

HENRY ISBAN, Appellant

vs.

Board of School Directors of
Tuscarora Intermediate Unit #11

Teacher Tenure Appeal No. 245

OPINION

John C. Pittenger
Secretary of Education

Henry Isban, Appellant herein, has appealed from the action of the Board of School Directors of the Tuscarora Intermediate Unit #11 transferring him from Fulton County to Mifflin County, which action he believes constitutes an improper demotion in salary and position.

FINDINGS OF FACT

1. Henry Isban is a professional employee. He was hired by the Fulton County Board of School Directors on January 19, 1965 as a speech therapist. The County Board was subsequently absorbed into the newly created Tuscarora Intermediate Unit #11. Mr. Isban received a professional employee's contract with the Intermediate Unit on May 13, 1971.
2. Until June 1973, Mr. Isban worked for the Intermediate Unit as a speech therapist, serving the Forbes Road School District, the Southern Fulton School District, and the Central Fulton School District.
3. By letter dated May 25, 1973, the Superintendent of the Central Fulton School District notified the Intermediate Unit that his district did not wish the services of Mr. Isban during the following school year. That letter read as follows:

"Because of various difficulties over the past years in the Speech Therapy Program, the administration of the Central Fulton School District hereby notifies Intermediate Unit #11 that during the 1973-74 school term, the school district would prefer to be without Speech Therapy services rather than have the program served by Mr. Henry Isban."

An identically worded letter was sent by the superintendent of the Southern Fulton School District on May 25, 1973. The same letter was sent by the superintendent of the Forbes Road School District to the Intermediate Unit on May 29, 1973.

4. On June 1, 1973, Mr. Isban met with Mr. Donald Miller, Director of Special Education, Tuscarora Intermediate Unit, to discuss materials requirements for the next school year. At that meeting, Mr. Miller informed Mr. Isban of the letters he had received from the three superintendents. Mr. Miller informed Mr. Isban that it would be impossible to find another position for him and that Mr. Isban should resign. Mr. Isban, surprised and shaken, left the meeting without making any commitment as to his future action.
5. On June 14, 1973, the Intermediate Unit Board, at its regular meeting, approved a revision in the special education program for the intermediate unit. As part of that revision, Mr. Isban was assigned to a language development program for mentally retarded trainable children. The trainable centers were located in Lewistown and Mount Union. Mr. Isban would not be providing speech therapy services in Fulton County as a result of this transfer. Mr. Isban was notified of his reassignment by letter dated June 15, 1973, from Mr. Miller inviting him to stop by the office to discuss the assignment at his convenience.
6. In a letter dated June 25, 1973, Dr. Clay Burkholder, Executive Director of the Intermediate Unit, responded to Mr. Isban's contention that he had not been informed of the reasons for the reassignment. Dr. Burkholder stated that the reasons had been specifically given him previously.

Dr. Burkholder concluded his letter by asking if Mr. Isban intended to accept the assignment or, instead, to resign. It was noted that a resignation would require 60 days advance notice under the school laws.

7. On July 2, 1973, the Board of School Directors of the Forbes Road School District approved a resolution adopting the language of the letter sent by its superintendent to the Intermediate Unit stating that the district did not want speech therapy service as furnished by the Intermediate Unit if that therapy was offered by Mr. Isban. The Board of School Directors of the Southern Fulton School District and the Central Fulton School District subsequently adopted similar resolutions. These resolutions, all of which stated that the district did not want speech therapy services if those services were to be provided by Mr. Isban, were reported in the Fulton County newspapers.

8. By letter dated August 6, 1973, Mr. Isban, through his attorney, requested that the Intermediate Unit provide him with a hearing pursuant to Section 1151 of the School Code on the basis that his transfer constituted a demotion. A hearing was subsequently scheduled for October 11, 1973.

9. By letter dated October 5, 1973, the Central Fulton School District notified the solicitor for the intermediate unit of the reasons why it did not want Mr. Isban's services.

10. By letter dated October 11, 1973, the Forbes Road School District notified the solicitor as to its reasons why it did not want speech therapy services provided by Mr. Isban.

11. The hearing was held as scheduled on October 11, 1973. Mr. Isban was the only person who testified. At the conclusion of his testimony, he requested, through his representative, that the hearing be continued so that he could have an opportunity to review the reasons given by the Forbes Road School District in its letter of that date as to why it did not want his services. The continuance was granted.

12. The minutes of the December 13, 1973 meeting of the intermediate unit board recorded that no request had been received for a continuation of the Henry Isban hearing.

13. By letter dated January 2, 1974, Mr. Isban's counsel requested a further hearing. Sometime subsequent, Mr. Isban's counsel was informed by the solicitor that a hearing would be denied because there was no demotion.

14. On July 15, 1974, a Petition of Appeal on behalf of Mr. Isban was filed in the Office of the Secretary of Education. A hearing on that appeal was held August 6, 1974. At that hearing, testimony was taken from Mr. Donald Miller and Mr. Isban.

15. Prior to his transfer, Mr. Isban lived in the town of McConnellsburg. After his transfer, approximately in late September or early October, 1973, Mr. Isban moved to an R.D. address in the McConnellsburg vicinity.

16. Mr. Isban used his own car in order to travel to the various schools he serviced. Prior to his transfer, he was reimbursed for his mileage expenses for the distance he traveled from his office, located in McConnellsburg close to his home, to the various schools in Fulton County which he served. As a result of his transfer, his office was moved to McVeytown in Mifflin County, a small city located midway between Mount Union and Lewistown. He received reimbursement for his mileage expenses from that office to the trainable centers which he serviced. Travel expenses from his home to that office were not reimbursed.

17. Mr. Isban did not move his residence after his transfer, except to move from McConnellsburg to the R.D. address. The distance he traveled one-way from his home to Mount Union was approximately 40 miles; he traveled to Mount Union three days a week. The distance from his home to Lewistown, which he traveled two days a week, was approximately 62 miles. In good weather, it took him approximately an hour and a half to drive that distance. During the winter months, it would take anywhere from an hour and 40 minutes to two hours and 15 minutes to drive to work. During the 1973-74 school year, he was spending between \$25-\$30 a week on gasoline. Only a small portion of those expenses were being reimbursed by the school district.

DISCUSSION

Mr. Isban contends that his transfer to a location a considerable distance from where he lives and from where he had been providing educational services constitutes a demotion. He contends he has been demoted in type of position as a result of this transfer because he is now required to provide speech therapy services for trainable retarded children. He contends he has been demoted in salary because he must now pay for a large part of his travel expenses out of his own pocket, instead of receiving reimbursement from the intermediate unit. In our opinion, his transfer did not result in a demotion either in type of position or in salary. Accordingly, we must dismiss his appeal for lack of jurisdiction.

We find no evidence that Mr. Isban is now in a position of less status than that which he held prior to his transfer. The type of instruction he performs is basically the same; the only difference is that the children receiving his speech therapy services are retarded. His status as a speech therapist remains unchanged. In *Appeal of Santee*, 156 A.2d 830, 397 Pa. 601 (1959), it was held that a transfer or reassignment from a ninth grade class to a sixth grade class did not constitute a demotion. Both before and after the reassignment, the status of the person involved remained that of teacher. Accordingly, because Mr. Isban's status has not changed, there is no demotion in type of position.

A transfer of a professional employee from one school to another does not constitute a demotion, either, *Omlor vs. Chester School District*, 37 D. & C. 2d 773 (1965). Even so, the transfer in this case caused us considerable concern. *Omlor* and *Santee* each involved a reassignment within a school district, not an intermediate unit. Because most school districts are small and can be traversed in a short period with little difficulty, an assignment from one school to another would not create much of a burden on the employee. Before intermediate units were created, when services were provided by county boards of school directors, a transfer from one school to another within the county would not cause much of a hardship on a county employee. Intermediate units, however, create quite a different situation. Many intermediate units are comprised of a number of counties and can extend in length for distances of close to a hundred miles. The Tuscarora Intermediate Unit, for example, stretches from the Maryland border to Central Pennsylvania at Lewistown, a direct distance of approximately 75 miles, by road, the distance is much greater. A transfer from one end of an intermediate unit to another, over the course of a year, could result in a rather severe and substantial burden to an employee who established his residence close to where he was originally assigned, especially if the mileage expenses from his residence to his new assignment were not reimbursed. In this case, Mr. Isban estimated that it cost him approximately \$1,000 a year just in fuel expenses to travel from his home near McConnellsburg to his assignment in Lewistown and Mount Union; his estimate of expenses did not include the wear on his automobile.

We are concerned that an intermediate unit might attempt to force a resignation from an employee it wants to dismiss by making working conditions unbearable through a transfer. By forcing a resignation, the intermediate unit could circumvent the procedural requirements of the School Code for the dismissal of a professional employee. An action of this type would constitute an abuse of discretion. The employee's remedy is to seek equitable relief in the courts, not in this Office.

An abuse of discretion does not constitute a demotion. An action is a demotion if the employee is reduced in status or salary, *Smith v. Darby School District*, 130 A.2d 661, 388 Pa. 301 (1957). The reasons for an assignment have no bearing on whether it is a demotion, but have considerable bearing on whether an assignment constituting a demotion will be upheld. This Office has jurisdiction only when a professional employee is demoted; we have no power to hear and resolve appeals of employees transferred for improper reasons.

Mr. Isban contends he has been demoted in salary because the increase in his travel expenses effectively reduces his earning capacity. This argument would have weight if Mr. Isban had been required as a condition of employment to pay expenses previously paid for by the intermediate unit. However, that type of requirement is not present here. Mr. Isban can avoid the travel expenses

by moving closer to his new assignment; the intermediate unit has not required him to continue living in the McConnellsburg vicinity.

Mr. Isban relies on the **Appeal of Coronway** 78 D. & C. 266, 38 Del. Co. 406 (1952) in which held that a teacher required to collect tickets at a football game was demoted in salary and in type of position. **Coronway** is inappropriate; that teacher had no choice as to whether he would collect tickets, whereas Mr. Isban is free to live wherever he chooses. Accordingly, we conclude that he has not been demoted in salary.

To hold that a transfer to an equivalent position in another school is or can be a demotion depending upon the increase in distance traveled from the professional employee's residence would create administrative chaos. In our opinion, the better practice is to follow the established rule that a transfer to an equivalent position is not a demotion.

We feel the principles governing such transfers were accurately stated in **Omlor v. Chester School District**, supra. In that case, a group of teachers were challenging transfers from one school to another which they believed were made unjustly, arbitrarily, improperly, without authority, in bad faith, and in a discriminatory manner to the detriment of the public good and welfare. The court rejected their suit, which was brought in equity, and pointed out the following:

"In the absence of any provision (in the school code) restraining the superintendent from making a transfer, it is his prerogative and duty, where he finds it to the best interests of the school district, to transfer teachers, and, in so doing, a superintendent has discretionary authority and power which will not be reversed by any court, unless there is evidenced a clear abuse of discretion and the burden of showing such a clear abuse of discretion is a heavy one: **Regan vs. Stoddard**, 361 Pa. 469 (1949); **Hibbs vs. Arensberg**, 276 Pa. 24 (1923)." Supra, 37 D. & C. at 774

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"In order for a court of equity to grant relief, it must clearly be shown that the school board acted outside the scope of its statutory authority or not in good faith. "It is only where the board transcends the limits of its legal discretion that it is amendable to the injunctive processes of a court in equity."": **Landerman vs. Churchill Area School District**, 414 Pa. 530 (1964)." Supra, 37 D. & C. at 774-75

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"It would be presumptuous for a court to attempt to impose its control upon the exercise of discretion by trained educators. A board of school directors is vested with wide powers; the superintendent, acting as the board's agent, will not be interfered with unless it is apparent that it is not discretion that has been exercised, but arbitrary will or caprice: **Regan vs. Stoddard**, supra. See also **Ganaposki's case.**, 332 Pa. 550 (1938)." Supra, 37 D. & C. 2d at 775.

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"So we have a narrow question for determination. Granted that a school superintendent has the right to transfer teachers within the school district, may he transfer teachers as a disciplinary measure without investigating the causes which make the action necessary, and without notice to and consultation with the teacher involved?

be decided by the intermediate board. This type of behavior has recently been held to be improper, *Appeal of Feldman*, 346 A.2d 895 (Pa. Cmwlth. 1975). Normally these errors would have justified a remand for a rehearing before the intermediate unit board. However, it is apparent from the hearing in the Office of the Secretary of Education that both parties were willing to let the Secretary decide the threshold question of whether or not a transfer such as occurred in this case constituted a demotion. Having decided that it is not a demotion, there is no need for a remand.

Accordingly, we make the following:

ORDER

AND NOW, THIS 15th day of November, 1976, it is hereby ordered and decreed that the appeal of Henry P. Isban be dismissed for lack of jurisdiction.

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WALTER A. BOEHM, JR., Appellant

vs.

The Board of Public Education of the School
District of Pittsburgh

Teacher Tenure Appeal No. 248

OPINION

John C. Pittenger
Secretary of Education

Walter A. Boehm, Jr., Appellant herein, has appealed from the decision of the Board of Public Education of the School District of Pittsburgh dismissing him as a professional employe on the grounds of persistent negligence.

FINDINGS OF FACT

1. Walter A. Boehm, Jr., Appellant, is a professional employe. He was appointed, effective September 1, 1966, to the position of Social Studies teacher at the Fifth Avenue High School. At the time of his dismissal, he was employed at the Fifth Avenue High School as Social Studies teacher, Athletic Faculty Manager, and school treasurer.
2. In March, 1973, Mr. Boehm was appointed by Mr. Edward Ray, principal of the Fifth Avenue High School, to the position of school treasurer. During the preceding months, Mr. Boehm had served as substitute school treasurer, replacing a teacher who had become ill. The school treasurer's responsibility was to oversee the use of all funds raised by the students for extracurricular activities, including receipts from athletic events and class dues, to pay the necessary expenses for such activities and to record in the accounting ledger how these funds were received and dispursed. Mr. Boehm had experience as an accountant; he had graduated from Duquesne University with a Bachelor of Science and Business Administration in August, 1952, and had taken a number of accounting and auditing courses there. He was also employed by the Pittsburgh Plate Glass Company as an auditor and office manager for seven and one-half years.
3. As school treasurer, Mr. Boehm was responsible for making all entries into the ledger of the Fifth Avenue High School student activities fund.
4. The ledger indicates that on June 29, 1973, \$1,000.00 in cash was deposited into the savings account. The ledger also shows that \$457.43 was deposited to the checking account on that same day. The balance in the savings account to be carried forward at the end of June was listed as \$7,655.08.
5. The months July, August and September, 1973, were listed together in the ledger as one