

**IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA**

GERTRUDE W. ROSE	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 05-09
	:	
SCHOOL DISTRICT OF	:	
PHILADELPHIA	:	
Appellee	:	

Gertrude W. Rose (“Ms. Rose”), Appellant, appeals the decision of the School Reform Commission (“SRC”) of the School District of Philadelphia (“District”) terminating her employment with the District.

Findings of Fact

1. Ms. Rose was employed by the District but on August 19, 2009, the SRC terminated her employment with the District effective March 11, 2009.
2. The termination of Ms. Rose’s employment with the District was conveyed to her by letter dated August 21, 2009.
3. On September 21, 2009, the Office of Chief Counsel in the Pennsylvania Department of Education (“PDE”) received a letter from Ms. Rose in which she stated “attached are some documents pertinent to a teacher tenure appeal concerning my dismissal as a teacher with the School District of Philadelphia.”
4. On September 30, 2009, a letter from the Secretary of Education was faxed to Ms. Rose and the District notifying them of the receipt of Ms. Rose’s appeal, the appointment of a hearing officer, and that a hearing on the matter was scheduled for October 21, 2009.

5. By letter dated October 2, 2009, the District sent requested documents to the hearing officer and filed an Answer to Ms. Rose's appeal and a Motion to Dismiss.

6. On October 5, 2009, the hearing officer held a conference call with the parties and there was a discussion about the Secretary's jurisdiction over Ms. Rose's appeal, which was raised in the District's Motion to Dismiss.

7. As a result of the October 5, 2009 conference call, it was agreed that on or before October 23, 2009, Ms. Rose would file a brief supporting her position that the Secretary had jurisdiction over her appeal. The District was satisfied with its Motion to Dismiss and did not wish to file a brief. In addition, the hearing was continued until the jurisdictional issue was decided.

6. Ms. Rose filed her letter "brief" together with documentation to support her position that the Secretary has jurisdiction over her appeal on October 23, 2009.

Discussion

The Secretary of Education has jurisdiction over the appeal from a professional employee who "considers himself or herself aggrieved by the action of the board of school directors" 24 P.S. §11-1131. Such appeal must be filed with the Secretary of Education within thirty (30) days after receipt by registered mail of the notice of the decision of the board.

The SRC notified Ms. Rose of her dismissal by letter dated August 21, 2009. Ms. Rose filed her appeal with the Department by letter dated September 21, 2009. Although Ms. Rose's appeal was not addressed to the Secretary of Education but was addressed to the Office of Chief Counsel, the Secretary accepted her appeal and appointed a hearing officer.

Subsequent to the filing of Ms. Rose's appeal, the District filed an Answer and Motion to Dismiss. The District argues in its Motion to Dismiss that Ms. Rose was not employed by the

District as a professional employee but as a per diem and long term substitute. Thus, the District argues, Ms. Rose's right to appeal her dismissal is pursuant to the Local Agency Law, 2 Pa.C.S.A. §754(b), and must be appealed to the Court of Common Pleas of Philadelphia, not to the Secretary of Education.

Pursuant to a conference call among the parties and the hearing officer, Ms. Rose was permitted to file, by October 23, 2009, a brief supporting her position that the Secretary has jurisdiction over her appeal. Ms. Rose's letter brief and attached documents were received by the hearing officer on October 23, 2009.

Ms. Rose states in her letter brief that she listed her position as ITS (Long Term Substitute) on her Election of Remedies Form. Ms. Rose provided copies of documents from Aesop Frontline Placement Technologies ("Aesop"), which is "an automated substitute placement service". In addition to documents describing Aesop's services, Ms. Rose provided a copy of Aesop documents that show assignments for Ms. Rose in the District. Other documents provided by Ms. Rose, such as Unsatisfactory Incident reports and various Memoranda, identify Ms. Rose as a substitute teacher or a per diem substitute. Documents provided by the District also identify Ms. Rose as a substitute or long term substitute.

Pursuant to section 1101(2) of the Public School Code, 24 P.S. §11-1101(2), the term "substitute" means:

any individual who has been employed to perform the duties of a regular professional employee during such period of time as the regular professional employe is absent on sabbatical leave or for other legal cause authorized and approve by the board of school directors or to perform the duties of a temporary professional employe who is absent.

24 P.S. §11-1101(2).

Professional employees are defined to include:

those who are certificated as teachers, supervisors, supervising principals, principals, assistant principals, vice-principals, directors of vocational education, dental hygienists, visiting teachers, home and school visitors, school counselors, child nutrition program specialists, school librarians, school secretaries the selection of whom is on the basis of merit as determined by eligibility lists and school nurses.

24 P.S. §11-1101(1). Thus, there is a distinction between a professional employee and a substitute teacher. A substitute teacher might have earned the status of a professional employee at some point in time. However, when a person is employed as a substitute teacher, even though he or she might have attained professional employee status at some previous time, that person is not considered a professional employee at the time he or she is hired as a substitute teacher.

“Occupation of a position as a substitute does not carry with it the attributes of tenure. A professional employee can be hired as a substitute.” *Bitler v. Warrior Run School District*, 437 A.2d 481, 482 (Pa. Cmwlth. 1981).

There is nothing in the documents provided by either Ms. Rose or the District that evidence that Ms. Rose was employed by the District as a professional employee. All the evidence in the record is that Ms. Rose was employed by the District as a substitute teacher. Therefore, since the Secretary of Education only has jurisdiction over appeals of professional employees, he does not have jurisdiction over Ms. Rose’s appeal.

Accordingly, the following Order is entered:

IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA

GERTRUDE W. ROSE
Appellant

v.

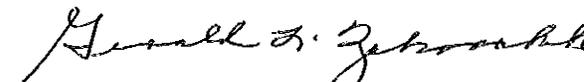
SCHOOL DISTRICT OF
PHILADELPHIA
Appellee

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Teacher Tenure Appeal
No. 05-09

ORDER

AND NOW, this 9th day of December, 2009 it is hereby ordered and decreed that the appeal of Gertrude W. Rose is denied because the Secretary of Education does not have jurisdiction over her appeal. Since Ms. Rose has also filed an appeal of this matter with the Court of Common Pleas of Philadelphia County, it is not necessary to transfer this matter to that court.


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

Date Mailed: 12/9/09