

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

BEVERLY BOWER, :
Appellant :
: v. : Teacher Tenure Appeal
: : No. 43-77
MONTGOMERY AREA SCHOOL :
DISTRICT, :
Appellee :
:

OPINION

Beverly Bower, Appellant herein, has appealed the decision of the Board of School Directors of the Montgomery Area School District abolishing her position as Director, Right to Read Program, and placing her in the position of classroom teacher which action she contends is an improper demotion in position.

FINDINGS OF FACT

1. The Appellant is a professional employee of the Montgomery Area School District.
2. Appellant has 23 years teaching experience and has worked in the school district for approximately 23 years.
3. Appellant is properly certified in English, Reading, and Social Studies. She holds a reading specialist and instructional certificate.
4. During the school years 1974-75, 1975-76 and 1976-77, the Appellant was employed by the school district as director of the "Right to Read" program.
5. In her position as director of the Right to Read program, the Appellant performed the following duties:
 - a. Developed and directed a peer tutoring program involving approximately 75-100 students; worked closely with teachers to determine attendance rates and work performance.

The peer tutoring program was designed to help students learn to tutor other students.

- b. Directed an adult volunteer program involving 15-20 adults. Appellant trained these adults to perform various classroom duties related to reading skills.
- c. Directed and initiated the idea of a toy lending library for the community. Appellant offered training sessions for parents to show how the toys could be put to educational use.
- d. Familiarized teachers with the materials available in a centrally located reading room and made specific recommendations to teachers on which materials to use. She also provided teachers with materials for children with special reading needs.
- e. Tested students with reading difficulties and prescribed materials to the teachers working with these students. Appellant also analyzed test results and, in some cases, worked directly with the children to overcome specific reading difficulties.
- f. Recommended certain students be tested and evaluated by the Mansfield Learning Center. After the Mansfield clinic gave a prescription to cure the reading problem, it was Appellant's responsibility to see that the prescription was implemented. This meant the Appellant would either teach the child herself, instruct a teacher how to work with the child or follow Mansfield's specifically prescribed method.
- g. Appellant did reading grouping for the school district based on teacher recommendations.

- h. Appellant was responsible for writing the Title 7 program - a highly competitive reading improvement program.
- i. The Appellant was not a supervisor. She provided staff support to the entire school district by virtue of her position in the reading program. She supplied classroom teachers with a variety of materials, e.g. test results, reading materials, etc.
- j. Appellant organized and directed a parent effectiveness training course.
- k. Appellant was responsible for secondary as well as elementary students and teachers.

6. After the Appellant was reassigned, some of her former job responsibilities such as evaluating and diagnosing reading problems, were taken over by various building principals.

7. The Appellant did not evaluate any professional staff members.

8. As Director of the Right to Read program, the Appellant established her own work schedule. On occasion she attended conferences and worked outside the school district. As classroom teacher, her schedule was established by the administration.

9. Appellant was never officially rated by a building principal or the superintendent of the District.

10. On August 10, 1977 the Board voted to terminate the "Right to Read" program thereby abolishing Appellant's position as Director of the "Right to Read" program.

11. Subsequent to the abolition of the "Right to Read" program, the Appellant was notified by letter that a secondary classroom teaching position was available to her and she was informed of her right to a hearing pursuant to the Pennsylvania Public School Code.

12. The Appellant requested a hearing before the Board with regard to the abolition of her position as director of the Right to Read program and her reassignment to a teaching position in the secondary schools.

13. A hearing was held before the Board of School Directors of the Montgomery Area School District (hereafter referred to as "Board") on Tuesday, October 11, 1977.

14. At the conclusion of the hearing, the Board determined that the Appellant had not been demoted in "type of position". As a result of this decision, the Board did not consider any other issues with regard to the abolition of Appellant's position and her reassignment to teaching in the secondary classroom position.

15. By letter dated November 11, 1977, the Board solicitor, Robert C. Wise, Esquire, notified the Appellant of the Board's decision. The letter stated that the Appellant had not been demoted in position within the meaning Section 1151 of the Public School Code.

16. On December 6, 1977, the Appellant filed a petition of appeal in the Office of the Secretary of Education.

17. On February 10, 1978, a hearing was held on this appeal before the Secretary of Education.

18. Both parties stipulated that the Appellant did not receive a demotion in salary.

DISCUSSION

This appeal presents one issue: whether the Appellant was demoted when she was reassigned from her position as Director of the Right to Read program to a teaching position in a secondary school. We conclude that this reassignment constitutes a demotion in type of position. Both parties agree the Appellant has not been demoted in salary.

The demotion of a professional employee is governed by Section 1151 of the School Code, which provides in Part:

". . . but there shall be no demotion of any professional employee either in salary or in type of position, except as otherwise provided in this act, without the consent of the employee, 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 employee." 24 P.S. §11-1151.

It is well settled law in Pennsylvania that the School Code does not prohibit a school board from demoting a professional employee or reassigning a professional employee to another class or school in accordance with its judgment and discretion. Smith v. Darby, 388 Pa. 301, 130 A.2d 661 (1957). School boards clearly have the power to assign their personnel to other positions and a professional employee has no vested right in any particular position. Smith, Id.; Appeal of Santee, 307 Pa. 601, 156 A.2d 30 (1959); Wesenberg Case, 346 Pa. 438, 31 A.2d 151 (1943); Commonwealth ex. rel. Wesenberg v. Bethlehem School District, 148 Pa. Super. 250, 24 A.2d 673 (1942). Also, the courts have consistently upheld the right of a school board to abolish a position or office and transfer and/or assign an employee to a new position. Smith v. Darby, 388 Pa. 301, 130 A.2d 661 (1957); Lakeland Joint School District v. Gilvary, 3 Pa. Commw. Ct. 415, 283 A.2d 500 (1971); Bilotta v. Secretary of Education, 8 Pa. Commw. Ct. 631, 304 A.2d 190 (1973); Lucostic v. Brownsville Area School District, 6 Pa. Commw. Ct. 587, 297 A.2d 516 (1972); Tassone v. School District of Redstone Township, 408 Pa. 290, 183 A.2d 536 (1962). Therefore, the Board, in the instant case, clearly had the authority to abolish the Appellant's position as Director of the Right to Read Program and reassign her to a classroom teaching position.

Since the Appellant did not consent to this reassignment and considered this action to be a demotion in type of position, she was entitled to a

hearing. A hearing was granted. The responsibility of the Board at the hearing was to determine whether or not a demotion had occurred and to make clear and apparent the reason(s) for the demotion. Smith v. Darby, supra; Tassone v. School District of Redstone Township, supra.

At the conclusion of the hearing the Board determined that a demotion did not occur. It concluded that the duties assumed by the Appellant in her new position did not constitute a demotion in position or status. We disagree.

In Smith v. Darby School District, supra, the State Supreme Court set forth broad and basic guidelines as to what constitutes a demotion:

"A demotion of a professional employee is a removal from one position and an appointment to a lower position; it is a reduction in type of position as compared with other professional employees having the same status." 388 Pa. at 303, 304, 130 A.2d at 664

* * *

"To demote is to reduce to a lower rank or class and there may be a demotion in type of position even though the salary remains the same." Id.

It was the Appellant's burden to show that her reassignment amounted to a demotion. Department of Education v. Kauffman, 21 Pa. Commw. Ct. 89, 343 A.2d 391 (1975). In her attempt to sustain this burden, the Appellant argued that the change in her job responsibilities constituted a demotion in position.

The record shows the Appellant was removed from a position where she developed, directed, and managed a number of reading programs in the district and was reassigned to a classroom teaching position where she only supervises and directs the children within her particular classroom.

The fact that the Appellant did not characterize herself as a supervisor in her position as Director of the Right to Read Program does not alter our conclusion that she was demoted when assigned to the position of teacher. The record establishes the extreme importance of

her former position and the vast responsibilities she assumed in her position with the Right to Read program. The reassignment from her former position to that of teacher meant that she gave up her status relative to managing and directing a number of training, reading, and tutorial programs for adults, teachers and students throughout the district. Her involvement with various testing programs for students, the analysis of the reading test results, and providing recommendations based on test results was significantly diminished, if not eliminated, as a result of her reassignment. After her transfer, Appellant's evaluations and diagnostic work of students with reading problems was taken over by building principals. This is an indication that she functioned as more than a classroom teacher and that experience as well as special expertise was needed for the job.

We do not dispute the fact that classroom teachers have an extremely important function in the educational system. The "rank" of a classroom teacher is really not at issue here. However, many of the responsibilities held by the Appellant in her former position did not carry over into her position as classroom teacher. The change and loss in terms of in her responsibilities and duties as a result of the reassignment can easily be viewed as a demotion in type of position. The record indicates that the Appellant's present position is not equal to the one she formerly held. The title is not the same, and the responsibilities are not the same.

In an earlier case, In Re Santee's Appeal, 397 Pa. 607, 156 A.2d 830 (1959), the Supreme Court, in determining whether a demotion had occurred, looked to see whether a reassignment meant a change in such factors as "importance, dignity, responsibility, authority, prestige or

.. compensation." Id at 156 A.2d 832. See also, Commonwealth of Pennsylvania, Department of Education v. Kauffman, 343 A.2d 391 (1975). In this regard, the record show that the Appellant's present position is not equal in importance, responsibility, prestige or authority to the one she formerly held.

Clearly the reassignment of the Appellant from the Director of a Right to Read Program to the position of classroom teacher was a demotion in importance and responsibility as well as in status and type of position. The Appellant's previous responsibility of overseeing reading programs for the entire school district was diminished to being responsible for a classroom of students. There is no doubt that the reassignment meant in a reduction in job responsibilities, a diminution in status and the importance of the work she performed.

At the hearing below, the School Board only decided the question of whether a demotion had occurred. It concluded the Appellant had not been demoted. It did not explain the reasons for the action taken. However, we conclude a demotion has occurred. Since the record below does not support the reasons for the demotion, this appeal must be remanded for further proceedings.

In Smith v. Darby School District, 388 Pa. 301, 130 A.2d 661 (1957), Supreme Court of the State of Pennsylvania stated:

"This provision of the School Code does not prohibit a school board from demoting a professional employee, but simply provides that a nonconsensual demotion shall be subject to a right to a hearing." At 308.

And at page 319:

"When a professional employe claims he has been demoted it is the school board's duty to grant him a hearing. At that hearing two questions are before the school board: (1) whether or not the professional employe has been demoted either in

type of position or salary, and, (2) in the event that the professional employee has been demoted, the reason for such demotion must be made clear and apparent."

In light of Smith, supra, the Board must hold a supplemental hearing for the Appellant to make clear and apparent the reasons for the demotion. The Appellant has the burden of proving the Board acted in an arbitrary or capricious manner or abused its discretion with regard to the demotion. Smith v. Darby, supra; Lakeland Joint School District v. Gilvary, supra; Lucostic v. Brownsville School District, supra.

In view of the foregoing, we make the following

ORDER

AND NOW, this 26th day of October, 1978 it is hereby Ordered and Decreed that the Appeal of Beverly Bower is sustained. This Appeal is hereby remanded to the Board of School Directors of the Montgomery Area School District for further proceedings consistent with this opinion.

Caryl M. Kline
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Secretary of Education