

A10-1272

STATE OF MINNESOTA
IN COURT OF APPEALS

Patricia Murphy,

Relator,

vs.

St. Paul Public Schools,
Independent School District No. 625,*Respondent.*

**BRIEF AND APPENDIX OF *AMICUS CURIAE*
MINNESOTA SCHOOL BOARDS ASSOCIATION**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
INTEREST OF THE <i>AMICUS CURIAE</i>	1
STATEMENT OF THE ISSUES, CASE AND FACTS	2
ARGUMENT	2
I. Introduction	2
A. Applicability of This Court’s Decision To All Minnesota Public Schools	2
B. Impact of the Court’s Decision on Public School Practices	5
II. The Reassignment of Duties in This Matter Cannot Constitute a “Demotion”	8
A. The Reassignment Is Not a Reduction in Rank	9
B. Relator Was Not Transferred to a Lower Branch of Service	12
C. Relator Was Not Transferred to a Position Carrying a Lower Salary or Compensation	15
III. Relator’s Reassignment Does Not Violate Her Constitutional Right to Due Process	16
CONCLUSION	20
APPENDIX INDEX	22

TABLE OF AUTHORITIES

	<u>Page</u>
 <u>UNITED STATES SUPREME COURT</u>	
<i>Cleveland Bd. of Educ. v. Loudermill</i> , 470 U.S. 532, 105 S. Ct. 1487 (1985)	17, 18
<i>Mathews v. Eldridge</i> , 424 U.S. 319, 96 S. Ct. 893 (1976)	18
 <u>MINNESOTA STATUTES</u>	
Minn. Stat. § 18B.095 (2008)	1
Minn. Stat. § 121A.67, subd. 1 (2008)	1
Minn. Stat. § 122A.40	3, 4, 17
Minn. Stat. § 122A.40, subd. 7(a)	3
Minn. Stat. § 122A.41	2, 3, 8, 9, 10, 11, 17, 20
Minn. Stat. § 122A.41, subd. 1(a)	10
Minn. Stat. § 122A.41, subd. 1(c)	8
Minn. Stat. § 123B.09, subd. 2 (2008)	1
Minn. Stat. § 123B.147 (2008)	13
Minn. Stat. § 125A.023, subd. 4 (2008)	1
Minn. Stat. § 179A.03	4
Minn. Stat. § 179A.04, subd. 3(b) (2008)	1
Minn. Stat. § 179A.25	19
Minn. Stat. § 354.06, subd. 1 (2008 & supp. 2009)	2

MINNESOTA RULES OF CIVIL PROCEDURE

Minn. R. 3512.0300 13
Minn. R. 3512.0300, subp. 1 13

MINNESOTA SUPREME COURT

Duluth Firemen’s Relief Ass’n v. City of Duluth,
361 N.W.2d 381 (Minn. 1985) 12
Foesch v. Indep. Sch. Dist. No. 646,
300 Minn. 478, 223 N.W.2d 371 (1947) 14
Hudson v. Indep. Sch. Dist. No. 77,
258 N.W.2d 594 (Minn. 1977) 7, 8
Johnson v. Indep. Sch. Dist. No. 281,
494 N.W.2d 270 (Minn. 1992) 4
McManus v. Indep. Sch. Dist. No. 625,
321 N.W.2d 891 (Minn. 1982) 9

MINNESOTA COURT OF APPEALS

Sweeney v. Special Sch. Dist. No. 1,
368 N.W.2d 288 (Minn. Ct. App. 1985) 9

UNPUBLISHED MINNESOTA COURT OF APPEALS*

Adkisson v. Indep. Sch. Dist. No. 13,
Co. No. C0-98-1006, 1998 WL 778321 (Minn. Ct. App. 1998)
(unpublished) 4
Educ. Minnesota-Aitkin v. Indep. Sch. Dist. No. 1,
Co. No. A05-1061, 2006 WL 1073054 (Minn. Ct. App. 2006)
(unpublished) 5

Jereczek v. Bd. of Educ.,
Co. No. CX-90-1626, 1991 WL 34701 (Minn. Ct. App. 1991)
(unpublished) 19

Spiss v. Indep. Sch. Dist. No. 138,
Co. No. C6-979-951, 1998 WL 40506 (Minn. Ct. App. 1998)
(Unpublished) 4

OTHER

Minnesota Education Statistics Summary 2008-2009 (Oct. 8, 2008),
available at www.leg.state.mn.us/docs/2009/other/091141.pdf 4

*Pursuant to Rule 4 of the Special Rules of Practice for the Minnesota Court of Appeals, all cited unpublished opinions are included in *Amicus Curiae* Minnesota School Boards Association’s Appendix.

INTEREST OF THE *AMICUS CURIAE*

The Minnesota School Boards Association (“MSBA”) is a voluntary nonprofit association of public school boards in the State of Minnesota.¹ MSBA represents school boards throughout the State in public forums, such as the courts and the State Legislature. MSBA also provides information and services to its members and coordinates their relationships with other public and private groups. In addition, MSBA provides advice and guidance to its member school boards in a wide variety of areas, including policy matters, public finance and legal issues.

Many of the activities of MSBA on behalf of its members are explicitly sanctioned or recognized by the Legislature. *See, e.g.*, Minn. Stat. § 18B.095 (2008) (requiring the commissioner to consult with MSBA to establish and maintain a registry of school pest management coordinators and provide information to school pest management coordinators); Minn. Stat. § 121A.67, subd. 1 (2008) (calling for input from MSBA on rules governing aversive and deprivation procedures); Minn. Stat. § 123B.09, subd. 2 (2008) (requiring school board members to receive training in school finance and management developed in consultation with MSBA); Minn. Stat. § 125A.023, subd. 4 (2008) (requiring that MSBA appoint one member to the interagency committee to develop and implement an interagency intervention service system for children with disabilities); Minn. Stat. § 179A.04, subd. 3(b)

¹ Rule 129.03 Certification: No party to this proceeding authored this brief in whole or in part. Further, no person or entity other than the *Amicus Curiae*, its members or its counsel made a monetary contribution to the preparation or submission of this brief.

(2008) (requiring MSBA, as the representative organization for Minnesota school districts, to provide a list of names of arbitrators to conduct teacher discharge or termination hearings to the Bureau of Mediation Services); and Minn. Stat. § 354.06, subd. 1 (2008 & supp. 2009) (requiring that one member of the board of trustees of the Teachers Retirement Association be a representative of the MSBA).

MSBA has an ongoing relationship with the public schools in the State of Minnesota. As *Amicus Curiae*, MSBA seeks to provide the perspectives of the public school system in this state that will be affected by this decision.

STATEMENT OF THE ISSUES, CASE AND FACTS

MSBA concurs in the statement of the issues, the case and the facts contained in Respondent's brief.

ARGUMENT

I. Introduction

A. Applicability of This Court's Decision To All Minnesota Public Schools

The issue of concern to MSBA, and all of its public school members, relates to how the Court will interpret the term "demotion" with respect to the assignments made to teachers. At first glance, the issues raised by Relator could be considered as having little or no application to most public schools in Minnesota as the Court has been requested to interpret Minnesota Statutes Section 122A.41. This statute, addressing the tenure rights of teachers,

applies only to public schools in the cities of the first class, namely Respondent and the Minneapolis and Duluth public school districts.

The language at issue in Minnesota Statutes Section 122A.41 relates to rights of teachers in cases of demotion. The language pertaining to demotions is not found in Minnesota Statutes Section 122A.40, which governs all other public schools, with the exception of charter schools, in the state of Minnesota. Minnesota Statutes Section 122A.41 and Minnesota Statutes Section 122A.40 differ in that Minnesota Statutes Section 122A.41 addresses “tenure” of a teacher, defines a “demotion” and provides due process procedures for a teacher to challenge not only a discharge but also a demotion. In contrast, Minnesota Statutes Section 122A.40 addresses the “continuing contract” rights of a teacher and provides procedural rights for teachers only in the case of discharge. In fact, Minnesota Statutes Section 122A.40 specifically provides that the powers of the school board to suspend or demote a teacher are not affected by the procedural requirements of Minnesota Statutes Section 122A.40. *See* Minn. Stat. § 122A.40, subd. 7(a) (“Such contract may be terminated at any time by mutual consent of the board and the teacher and this section does not affect the powers of a board to suspend, discharge, or demote a teacher under and pursuant to other provisions of law”).

Yet, the fact that public schools outside the cities of the first class are not statutorily mandated to provide due process procedures with respect to the “demotion” of a teacher does

not make this issue of any less importance to the approximately 383² other public schools in this state. While a teacher in a public school outside of a city of the first class would not have the statutorily-imposed due process rights with respect to a “demotion,” teachers still may raise contractual or constitutional claims or allege other statutory rights outside of the continuing contract laws based upon an alleged demotion. In fact, there are several instances where teachers have brought such claims before the Minnesota courts. *See, e.g.*, *Johnson v. Indep. Sch. Dist. No. 281*, 494 N.W.2d 270 (Minn. 1992) (teacher sought writ of certiorari challenging a reassignment from principal to principal on special assignment as a demotion and/or discharge requiring a hearing); *Adkisson v. Indep. Sch. Dist. No. 13*, Co. No. C0-98-1006, 1998 WL 778321 (Minn. Ct. App. 1998) (unpublished) (*see* App. A-1 to A-3) (teacher claimed school district failed to comply with valid decision of an arbitrator, contrary to Minn. Stat. § 179A.03, when he was not returned to his classroom duties but “demoted” to curriculum duties); *Spiss v. Indep. Sch. Dist. No. 138*, Co. No. C6-97-951, 1998 WL 40506 (Minn. Ct. App. 1998) (*see* App. A-13 to A-21) (unpublished) (in writ of certiorari challenging termination, teacher claimed superintendent did not have authority to modify her employment rights by transferring her to a position of unequal rank by removing supervisory

² This figure is based upon data derived from the Minnesota Department of Education. Included in this calculation are independent school districts, common and special school districts, intermediate school districts, integration districts, state schools/academies, education districts and cooperative districts, all of which are governed, in whole or in part, by Minnesota Statutes Section 122A.40. *See* Minnesota Education Statistics Summary 2008-2009 (Oct. 8, 2008), available at www.leg.state.mn.us/docs/2009/other/091141.pdf.

duties as assistant principal); *Educ. Minnesota-Aitkin v. Indep. Sch. Dist. No. 1*, Co. No. A05-1061, 2006 WL 1073054 (Minn. Ct. App. 2006) (unpublished) (*see* App. A-4 to A-8) (teacher appealed district court decision denying motion to compel arbitration on issue of whether reassignment to a non-teaching position was a demotion, disciplinary and illegal in nature).

As these cases demonstrate, the Minnesota courts regularly have looked to the interpretation of the terms “demotion” and “position,” as they have been interpreted and applied to schools in the cities of the first class, in determining the employment rights of other public school teachers. Certainly, if such claims should arise, whether in arbitration or other administrative proceedings, litigation or appeals before the appellate courts, it is likely that the interpretation applied by the Court in this matter will be utilized in determining the rights of these teachers as well. Accordingly, the decision of this Court will have great significance to all public schools, not just those belonging in cities of the first class.

B. Impact of the Court’s Decision on Public School Practices

With respect to the impact of this decision, the Court also should be aware that the practices of Respondent, as noted in this matter, are not unique to Respondent or to the two other school districts in the cities of the first class. School districts regularly reassign teachers and principals in a variety of manners for a number of reasons.

For example, it is not uncommon for school districts to reassign teachers or principals to other buildings, other grade levels, other courses or other types of duties to accommodate budget cuts or staffing needs, as was the situation in this matter. Unless restricted by a

collective bargaining agreement, public schools, similar to Respondent, have assigned principals to assistant principal positions or other administrative positions when cuts are made without regard to title. These decisions are made upon the qualifications and experience of the teachers involved, the duties required of the position, staffing needs and other practical concerns. They are not disciplinary in nature and do not carry with them any less prestige or pay.

Another particularly common practice is to assign teachers and principals to the position of “teacher on special assignment” or “administrator on special assignment.” These positions generally are specialized assignments that are temporary in nature that provide educational support to students and teachers, normally in the areas of curriculum, assessment and instruction. They allow school districts to utilize in-house experts instead of hiring outside consultants or adding further district-level administration positions. They provide flexibility to complete needed short-term tasks in a cost-effective manner. As mentioned, these positions often are temporary in nature, in part, because they frequently are funded by special sources such as grants, state or federal aid or levies. Thus, when the funding is gone, often, too, is the position. In other instances, these funds cannot be used for regular classroom teachers, thus necessitating the need for a more specialized position.

There also are some instances where principals or assistant principals may be reassigned to meet various temporary staffing needs. For example, in those instances where a teacher takes a leave of absence, it is often more economical and practical to reassign staff,

including administrative staff, to temporarily teach a class rather than to hire a substitute. The reassignment of these duties does not change the nature or position of the administrator. Rather, it is an extension of the administrator's duties to ensure the proper and efficient operation of the school.

In all of these examples, school districts do not change the actual position or rights to employment of the teacher. The teacher is still employed in a position commensurate with his or her license and qualifications. Pay and seniority status remain the same. The only difference is that the assignment of duties and the title that the teacher's job may carry have been altered.

Clearly, there is a great need for public schools to retain the inherent managerial authority to determine the assignment of their employees for purposes of efficiently operating the educational services provided. If schools are subject to challenge for every teacher reassignment decision because the teacher believes the assigned duties are beneath his or her present position, the public school system would not be able to manage its resources effectively. While MSBA recognizes that the overriding legislative purpose behind tenure and continuing contract laws is to prevent the arbitrary demotion and discharge of teachers, there also is a balancing goal in the law recognizing the importance of school boards in having enough latitude to fulfill their statutory obligation to effectively administer the operation of the public schools. *See Hudson v. Indep. Sch. Dist. No. 77*, 258 N.W.2d 594, 597 (Minn. 1977).

In fact, the need for a school district to have flexibility in assigning its staff, notwithstanding the rights of teachers, has been clearly recognized by the Minnesota Supreme Court. *See, e.g., Hudson*, 258 N.W.2d at 597 (Minn. 1977). Reassignment of a teacher's duties where there is no reduction in pay, benefits or seniority cannot be restricted by a narrow determination as to what may constitute a "demotion" for purposes of affording a teacher the right to due process. Accordingly, as the Court considers the issues in this matter, MSBA respectfully asks that the Court consider the potential floodgate of claims to which public schools may be exposed, including the burden in time and expense in addressing such challenges, when these assignments, including the type challenged by Relator in this matter, are regularly and consistently made.

II. The Reassignment of Duties in This Matter Cannot Constitute a "Demotion"

The issues in this case revolve around the question of whether Relator's reassignment from a principal position to an assistant principal position constitutes a "demotion" pursuant to Minnesota Statutes Section 122A.41, entitling Relator to certain procedural rights. Minnesota Statutes Section 122A.41 specifically defines "demote" to mean "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). In this situation, the temporary reassignment of Relator does not fall within this statutory definition. As a result, any right Relator may claim to procedural due process under any provision of Minnesota Statutes Section 122A.41 would not apply. For the reasons set forth below, this Court's interpretation

of a demotion in this matter must be carefully considered given the potential application of this term to all public schools within the state.

A. The Reassignment Is Not a Reduction in Rank

Minnesota Statutes, including Minnesota Statutes Section 122A.41, do not define the term “rank.” Similarly, in cases where the Minnesota courts have interpreted the definition of “demotion,” there has been no attempt to specifically define the meaning of the term “rank,” as used in the tenure law with respect to demotions.³ The parties in this matter have both offered for the Court’s consideration dictionary definitions for the phrase “reduction in rank,” interpreting this term to mean the relative standing or position of an employee. However, these definitions still fall short of clarifying this issue, particularly when these terms are interpreted in the common and ordinary meaning and not to the particular field in which this term is being applied.

³ In reciting the factual background of cases before them, the courts have referred to the reassignment of a principal to an assistant principal position as a “demotion.” *See, e.g., McManus v. Indep. Sch. Dist. No. 625*, 321 N.W.2d 891 (Minn. 1982); *Sweeney v. Special Sch. Dist. No. 1*, 368 N.W.2d 288 (Minn. Ct. App. 1985). However, in each of these cases, there was no consideration of the facts or law as to whether the actions of the school districts in moving a principal to an assistant principal position constituted a demotion. Rather, the issues in these matters related solely as to how seniority or tenure should be applied. In this case, as is true with many other situations in public schools, there are factual issues as to whether or not the change of assignment constitutes a “demotion” by change in “rank.” Included among these issues is the fact that the reassignment of Relator is only temporary in nature. Therefore, neither the *McManus* nor *Sweeney* decisions provide the necessary guidance for this Court in determining the proper application of such reassignment practices either in this particular situation or to the general practices of all public schools.

In this regard, in the context of teachers and the educational system, it is difficult to apply the term “rank” as meaning some type of hierarchy relative to the position held. Again, it is important to note that the application of the term “rank” is being applied to all “teachers,” which includes every person employed to give instruction in a classroom or to superintend or supervise classroom instruction and also includes counselors and librarians with school licensure. *See* Minn. Stat. § 122A.41, subd. 1(a). Applying the term “rank” too narrowly in the context of principals and assistant principals will have a resounding effect as to how the term will be applied to all teachers.

In this regard, while schools may “rank” unclassified positions, such as custodians or clerical employees, into various classifications carrying with them differing duties, authority and pay scales, most public schools do not “rank” their professional employees. There is no difference in rank, prestige or authority between a math teacher, a social studies teacher or a counselor.

Yet, if the Court were to construe the term “rank” to mean one in a higher standing or position to another teacher, as suggested by Relator, the assumption could be that a calculus teacher could outrank an algebra teacher or that a 12th grade teacher could outrank a 6th grade teacher. It is difficult to construe how this term could possibly be applied to the vast majority of teachers under Minnesota Statutes Section 122A.41. If such meaning were given, there certainly is the potential that teachers may argue that they cannot be “demoted” to a different grade or subject matter as it carries with it a lower “rank” or prestige.

Public schools do, however, in accordance with statutory requirements, “rank” their teachers in accordance with seniority. Each teacher, whether an elementary teacher or a principal, is listed in accordance with date of hire and is ranked, in order, against all other teachers, probationary and nonprobationary alike. In essence, seniority is the only “ranking” that is assigned to all teachers, classroom teachers and principals alike, in the common everyday practice of a public school. Seniority provides a clear and definable assignment of a teacher’s “rank” and more succinctly evidences the intent of the Legislature in ensuring that security with respect to employment is not unjustifiably lowered. Applying a more arbitrary description to this term, as to how one teacher views his or her standing next to that of another, will not benefit either teachers or school administrators in ensuring that schools comply with the dictates of Minnesota Statutes Section 122A.41 in terms of demotion.

Clearly, this conundrum is evidenced in the facts of the present case. Relator sees herself as “demoted” based upon her perception as to her relative importance within the school system. Respondent does not perceive Relator’s reassignment as a demotion as there was no diminution as to Relator’s duties, seniority or salary. If a more definitive explanation of the term “rank” were applied, such as seniority, there would be no dispute that Relator was not the subject of a demotion, as she retained her seniority. This definition also meets the statutory intent of providing job protection to a teacher, as senior teachers with more experience in a school district are entitled to retain their employment over less senior teachers.

Moreover, if, as suggested by Respondent, the term “rank” refers to a reduction of standing or position, there is little distinction in defining “rank” and defining the term “reduction” in the “branch of service” of a teacher. It must be assumed that in utilizing both the phrases “reduce in rank” and “transfer to a lower position” in defining demotion in this statute, these terms were not intended to be synonymous but to carry distinct meanings. To do otherwise would render the inclusion of one of the phrases redundant or meaningless, which is contrary to statutory construction. *See Duluth Firemen’s Relief Ass’n v. City of Duluth*, 361 N.W.2d 381 (Minn. 1985) (basic maxim of statutory construction is that statute is to be construed, if possible, so that no word, phrase, or sentence is superfluous, void or insignificant). Thus, some distinction must be made between a reduction in rank and a transfer to a lower position. Construing “rank” as meaning seniority addresses this issue.

As seniority is an identifiable and protectable interest, separate from protections related to the transfer to a lower branch, MSBA respectfully urges the Court to interpret the term “rank” to refer to seniority. Under this interpretation, as well as for the reasons set forth by Respondent, Relator was not subjected to a reduction in rank.

B. Relator Was Not Transferred to a Lower Branch of Service

A reassignment also may be considered a demotion if it results in a transfer to a “lower branch of the service.” Again, the meaning of this phrase is not provided for in statute nor has it been interpreted by the courts. Whether or not this Court construes a demotion in “rank” similar to the phrase “lower branch of service,” the interpretation of this phrase, as well,

should be considered not solely in conjunction to the facts of this case but also as to how it will apply to the educational system as a whole.

Again, “lower branch of service” is a difficult term to apply in the educational context with any effectual meaning. Relator urges that this phrase should be construed in accordance with her authority relative to that of other administrators and their duties. Yet, it should be noted that there is no legal distinction between the authority of the administrative positions at issue. Minnesota Statutes provide for only one definition of principal, with no differentiation between a principal and an assistant principal. *See* Minn. Stat. § 123B.147 (2008). The Department of Education provides only one license for school principals, again with no distinction being made as to title, duties or authority. *See* Minn. R. 3512.0300. The collective bargaining agreement in this case groups principals and assistant principals into one bargaining unit. (*See* Relator’s App. 16.) Clearly, principals, whether titled “principal,” “assistant principal,” “principal on special assignment” or some other administrative term, occupy the same “branch of service” within a public school system. They are all administrators charged with duties in administration, personnel, supervision, evaluation and curriculum. *See, e.g.*, Minn. R. 3512.0300, subp. 1.

From a practical standpoint, it also would be difficult, if not impossible, for schools to distinguish what “branch of service” a principal occupies given the varying types of administrative duties and titles afforded to a principal. As noted above, these positions vary based upon the funding and educational needs of a school district. Would a temporary position

be included in a different branch of service from a traditional high school principal position? Positions vary according to the building being supervised. Would an elementary principal occupy a different branch of service than a high school principal? Some positions are purely administrative or curricular with respect to duties, while others carry not only administrative duties but also supervisory duties over staff and students. Would an administrator of curriculum be classified in a different branch than an elementary school principal? Positions within a school district requiring licensure as a principal, whether by law or by determination of the school district itself, are all administrative in nature and occupy the same "branch" of administrative service.

Based upon licensure, a school district has the authority to move an employee with a principal's license into any position where such license is required. Restricting a school district's ability to make these assignments and transfers into varying departments by the type of duties assigned or the title given to a position, and requiring due process every time such decision is made, would severely hamper the ability of schools to operate efficiently. School districts would be required to create a caste system of principals that has to date never existed. As noted in *Foesch v. Independent School District No. 646*, the tenure laws were "not enacted to place an unreasonable restriction on the powers of a school board which it must possess in order to effectively administer the operation of our schools." *Foesch v. Indep. Sch. Dist. No. 646*, 300 Minn. 478, 485, 223 N.W.2d 371, 375 (1974). Requiring schools to create such classification systems and then provide due process to a principal each time he or she were

reassigned to a different classification would severely paralyze the administrative effectiveness of our schools.

For these reasons, MSBA concurs with Respondent, including the arguments raised by Respondent in its brief, that the phrase “lower branch of service” cannot be interpreted to distinguish a principal from an assistant principal. Individuals in these positions serve in the same administrative “branch.” To rule otherwise would be inconsistent with the purpose of the law and school district practices.

C. Relator Was Not Transferred to a Position Carrying a Lower Salary or Compensation

The final factor to consider as to whether Relator or any other teacher is “demoted” is whether the teacher’s salary or compensation has been lowered. In this respect, there is no factual dispute that the change to Relator’s assignment carried with it no change to her salary or benefits. Relator, however, makes much of the fact that the collective bargaining agreement applicable to her position distinguishes the pay of a principal and assistant principal. Yet, Relator does not point out that the collective bargaining agreement makes no distinction as to the benefits provided to unit members, whether titled a principal or assistant principal or principal on special assignment. (*See Relator’s App. 25-31.*) Moreover, there is nothing set forth in the facts of this matter that Respondent has indicated any intent to pay Relator on an assistant principal pay scale.

The Court should be aware that there are frequent occasions when school districts will reassign principals to a position that, pursuant to a collective bargaining agreement, would be

paid a lower salary or have no designation on the pay scale at all. For example, as in this matter, a position is created or redesigned to add additional administrative duties. There is no “position” of administrator on special assignment that has a designated pay scale pursuant to contract. The parties often agree that because the position is temporary, as in this matter, or unique to the collective bargaining agreement, the administrator will retain his or her present salary. The fact is that, in these situations, there is no change as to that individual’s earnings or benefits. To say that such a reassignment constitutes a demotion, which connotes some type of penalty, would be inconsistent with the factual and practical application of such reassignment. Accordingly, MSBA urges the Court to find that unless a teacher sustains an actual loss in salary or benefits, there is no “demotion.”

III. Relator’s Reassignment Does Not Violate Her Constitutional Right to Due Process

While not formally raised as an issue in her statement of the issues, Relator makes a vague allegation, in conjunction with her argument as to a right to a hearing, that Respondent’s failure to provide a hearing violates not only her statutory rights but also her right to due process under the Minnesota and Federal Constitutions. (Relator’s Brief, p. 21.) Because this issue was not formally raised in the appeal, it ought not be considered. Nonetheless, as *amicus curiae*, MSBA will not attempt to reiterate the well-argued legal points made by Respondent in its brief as to why Relator has not stated a legally viable Constitutional claim.

MSBA does, however, wish to emphasize the impact the Court's decision on this issue may have. As mentioned above, there are clear distinctions between Minnesota Statutes Section 122A.40 and Minnesota Statutes Section 122A.41 in that only the law applicable to schools in the cities of the first class provides due process procedures in the case of a demotion. Statutory due process rights do not apply to teachers in the case of demotion to any of the other almost 383 public schools in the state of Minnesota. A decision by this Court as to the rights of a teacher to state and federal constitutional protections in the case of a reassignment of position will, however, be applicable to all of these public schools.

Again, while Relator argues she was "demoted," the action taken by Respondent in reassigning Relator is a common practice amongst all school districts. Each year, school districts make numerous reassignments of their teachers for various reasons, as explained more fully above. As in the case of Relator, these changes of job duties or assignments are not accompanied by any loss of pay, benefits or seniority. It is simply a change of job duties or a change in the location or manner in which these duties are performed. Attaching property or liberty interests to these decisions and requiring some element of due process for each of these actions will create an enormous burden on public schools.

Under a constitutional analysis, even if due process rights were deemed to attach, such decisions should not carry with them a right to a hearing, as argued by Relator. Assuming such actions were deemed to be adverse to the teacher, due process requires "something less" than a full evidentiary hearing prior to adverse administrative action. *See Cleveland Bd. of Educ.*

v. Loudermill, 470 U.S. 532, 545, 105 S. Ct. 1487, 1495 (1985). The specific dictates of due process are flexible. See *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903 (1976). At a minimum, due process requires notice and “something less” than a full evidentiary hearing prior to adverse administrative action. *Cleveland Bd. of Educ.*, 470 U.S. at 545, 105 S. Ct. at 1495, quoting *Mathews*, 424 U.S. at 343, 96 S. Ct. at 907. When examining procedural due process safeguards, courts must consider: (1) the importance of the individual interests involved; (2) the value of specific procedural safeguards to that interest; and (3) the governmental interest in fiscal and administrative efficiency. *Mathews*, 424 U.S. at 335, 96 S. Ct. at 903.

In this instance, as in most instances where schools reassign their teachers, the interests of the teacher are not to the same degree as in the case of a termination. The employee retains his or her pay, benefits and seniority. Notice of the reassignment and a meeting to discuss the reassignment, if requested, certainly would safeguard the employee’s right to have notice as to the reason for the reassignment and to provide any objections to it. Anything more than a meeting with the employee would severely impinge on administrative resources if a school district were required to provide a formal due process hearing for every teacher dissatisfied with a reassignment.

Moreover, the adequacy of such safeguards are always coupled with post-deprivation administrative procedures. Every teacher in the state of Minnesota has the right to file a grievance either pursuant to a collective bargaining agreement or in accordance with

Minnesota Statutes Section 179A.25 (providing that every public employee has the right to independent review of a grievance related to the terms and conditions of employment). These procedures certainly provide a teacher with adequate due process remedies to address reassignment issues without overburdening the resources of our public schools. *See, e.g., Jereczek v. Bd. of Educ.*, Co. No. CX-90-1626, 1991 WL 34701 *2 (Minn. Ct. App. 1991) (unpublished) (*see App. A-9 to A-12*).

In the matter at hand, these procedures were available to Relator. As both Relator and Respondent point out, there were numerous communications between them as to Relator's reassignment as well as a meeting which included Relator's legal representative. Relator also had grievance proceedings available to her to challenge the reassignment once it was made.⁴ (Respondent's App. 32-34.) These communications and meetings, in conjunction with the right to grieve her reassignment, surely provided Relator with sufficient due process to the extent such an entitlement may be deemed to exist. Relator should not be entitled to a hearing outside of these processes nor be allowed to open the door for such challenges by other teachers.

⁴ While MSBA would argue that the reassignment of Relator is an inherent managerial right of Respondent not subject to arbitration, Relator, nonetheless, would have the opportunity to challenge the right of assignment of Respondent and jurisdiction of an arbitrator in grievance proceedings.

CONCLUSION

Amicus Curiae MSBA respectfully requests that this Court conclude that, as a matter of law, Relator's reassignment does not constitute a "demotion" entitling her to any rights under Minnesota Statutes Section 122A.41. The intended purpose of the law, to protect the rights of teachers, will not be furthered or properly balanced against the needs of school districts to efficiently operate their institutions in determining that Relator was demoted. Public schools require flexibility to reassign their teachers where they are most needed.

When such reassignments do not affect the pay, benefits or seniority of a teacher's employment, there is no harm to the teacher that need be protected by the tenure or continuing contract laws. However, if the term "demotion" is given a broad definition to include a teacher's perception of his or her job status amongst peers, public schools will be subjected to a floodgate of challenges from teachers dissatisfied with their assignment. In essence, this case will have a significantly detrimental impact upon the practices of public school districts and the educational system as a whole if Relator were to prevail.

For all of the above reasons as well as those cited by Respondent, MSBA respectfully requests that the Court affirm the decision of Respondent St. Paul Public Schools, Independent School District No. 625.

Respectfully submitted,

KNUTSON, FLYNN & DEANS, P.A.

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