School District filed its Answer, contending that the Appellant was not a professional employee and, therefore, the Secretary of Education lacked jurisdiction to hear the appeal.

24. On November 8, 1972, a hearing was held in the Office of the Secretary of Education on the Appellant's petition of appeal. Briefs were requested; all briefs were received by May 16, 1973.

DISCUSSION

Although it issued him a professional employee's contract, the Board of School Directors of the Oxford Area School District now contend that the Appellant, Miller G. McDowell, is not a professional employee. The Board relies on an informal opinion from a member of the Department of Justice to the Department of Education which held that persons serving on interim or intern certificates could not attain professional employee status. Based on that opinion, the Department of Education issued School Administrators Memorandum #417, dated August 16, 1971, which the Board cited in its belief. The issue raised by the Board is important, if the Appellant is not a professional employee, the Secretary of Education does not have jurisdiction to hear his appeal, Section 1131 of the Public School Code. In an effort to resolve this issue, we asked the Attorney General for a comprehensive opinion on the employment rights of persons serving on intern or interim certificates.

In Official Opinion Number 51 of 1974, dated October 8, 1974, the Attorney General advised the Department of Education that persons teaching on intern or interim certificates are entitled to professional or temporary professional employee status, depending upon the circumstances of their employment, (i.e., persons employed as substitutes are not entitled to professional status). Based on that opinion, we have already held in the Appeal of Lois V. Goodrich, Teacher Tenure Appeal No. 231, that a person who has satisfactorily completed two years of service on an intern or interim certificate in a vacant or newly created position is entitled to professional employee status.

Accordingly, we conclude that the Appellant is a professional employee; he legally achieved that status at the end of the 1970-71 school year. His previous two years of service in the Oxford Area School District, where he taught mathematics on the interim certificate for mathematics, were rated satisfactory; that meant he attained professional employee status even though the School Board took no action then to recognize that fact, **Elias v. Board of School Directors of Windber Area**, 218 A.2d 738, 421 Pa. 260 (1966). The professional employee's contract the Board had previously issued to him was issued in error. The Appellant did not attain professional employee status earlier because he lacked the appropriate certification for his teaching positions; when he taught elementary up to 1962, he only had emergency certification; when he taught junior high mathematics, he had elementary certification and later, as of 1965, social studies certificationIt was not until September, 1969, that the Appellant possessed certification directly related to the subject matter he was teaching.

Nevertheless, the record establishes that the Appellant's dismissal was proper. In reviewing the merits of a dismissal action, we must determine whether or not the school board followed the required procedures and also presented substantial evidence supporting one or more of the causes for dismissal recognized in Section 1122 of the School Code. The record shows that the School Board complied in both areas. To dismiss an employee for incompetency, there must be two unsatisfactory ratings, **Thall Appeal**, 189 A.2d 249, 410 Pa. 222 (1963). The Appellant was rated unsatisfactory at the end of the Fall and also the Spring semesters of the 1971-72 school year. Each rating was preceded by two formal evaluations where the Appellant was rated unsatisfactory in important areas. Each rating and evaluation was accompanied by detailed anecdoted records; the principal also discussed with the Appellant what was observed, in an attempt to alert the Appellant to problem areas which must be improved.

One essential quality of a teacher is the ability to maintain discipline so that a proper learning environment can be provided. The record shows that the Appellant lacked this quality; he simply was unable to control his students or obtain their respect. As a result, his classroom was being effectively destroyed and the learning environment was having a deleterious effect on the students. Explaining why he gave the second unsatisfactory rating, Dr. Ottey said:

> "I weighed the evidence in my mind. I weighed the fact that I saw no rapport or almost no rapport with the students; respect from the students was generally lacking; a great number of disciplinary

> problems originated in the room and then came to the office. Some students left school permanently as a result. Others were referred to the psychologist; detentions were given; parents were called -- but many, many problems originated there."

In submitting his recommendation to the Superintendent that the Appellant be given an unsatisfactory rating for the 1971-72 school year, Dr. Ottey wrote:

> "I cannot at this time recommend that he be offered a contract for the coming year. Mr. McDowell has been unable to assert the leadership necessary in a classroom to teach effectively. The students act as they please, many refusing to cooperate and making his efforts to teach them fruitless, and preventing the remaining students from learning. The condition of his classroom is deplorable and continues to deteriorate. Numerous discipline problems have been spawned in his room. For these reasons I must make my unsatisfactory rating."

We have given great weight to Dr. Ottey's testimony; the opinion of a school principal as to the competence of a teacher under his supervision has the status of expert testimony and, therefore, has probative value when based on personal observation, even though the evidence as to the basis of the opinion is not as detailed as desirable, **Appeal of Kiebler**, 30 D.& C. 620 (1938). In this case, the evidence is very detailed.

We are also impressed by the conscientious manner in which Dr. Ottey conducted his evaluations; he made many visits at different periods of the day; he checked the classroom before and after other teachers used it to see if they were responsible for the damage; he checked other teachers to see if they had the same type of problems with the Appellant's students as the Appellant was having. It is obvious that before rating the Appellant unsatisfactory, Dr. Ottey devoted considerable thought to the matter to make certain he was making the right conclusions.

Accordingly, we make the following

ORDER

AND NOW, this 7th day of April, 1975, it is hereby Ordered and Decreed that the decision of the Board of School Directors of the Oxford Area School District dismissing Miller G. McDowell on the grounds of incompetency be sustained.

* * * *

Appeal of Orville Harris, a Professional Employe, from a decision of the Board of Education of the Philadelphia City School District, Philadelphia County, Pennsylvania

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

No. 219

OPINION

John C. Pittenger
Secretary of Education

Orville Harris, appellant herein, has appealed from a decision of the Board of Education of the School District of Philadelphia terminating his contract and dismissing him as a professional employe.