

NO. A10-1272

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State of Minnesota  
**In Court of Appeals**

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Patricia Murphy,

*Relator,*

v.

St. Paul Public Schools,  
Independent School District 625,

*Respondent.*

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**REPLY BRIEF OF RELATOR**

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## **I. INTRODUCTION**

The chief issue in this case is whether changing Relator Murphy's job from a Principal, as she was for years, to an "Assistant Principal," as she now is, constitutes a "demotion" within the meaning of the Teacher Tenure Act, Minn. Stat. § 122A.41. A secondary issue is whether Relator has sufficient tenure to be given a Principal position under the job security provision of the statute.

The School District confounds these relatively straight forward issues by references to antiquated, discredited, and overruled case law and lexicographic legerdemain that avoid the obvious: As an Assistant Principal, assigned "to provide administrative support to the principal" of Como Park High School, *Respondent's Brief*, p. 3, Relator Murphy has a reduced rank, lesser duties, and is in a lower pay-benefits classification than she was before as a full-scale Principal. She satisfies all three of the disjunctive prongs of the "demotion" portion of the statute, although she need meet only one.

Therefore, her rights were violated under the statute and she is entitled to reinstatement.

## **II. THE DISTRICT ELIMINATED PRINCIPAL POSITIONS**

Attempting to obfuscate the definition of the word "Principal," the District asserts that it did not eliminate any Principal positions. Amazingly, it asserts that Murphy "maintains her position as a principal." *Id.*, p. 13. But its own statistical

analysis belies its assertion. *Id.*, p. 4. The District admits that the number of school buildings within the District decreased from 65 to 58, resulting in a potential elimination of seven principal positions between the 2009-2010 and 2010-2011 school years. It also admits that it decreased the total of Principals from 71 to 65, a reduction of six, between those same school years. *Id.*<sup>1</sup>

Therefore, it eliminated at least six, and perhaps seven, Principal positions since the last school year. Whether it did so through attrition or another means does not alter the reality that there are six or seven fewer Principals in the District today than there was the previous year.

Murphy was one of the St. Paul Six (or Seven). The District admits that she is no longer a Principal, despite saying she is. It explains that Murphy, the ex-Principal of now-closed Arlington High School, has been assigned “to provide administrative support *to the Principal* at Como Park Senior High School.” *Id.*, p. 3 (emphasis supplied). In short, she is an aide *to* a Principal, not *a* Principal.

This unavoidable conclusion, shared by Relator and the District, stems from the letter Murphy received from the Superintendent this summer, after Arlington closed, informing her of “your assigned position of Assistant Principal.”

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<sup>1</sup> The District also had one Principal serving a specialty program during both years, and another Principal on Special Assignment in the 2010-2011 school years. It is unclear how many Principals on Special Assignment it employed during the previous year.

*Add. 7.* She was told that she would not be a “co-principal.” *Respondent’s App. 3.* Instead, she was directed to report to, and be “directed by,” *the* Principal at Como Park, would not be a building leader, like other Principals, and her duties would be those within the “generic job description for Assistant Principals.” *Add. 6, 7.*

### **III. MURPHY WAS ‘DEMOTED’**

Relator Murphy has been demoted from her position of Principal to that of Assistant Principal. Under the Teacher Tenure Act, demotion exists when any of three different conditions exist: “to reduce in rank **or** to transfer to a lower branch of the service **or** to a position carrying a lower salary or compensation.” Minn. Stat. § 122A.41, subd. 1(c) (emphasis added). Because of the use of the word “or” in the statute, Murphy need only show *one* of the elements for the action of the District to constitute a demotion, which Relator has done. *See Relator’s Brief*, pp. 13-19. But before she could be demoted, the District was required to provide her a hearing and, in conducting any demotions, to provide preference to tenured Principals and follow the provisions of Minn. Stat. §122A.41, subd. 14, requiring elimination of positions in “inverse order” of employment among tenured Principals.

The District’s contention that Murphy merely experienced a change in “assigned job duties,” is a mischaracterization. *Respondent’s Brief*, p. 16. The reduction of her duties and title of Principal to Assistant Principal is a demotion

because it constitutes a reduction in “rank,” as she has been transferred to a lower position as evidenced by the collective bargaining agreement. Moreover, the position of Assistant Principal is one “carrying” a lower salary and other compensation. *See Relator’s Brief*, pp. 17-19.

The District leans heavily on the case of *Ging v. Board of Education of the City of Duluth*, 7 N.W.2d 544 (Minn. 1942), for the definition of the word “position” to argue that Relator was not demoted and other assertions as well. But that reliance is misplaced because *Ging* was overruled in *Foesch v. Independent School District No. 646*, 223 N.W.2d 371 (Minn. 1974), which repudiated *Ging* as antiquated and unreliable as precedent for the workings of a modern school system. As the court in *Foesch* explained: “*Ging* was decided in 1942, and while a classification of teachers as primary, intermediate, and grammar may have had some validity then, a majority of this court is *not* convinced such a classification is *valid today*.” 223 N.W.2d at 375. (emphasis added).

Nor is the dictionary definition of “position” much help. It is a multifaceted and general term which can act as a noun, verb, adverb or adjective. *Respondent’s App.* 31. Its meaning depends on the context in which it is used, and in this case, could simply refer to “7. Social standing or status; rank,” or could refer to “8. A post of employment; a job...” *Id.*

The word “position” appears in two portions of the Tenure Act; in the definition of the word “demotion” in subd. 1(c); and in subd. 14, directing the order of lay off when positions are eliminated. In both contexts, the most logical definition is that of a “job” or “post of employment....” *Respondent’s App.* 31.

But this begs the question, which is whether Murphy continues to hold the post of “Principal” or whether she is occupying the job of Assistant Principal for the 2010-2011 school year. The answer is the latter, as evidenced by the Superintendent’s directive telling her she has “the position of Assistant Principal.” *Add.* 6. Having told her she was relegated to “Assistant Principal” and admonishing her not to call herself “co-Principal,” the District cannot credibly now tell this Court that she is really a “Principal.”

The Superintendent had no problem defining Murphy’s “position” as that of Assistant Principal. She stated in a letter to Murphy that her “assignment [was] to Como Park Senior High School in the *position of Assistant Principal.*” *Add.* 6 (emphasis supplied). In concluding, the Superintendent reiterates: “You are hereby directed to report to Como Park Senior High at 8:00 a.m. on August 9, 2010 to commence employment for the 2010-2011 school year in your assigned *position of Assistant Principal.*” *Add.* 6-7 (emphasis added). The Superintendent’s telling use of the word “position” to communicate to Murphy that she is an Assistant

Principal tells Murphy that she has been demoted to a lower rank and one that is “carrying” a lower scale of pay and benefits.<sup>2</sup>

Even the caselaw cited by the District fails to support its argument that Murphy remains in the “position” of Principal. The discredited *Ging* case relied on by the District quotes a dictionary definition defining “position” as “relative place, situation, or standing, specif. official rank or status.” *Respondent’s Brief*, p. 17. The Superintendent made clear that Murphy’s official “situation or rank” for this year is that of “Assistant Principal,” whose job is “to provide administrative support” to a Principal, not to be a Principal.<sup>3</sup>

The District’s slight that Murphy merely has a “subjective perception” of a demotion is disingenuous. *Respondent’s Brief*, p. 8. Her lower rank and status is

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<sup>2</sup> While Relator’s pay and benefits currently are unchanged, the statute treats a “demotion” as one that is “carrying” a lower salary. The Assistant Principal position does so, even if the diminution has not yet been implemented. *Relator’s Brief*, pp. 18-19.

<sup>3</sup> The District’s position that Relator remains a “Principal,” even though the Superintendent regards her as an “Assistant Principal” with corresponding duties is reminiscent of the semantic silliness faced by the fictional Alice while wandering through Wonderland. No less a character than Humpty Dumpty tells the heroine: “When I use a word it means just what I choose it to mean – neither more nor less.” L. Carroll, *Alice in Wonderland*, Grosset, Dunlop edition (1983), p. 238. “The question is,” Alice retorts “whether you can make words mean so many different things,” to which the rotund one counters: “The question is which is to be master – that’s all.” The Superintendent’s placing of Relator as “Assistant Principal” and the District’s assertion that she “maintains her position as a principal.” *District’s Brief*, p. 3, are two conflicting positions that cannot stand and, like Humpty Dumpty, is destined to fall – and cannot be put back together again.

reflected in the lessening of her duties with daily work of providing discipline for students, supervision of the lunch room, and other duties that are performed by Assistants, not Principals.

As the case of *State ex rel. Haak v. Independent School District. No. 625, St. Paul*, 367 N.W.2d 461 (Minn. 1985), also relied on by the District clarifies, in determining the position of an employee, “the functions and responsibilities of the position in question are most germane....” *Id.*, p. 25. Murphy’s functions and responsibilities are those of an Assistant Principal. *See Relator’s Brief*, pp. 15-16; *App.* 46-49.

While conceding that Murphy is required to report to, and be supervised by, a Principal, the District ignores the job description given to her by her new boss, the Principal, and instead considers only the list of job duties provided by the Superintendent. But the July 29, 2010, letter from the Superintendent, *Respondent’s App.* 6-7, states that Murphy is “directed” to do the job duties of an Assistant Principal. The letter explicitly says – not once, but twice, that her “position” is that of Assistant Principal. *Respondent’s Add.* 6-7. It goes on to say: “Your duties for the 2010-2011 school year at Como Park Senior High (as those of the other Assistant Principal) will be those set forth in the District’s generic *job description for Assistant Principal – Elementary and Secondary* as otherwise modified and/or directed by the Principal.” *Id.* at 6 (emphasis supplied). Having

clarified that Murphy's duties are those of an Assistant Principal, the Superintendent then recites nine additional job duties relied on so heavily by the District. Even those duties are to be done under the supervision of her boss, the Principal, and many are duties done by the other Assistant Principals as well. *Respondent's App.* 6. In a letter dated June 9, 2010, the Superintendent states "You will be assigned to provide administrative support to a secondary principal." *Respondent's App.* 3. She rejects Murphy's notion that she had been assigned as a co-principal, stating that use of that title may "result in ambiguity around who the building leader is..." *Id.*

Relator's boss, the Principal at Como Park High School provided her a job description for her position of Assistant Principal, and those of the other Assistant Principals. *Respondent's App.* 16-18. Similar to the other Assistant Principals, Murphy is to provide oversight and discipline to a group of students, in her case, those with the last names starting with A through H. *Respondent's App.* 14, 16-18. She supervises a lunch period, a duty shared with the other Assistant Principals, and is given other responsibilities for various committees and functions, similar to other Assistants. *Id.* Even those duties the District claims to be Principal-like, such as "staff supervision and evaluations," "share[d] instructional leadership responsibilities with principal in the areas of curriculum, assessment, and instruction," and "serve as a positive role model for students and staff" are

performed by all the other Assistant Principals too. *Id.* at 16. In short, her job description and duties are those of an Assistant Principal, a rank *below* that of Principal.

In spite of the unambiguous directive of its Superintendent, the District conjures up cases that conclude that the job of a Principal on Special Assignment (POSA”) is not a demotion. *Respondent’s Brief*, pp. 23-24, 40-41. The equation fails the math test (and the “smell” test too), because Murphy was not given a POSA spot. On June 1, 2010, Murphy e-mailed the Superintendent to confirm her understanding that she had been assigned as a POSA or co-Principal; the Superintendent quickly responded that there was a “misunderstanding” and that Murphy was “to provide administrative support to a secondary Principal...” *Respondent’s App.* 1, 3. The Superintendent clarified further in a letter of June 29, 2010, specifically telling Murphy that her assignment was “in the position of *Assistant Principal...*” *Respondent’s Add.* 6-7. Thus, the District’s POSA reasoning is defective.

This is not a case of hurt feelings or “subjective” responses as the District claims. *Respondent’s Brief*, p. 8. It is a case in which the District demoted a veteran Principal claiming there were no Principals jobs available for her, and then hired four new Principals, and kept on 12 others doing Principal duties who had not achieved tenure as Principal. This is an injustice that violates the plain

language and the policy of the Teacher Tenure Act, and must be reversed as arbitrary and capricious, and a violation of law.

#### **IV. MURPHY SHOULD HAVE BEEN ASSIGNED A PRINCIPAL POSITION**

The District's assertion that Murphy would not have been assigned a Principal position even if she was "demoted," is an erroneous reading of the Teacher Tenure Act. The statute instructs a district how to proceed with the termination of Principals when positions are eliminated due to a lack of pupils, as occurred here, when Arlington and other schools were shuttered. Minn. Stat. § 122A.41, subd. 14(a) provides that when a principal's "services are terminated on account of discontinuance of position or lack of pupils must receive first consideration for other positions in the district for which that [principal] is qualified. In the event it becomes necessary to discontinue one or more positions, in making such discontinuance, [Principals] must be discontinued in any department in the inverse order in which they were employed . . . ."

The Act provides for a three-year probationary period for all teachers, and allows the District and the Principals' union to negotiate an additional probationary period specific to the position of Principal of up to two years for Principals hired internally. Minn. Stat. § 122A.41, subds. 2 and 5a.

The Collective Bargaining Agreement between the District and the St. Paul Principals' Association provides for a two-year probationary period for District employees promoted to the position of Principal. *Relator's App. 31.*<sup>4</sup>

Thus, regardless whether an individual Principal has achieved tenure as a classroom teacher or an Assistant Principal, that individual must serve *another* probationary period as a non-tenured Principal. This is why the District's seniority list includes two tenure dates for Principals, the date of tenure within the District, and the date of completion to the probationary period for the position of Principal. *Respondent's App. 24-26.*

Accordingly, in determining a lay-off of Principals for lack of pupils, the District must first look at all of the Principal's District-wide and eliminate those who had not achieved tenure as Principal before those persons who had achieved tenure as principal. *See State ex. Rel. Marolt v. Independent School District No. 695*, 229 Minn. 134, 142, 217 N.W.2d 212, 217 (Minn. 1974) (a district may not "terminate a tenure teacher and retain a non tenure teacher to fill a position for which the tenure teacher was qualified"); *Klein v. Bd. of Educ. of Indp. Sch. Dist. No. 671*, 497 N.W.2d 620, 623-24 (Minn. Ct. App. 1993), *rev. granted*, (May 18,

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<sup>4</sup>There also is a separate two year probationary period for Assistant Principal in the Union contract. *Relator's App. 31.*

1993), *appeal dismissed*, (June 28, 1993) (district violated Teacher Tenure Act by displacing principal with less senior administrator).

The District's reliance on *Sweeney v. Special School District No. 1, Minneapolis*, 368 N.W.2d 288 (Minn. Ct. App. 1985), is misplaced. In *Sweeney*, the Court addressed the question whether seniority in the District or seniority in the position as Principal or Assistant Principal should be applied where all of the educators had tenure as Principal or Assistant Principal. 368 N.W.2d at 291. But the case did not address the question presented here: whether those who had not achieved tenure status would be preferred over those like Murphy, who had.

Nor does *McManus v. Independent School District No. 625*, 321 N.W.2d 891 (Minn. 1982) provide otherwise. The Court in *McManus* held that the seniority of a Principal under the Teacher Tenure Act is based upon District-wide seniority. It also did not address whether a probationary, or non-tenured Principal had any priority at all over a tenured Principal like Murphy.

Thus, neither of the cases trumpeted by the District sounds like the present case or addresses the issue raised here. But the Supreme Court did address that issue in the case of *State ex. Rel. Marolt v. Independent School District No. 695*, 229 Minn. 134, 217 N.W.2d 212, (Minn. 1974). It held there that a School Board cannot "terminate a tenure teacher and retain a non tenure teacher to fill the

position for which the tenure teacher was qualified.” 229 Minn. at 142, 47 N.W.2d at 217.

Contrary to the District’s assertions, the *Marolt* case was not based upon any specific statutory language in the continuing contract provision for schools not of the first class, it relied upon case law from numerous jurisdictions analyzing similar Teacher Tenure provisions. *Id.* 299 Minn. at 140-42, 217 N.W.2d at 216-17 and cases cited therein. Even if it was, “continuing contract rights” are equivalent to “tenure rights.” *Jurkovich v. Indep. Sch. Dist. No. 708, Tower-Soudan*, 478 N.W.2d 232, 233 n.1 (Minn. Ct. App. 1991). The legislature intended that Principals in cities of the first class, like Murphy, receive the same amount of protection as Principals in cities not of the first class. *Berland v. Special Sch. Dist. No. 1*, 314 N.W.2d 809, 812 (Minn. 1981).

That tenured educators have priority over their nontenured colleagues in cities of the first class, as they do in cities not of the first class, is made clear in *Ging*. Although later overruled on other grounds, *Ging* noted that preference of non-tenured teachers like Murphy transgresses the Teacher Tenure Act. In *Berland* the Supreme Court pointed out that “one tenured teacher does not inherently have superior rights to another,” implying that a tenured educator *does* inherently have superior rights to a non-tenured colleague. After non-tenured Principals are removed from the mix, the positions are to be eliminated based on

seniority. *Berland*, 314 N.W.2d at 812 (“[w]hen positions are eliminated due to economic reasons, terminations will be made departmentally, by seniority”).

Utilizing that principle, Murphy should have been assigned to a Principal position. She was relegated to Assistant Principal on June 1, 2010. Thirty days later, on June 30, 2010, the District hired or promoted four people to the position of Principal. In addition, it continued to employ a dozen Principals who had not achieved tenure as Principal at the time of Relator Murphy’s demotion. *See Respondent’s App.* pp. 24-26.

The following chart, taken from the District’s seniority list included in its Appendix at pp. 24-26, lists those Principals who were not Principals or were not tenured as Principals at the time of Relator Murphy’s demotion

**UNTENURED PRINCIPALS AS OF JUNE 1, 2010**

<u>NAME</u>	<u>SCHOOL</u>	<u>PRINCIPAL PROBATION DATES</u>
Andrastek, John P.	Principal on Special Assignment Plato Adm. Office	06/30/2010
Bell, Hamilton E.	North End Elementary/Not Building Leader	06/30/2010
Flynn, Kathleen	Benjamin Mays Int’l Magnet	06/30/2010
Johnson, Ann E.	St. Anthony Park Elementary	06/30/2010
Kadrmass, Stacy	Frost Lake Magnet Jr. High	06/30/2010
Lehman, Melissa A	Johnson Achievement Plus Elementary	06/30/2010

Pedersen, Rebecca	Groveland Park Elementary	06/30/2010
Pendelton, Adrain	Obama Service Learning Elementary	06/30/2010
Vang, Christine	Como Park Elementary	06/30/2010
Evangelist, Barbara Jean	Franklin Music Magnet	06/30/2011
Moua, Shoua Faith	Bruce F. Vento Elementary	06/30/2011
Parker, Linda Grace	Highwood Hills Elementary	06/30/2011
Flucas, Steven T.	Daytons Bluff Achievement Plus Elementary	06/30/2012
Levin, Alan Craig	Riverview School of Excellence	06/30/2012
McCain, Deborah	Galtier Magnet	06/30/2012
Thompson, Michael	Gordon Parks High School	06/30/2012

Thus, the District violated the Teacher Tenure Act when it promoted Flucas, Levin, McCain, and Thompson to the position of Principal a month after Murphy's demotion to an Assistant Principal position, and preferred the dozen additional non-tenured Principals over Relator Murphy.

The District had seven excess building Principals. *Respondent's Brief*, p. 4; *Respondent's App.* 44. Had the District followed the Teacher Tenure Act and given Relator Murphy preference over these 16 individuals, she would not have been demoted. Even if tenured teachers are not given preference over those without tenure, Murphy had more building seniority than eight other Principals

who were assigned Principal positions, according to the District's own tenure list.

*Respondent's App.* 26. They are:

- Barbara Jean Evangelist, Principal of Franklin Music Magnet;
- Stacey Kadrmas, Principal, Frost Lake Magnet;
- Steven Flucas, Principal, Dayton's Bluff Achievement Plus;
- Adrain Pendelton, Principal, Obama Service Learning;
- Shoua Faith Moua, Principal, Bruce F. Vento Elementary;
- Hamilton Bell, Principal, North End Elementary;
- John P. Andrastek, POSA, Plato Administrative Offices; and
- Tyrone Brookins, Principal, Museum Magnet Elementary.

Since the District counts seven excess building Principals, under either method of calculation, Relator Murphy was entitled, under the Teacher Tenure Act, to continue her position as a Principal.<sup>5</sup> The District, therefore, should be directed to assign Relator Murphy to a Principal position to which she is statutorily-entitled.

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<sup>5</sup> Three of the four persons who were promoted to Principal positions after Murphy was demoted had more building seniority than Murphy. If these three are also subtracted from the mix, Murphy would have had even more cushion against future demotion.

## V. MURPHY DID NOT WAIVE HER STATUTORY RIGHTS

The District's oblique suggestion that correspondence between the District and Murphy somehow suggests a waiver of her statutory rights also lacks merit. Waiver is the "intentional, voluntary, knowing, and intelligent relinquishment or abandonment of a known right or privilege."<sup>6</sup> *U.S. v. Black Bear*, 422 F.3d 658, 663 (8th Cir. 2005). *See also Great Plains Real Estate Dev., LLC v. Union Cent.*

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<sup>6</sup>The District argued in its Statement of the Case and Respondent's Memorandum of Law in Opposition to Relator's Motions to Strike and to Supplement Record that other districts which demoted Principals in the past without a change in salary did not draw objection from their respective unions or the other persons affected. It does not make that argument in its Responsive Brief, however.

Even if it had, that argument is unavailing. *See* Relator's Reply Memorandum of Law in Support of Motion to Strike and to Supplement Record, pp. 7-9. The rights of a Principal under the Teacher Tenure Act are individual and cannot be bargained away by a labor union. *Lucio v. Sch. Bd. of Indep. Sch. Dist. No. 625, St. Paul*, 574 N.W.2d 737, 743 (Minn. Ct. App. 1998).

The collective bargaining agreement between Relator Murphy's Union and the District is silent on issues of demotion and discharge. *App.* 13-41. But even when a collective bargaining agreement allows a teacher's union to bring a grievance relating to discharge or demotion, PELRA allows the teacher to choose between the hearing under the Teacher Tenure Act or a grievance. Minn. Stat. § 179A.20, subd. 4(d). *See also Lucio*, 574 N.W.2d at 743 (Minn. Ct. App. 1998) (citing *Jerviss v. Indep. Sch. Dist. No. 294*, 273 N.W.2d 638, 644 (Minn. 1978)) ("Where the terms of a collective bargaining agreement and the terms of an applicable statute conflict, the statute controls").

*Life Ins. Co.*, 536 F.3d 939, 944 (8th Cir. 2008). Murphy certainly did not waive her rights. The correspondence between the District and Murphy makes clear that she “will not accept an Asst. Principal position.” *Respondent’s App.* 11. She is currently working that position, while this litigation is pending, because she was “directed” to do so by the Superintendent over her objections. *Respondent’s Add.* 6.

Relator Murphy was clearly demoted. She was told by the Superintendent that she will “support” a Principal, and the job description and duties she was directed to work under by the boss, the Como Park High School Principal, and by the Superintendent is the job of an Assistant Principal, not a Principal. Since she is tenured as a Principal, she should have been given preference over the 16 non-tenured Principals and allowed to keep her job. The District’s deprivation of her job as Principal, without notice or hearing, was arbitrary, capricious, contrary to law, and should be reversed.

## **VI. THE DISTRICT’S INTERPRETATION IS NOT ENTITLED TO ANY DEFERENCE**

The District’s claim that its own administrative interpretation of the Tenure Act is entitled to deference is specious. *Respondent’s Brief*, p. 51. If the decision was legally improper, as it was, it cannot be salvaged by misplaced deference.

As the District admits, the interpretation of a statute is a question of law, for which the School Board is not entitled to any deference. *Education Minnesota* –

*Chisholm v. Independent School District No. 695*, 662 N.W.2d 139, 143 (Minn. 2003). In this case the Teacher Tenure Act provides that the school board, in the St. Paul District denominated the Board of Education, is to hold hearings and render decisions about the “discharge or demotion” of a teacher defined to include a principal under the Act. Minn. Stat. sec. 122A.41, subs. 1(a) and 7. Had the Board of Education held a hearing and rendered a decision, this Court would likely have reviewed the factual findings under a deferential standard of review and reviewed any legal conclusions under a de novo standard. *Ganyo v. Indep. Sch. Dist. No. 832*, 311 N.W. 2d 497, 500 (Minn. 1981) (reviewing whether the decision was “fraudulent, arbitrary, unreasonable, not supported by substantial evidence on the record, not within the school board’s jurisdiction or is based on an erroneous theory of law”).

But here, the Board of Education did not hold a hearing, did not make any factual findings or conclusions of law, and did not render a decision. There is, therefore, no agency decision to defer to, even if deference were appropriate for a legal conclusion, which it is not. Thus, the District’s actions, and especially the legal conclusions, are not entitled to deference.

## **VII. THE ASSOCIATION’S AMICUS IS INAPPOSITE**

The Amicus Brief submitted by the Minnesota School Boards Association sets forth a number of general, conclusory statements, without any factual support,

purporting to show that the practice of re-assigning Principals to positions of Assistant Principal is commonplace and condoned. There is, however, no basis in the record for such an assertion and, even if there were, it is not germane or relevant.<sup>7</sup>

Basically, the Association maintains that it is “not uncommon for school districts to re-assign teachers or principals” to lesser duties. *Amicus Brief*, p. 5. But, in this case, there was not a mere “reassignment.” Relator Murphy was told that she would no longer be a Principal, or “co-Principal,” and was directed to provide “administrative support to a Principal.” She was not reassigned, she was relegated to a lesser role.

The Association’s lamentation that a ruling in Relator’s favor could cut into its “inherent managerial authority” is specious. *Id.*, p. 7. No one, including Relator, is contesting the right of St. Paul Public Schools, or other school districts, for that matter, to make decisions regarding Principals, site locations, transfer between facilities, and similar factors. The issue here is not “inherent managerial authority,” but fidelity to the Teacher Tenure Act, which provides important

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<sup>7</sup> Relator Murphy continues to object to the participation by the Association as an Amicus on grounds of timeliness and other reasons set forth in Relator’s Memorandum of Law submitted in opposition to the Association’s Motion for Leave to File an Amicus Brief.

and hard-fought rights for educators that the Association, not surprisingly, ignores altogether. The Teacher Tenure Act is intended to provide job security and stability for educators, especially those who work long and hard to obtain tenure, and to erect barriers to the demolition of those safeguards.

Nor is this case one, as the Association contends, involving “flexibility of managerial decision making.” *Amicus Brief*, p. 8.

The St. Paul School District and others, as well, have ample “flexibility” in making decisions regarding deployment of Principals, but they do not have – and should not have – the “flexibility” to circumvent the Teacher Tenure Act by reducing Relator’s “rank” to that of Assistant Principal, which is a position that is “carrying a lower salary schedule,” even though her salary currently remains unchanged. Relator satisfies all three disjunctive (or) statutory prongs: she has been reduced in “rank” and is in a position carrying a “lower” salary schedule, as well as being put in a lower “branch” of work. While she need only satisfy one of the disjunctive statutory criteria, she satisfies all three: a teacher trifecta.

The Supreme Court has twice, as the Association notes, referred to the changing of a Principal’s duties to those of an Assistant Principal as a “demotion.” *E.g.*, *McManus v. Indep. Sch. Dist. No. 625*, 321 N.W.2d 891 (Minn. 1982) (St. Paul Public Schools); *Sweeney v. Special Sch. Dist. No. 1*, 368 N.W.2d 288 (Minn. Ct. App. 1985) (Minneapolis). *See Amicus Brief*, p. 9, n. 3.

While the Association attempts to distinguish these cases as saying that they “did not involve consideration of facts or law,” those cases did involve “facts or law,” as do most cases. Although the issue was different, a common theme of *McManus* and *Sweeney*, and this case, is identical: the diminution of an educator from the role of “Principal” to that of “Assistant Principal,” which evokes the “demotion” provision of the Teacher Tenure Act.

Finally, the Association’s mention that Relator Murphy has many “other alternatives” is myopic. *Amicus Brief*, p. 19, n. 4. She has individual, personal right to proceed under the Teacher Tenure Act, irrespective of whether her union – or other unions – have done so in the past. *See* p. 17, n. 16, *supra*. Under the Minnesota Public Employers Labor Relations Act (PELRA), it is the educator’s choice whether to contest a demotion under the Teacher Tenure Act or the Collective Bargaining Agreement, if the union contract provides such an option, which it does not here. Minn. Stat. § 179A.20, subd. 4(d).

Moreover, the Association’s assertion that Relator could grieve this matter under the Collective Bargaining Agreement overlooks at least two obstacles: (1) the Collective Bargaining Agreement does not contain any provision relating to this issue, *see Relator’s App.* 13-41; and (2) if she were to do so, the District, with support from the Association, would undoubtedly claim “inherent managerial authority” and resist any grievance-arbitration proceeding.

Therefore, the claimed “alternatives” available to Relator are illusory and irrelevant in light of her individual right under the Teacher Tenure Act to challenge her “demotion.”

### VIII. CONCLUSION

For the above reasons, the Court should reverse the action of the District and remand this matter to the Board of Education of the St. Paul Public Schools, Independent School District 625, with direction to reinstate Relator Murphy to the position of Principal of a school within the District.

**MANSFIELD, TANICK & COHEN, P.A.**

Date: September 27, 2010

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**CERTIFICATE OF COMPLIANCE**

Relator's Reply Brief contains 5,683 works, including footnotes, in compliance with Minn. R. Civ. App. P. 132.01, Subd. 3 (b).

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