

Appeal of Gareth Smith, from the Decision  
of the Board of School Directors of the Jersey  
Shore Area School District, Lycoming  
County, Pennsylvania

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

No. 233

### OPINION

John C. Pittenger  
*Secretary of Education*

Gareth Smith, Appellant herein, has appealed from the decision of the Board of School Directors of the Jersey Shore Area School District not to continue her employment as a teacher after the 1972-73 school year.

### FINDINGS OF FACT

1. The Appellant, Gareth Smith, is certificated in elementary education. She graduated from college in May, 1971.
2. The Appellant began her employment in the Jersey Shore School District in September, 1971. She was employed during the Fall semester of the 1971-72 school year as a substitute, teaching reading in the ninth grade. She replaced Mrs. Linda Walizer, who was on maternity leave.
3. During the Spring semester of the 1971-72 school year, the Appellant was employed on a full-time basis teaching kindergarten.
4. During the 1972-73 school year, the Appellant was employed as a remedial reading teacher for fourth and sixth grade students, in accordance with the Title I program of the Federal Elementary and Secondary Education Act of 1965. She was paid on an hourly basis; teaching four and a half hours each day.
5. The Jersey Shore Area School District did not assign the Appellant teaching duties for the 1973-74 school year. The Appellant requested a hearing before the School Board, which the Board refused in a letter dated September 24, 1973.
6. Other teachers were hired by the School District and tendered temporary professional employee contracts during the course of the Appellant's employment. The School Board did not issue such a contract to the Appellant, however. In the opinion of the Board, the Appellant was a part-time hourly employee, not a temporary professional employee.
7. On October 15, 1973 the Appellant's Petition of Appeal was received in the Office of the Secretary of Education. The Appellant contends that she is entitled to professional employee status and that, therefore, the School Board illegally terminated her employment.
8. A hearing before the Secretary of Education was scheduled for November 15, 1973. At the request of Appellant's counsel, it was rescheduled for December 12, 1973. It was rescheduled again for January 11, 1974. Instead of having a hearing, both parties then agreed to submit the case on a stipulated statement of facts. By letter dated May 9, 1974, the Appellant's counsel informed the Department that the parties were unable to reach agreement on the stipulation of facts. Accordingly, a hearing was scheduled for June 20, 1974. At that hearing testimony was offered on behalf of the Appellant and the School District.

### DISCUSSION

Before the Secretary of Education can review the merits of what the Appellant contends was the improper termination of her employment, it is essential that the Secretary's jurisdiction be established. Section 1131 of the School Code gives the Secretary jurisdiction over appeals of professional employees, not temporary professional employees. The facts of this case demonstrate that the Appellant is a temporary professional employee; accordingly, her appeal must be dismissed.

To be entitled to professional employee status, one must serve a two year probationary period as a temporary professional employee and satisfactorily complete the last four months of such service, Section 1108, 24 P.S. Section 11-1108. If these requirements are met, the person can be a professional employee even though her School Board and supervisors believe otherwise and do not rate her or give her a temporary professional employee's contract, see *Elias v. Board of School Directors of Windber Area*, 218 A. 2d 738, 421 Pa. 260 (1966).

The Appellant did not serve two years in the capacity of temporary professional employee; she was a substitute during one-fourth of the two year period she was employed by the Jersey Shore School District. The School Code distinguishes "substitute" from "temporary professional employees" in Section 1101:

"(2) The term 'substitute' shall mean 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 approved by the board of school directors or to perform the duties of a temporary professional employe who is absent.

"(3) The term 'temporary professional employe' shall mean any individual who has been employed to perform, for a limited time, the duties of a newly created position or of a regular professional employe whose services have been terminated by death, resignation, suspension or removal." 24 P.S. Section 11-1101(2) and (3)

As a substitute, the Appellant was not entitled to any of the rights of temporary professional employee status and, therefore, was not entitled to count her service as part of the two year probationary period, see *Love v. School District of Redstone Township*, 375 Pa. 200, 100 A. 2d 55 (1953). In *Love*, the teacher worked four years as a substitute. The Pennsylvania Supreme Court held she was not entitled to professional employee status, because she failed to serve two years as a temporary professional employee.

The Appellant was employed as a substitute during the fall semester of the 1971-72 school year. She thereafter worked only one and a half years in the capacity of a temporary professional employee.

Accordingly, we make the following

#### ORDER

AND NOW, this 7th day of April, 1975, the Appeal of Gareth Smith is dismissed for lack of jurisdiction.

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Appeal of Carroll Bittner, from the Decision of the Board of School Directors of the Jersey Shore Area School District, Lycoming County, Pennsylvania.

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

No. 234

#### OPINION

John C. Pittenger  
*Secretary of Education*

Carroll Bittner, Appellant herein, has appealed from the decision of the Board of School Directors of the Jersey Shore Area School District terminating her services as teacher in the ESEA reading program.