IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joseph W. Findley, Jr.,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 114 C.D. 2011
	:	
Montour School District,	:	Argued: November 14, 2011
	:	
Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: December 29, 2011**

Joseph W. Findley, Jr. (Dr. Findley) petitions for review of the Order of the Secretary of Education (Secretary) which denied Dr. Findley's appeal and affirmed the decision of the Board of School Directors (Board) of the Montour School District (District) that held that Dr. Findley's employment as elementary school principal at Burkett Elementary School (Elementary School) was properly terminated as of June 30, 2009, pursuant to the terms of an individual employment contract. Dr. Findley argues that the Secretary erred because his employment as principal was governed by the tenure provisions of the Public School Code of 1949

(School Code),[1] and the District did not follow the School Code's procedures to discharge a tenured professional when it ended his employment on June 30, 2009.

Dr. Findley became tenured in 1978 and, in 2003, the District hired Dr. Findley as a professional employee to serve as the principal of a middle school.[2] (Secretary's Decision, Findings of Fact (FOF) ¶¶ 1-2.) In December 2004, the District appointed Dr. Findley as Superintendent from January 1, 2005, through June 30, 2009, and the parties executed an employment contract (2005 Agreement) establishing the terms and conditions of that employment. (FOF ¶¶ 3-4.) Dr. Findley contacted the District by letter dated June 13, 2006, requesting to transfer from his position as Superintendent to a position as a principal for the Elementary School; he also requested that his contract be extended a year beyond the term on the 2005 Agreement, which would allow him to achieve 35 years of public service and a greater retirement benefit. (Secretary's Decision at 2 n.3; FOF ¶ 5.) In response, the District's Solicitor sent Dr. Findley's counsel a letter, dated June 19, 2006, indicating that the District would support Dr. Findley's proposal if the matter was resolved by June 20, 2006. (FOF ¶ 6.) In the letter, the District agreed, *inter alia*: (1) to Dr. Findley's resignation and termination of the 2005 Agreement by, at the latest, June 30, 2006; (2) to Dr. Findley's transfer to the position of principal of the Elementary School at the Superintendent's salary throughout the term of a new contract (2006 Agreement); (3) that the 2006 Agreement would expire on June 30,

[1] Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §§ 1-101 – 27-2702.

[2] Section 1101 of the School Code defines "professional employe" as "those who are certified as . . . principals," and "temporary professional employe" as "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. §§ 11-1101(1), (3).

2009, the same date as the 2005 Agreement; (4) that Dr. Findley's employment would be subject to the School Code; and (5) that there would not be an additional year of employment as Dr. Findley requested. (FOF ¶ 6.) Dr. Findley "irrevocably resign[ed]" his Superintendent position by letter dated June 20, 2006, and accepted the principal position at Elementary School under the terms and conditions of the Solicitor's June 19, 2006, letter. (FOF ¶ 7.) The Board, by Resolution of June 20, 2006, accepted Dr. Findley's voluntary resignation from his Superintendent position and agreed to transfer him to the principal position. (FOF ¶ 8.) Dr. Findley and the District executed the 2006 Agreement, effective June 21, 2006, to "memorialize the transfer and terms and conditions" of Dr. Findley's employment as principal, which was to be from June 21, 2006, through June 30, 2009. (FOF ¶¶ 9, 11.) The 2006 Agreement permitted Dr. Findley's term of employment as principal to be extended beyond June 30, 2009, by mutual written agreement. (FOF ¶ 10.) On December 10, 2008, and May 15, 2009, Dr. Findley requested, in writing, to continue as the principal of the Elementary School for the 2009-2010 school year. (FOF ¶¶ 12-13.) The District neither responded nor agreed to Dr. Findley's requests. (FOF ¶ 14.) By letter dated June 26, 2009, the District informed Dr. Findley not to report to work after June 30, 2009, the date the 2006 Agreement expired. (FOF ¶ 15.) Notwithstanding this letter, Dr. Findley advised the District that he intended to report to work on July 1, 2009 and, when he did, the District asked him to leave because he was no longer employed by the District. (FOF ¶¶ 16-17.)

The District neither issued a Statement of Charges to Dr. Finley, nor did it claim that Dr. Finley's performance was unsatisfactory. (FOF ¶¶ 18-19.) The District did not schedule a hearing pursuant to Cleveland Board of Education v.

Loudermill, 470 U.S. 532, 542 (1985) (requiring "some kind of hearing" prior to the discharge of an employee who has a constitutionally protected property interest in his employment), because there were no grounds for discharge; however, the District did not consider Dr. Findley a tenured employee because it believed that Dr. Findley's employment was controlled by his 2006 Agreement, which provided an explicit termination date for his employment. (FOF ¶ 20.) Dr. Findley, through his counsel, requested a due process teacher tenure hearing before the Board pursuant to Sections 1122 and 1127-1132 of the School Code, 24 P.S. §§ 11-1122, 11-1127—11-1132, to consider the Board's failure to continue Dr. Findley's employment after June 30, 2009. (FOF ¶ 21.) The District convened a hearing before the Board on September 16, 2009, but did not characterize the hearing as a teacher tenure hearing under the School Code. (FOF ¶¶ 22-23.) The Board, by majority vote, denied Dr. Findley's claims and held that his employment ceased on June 30, 2009, pursuant to the 2006 Agreement. (FOF ¶ 24.) In its written decision, the Board found: (1) that Dr. Findley was not a tenured professional employee at the time of his separation from employment; (2) that the 2006 Agreement governed the terms of his employment, including the duration of that employment; and (3) because he was not a tenured employee with the District and was not terminated for cause, the Board was not obligated to issue formal charges or convene a discharge hearing under the School Code. (FOF ¶ 25.) Dr. Findley filed a Petition for Appeal with the Secretary, appealing his termination by the District from his principal position.[3] (FOF ¶ 26.) The Secretary appointed a

[3] In addition, because the District characterized the September 16, 2009, proceeding as a hearing pursuant to the Local Agency Law, 2 Pa. C.S. §§ 551-555, 751-754, Dr. Findley also filed a Petition for Review with the Court of Common Pleas of Allegheny County. (FOF ¶ 28.) There is no indication in the record as to the status of that appeal.

hearing officer to hear Dr. Findley's appeal, and the parties offered oral argument in support of their positions on May 17, 2010. (FOF ¶ 27.)

The Secretary issued an opinion identifying the issue as being "whether Dr. Findley was a tenured professional employee with tenure rights continuing beyond the June 30, 2009[,] termination of the 2006 [] Agreement or whether the 2006 [] Agreement governed his employment and the termination date of his employment?" (Secretary's Op. at 7.) The Secretary noted that when Dr. Findley transferred to the principal position, a tenured position, he had attained tenure in 1978. However, the Secretary held that even though Dr. Findley had retained his tenure status and was in a tenured position, he and the District specifically negotiated the terms and conditions of his resignation as Superintendent and employment as principal. The Secretary considered this Court's decision in Sakal v. The School District of Sto-Rox, 339 A.2d 896, 897-98 (Pa. Cmwlth. 1975), in which this Court rejected a school district's argument that the School Code does not prevent a school district from contracting with a professional employee for less than a tenure contract, and concluded that this matter was factually distinguishable from Sakal. For example, in Sakal, the professional employee's superintendent position was not renewed by the school district, he was purportedly appointed to an assistant principal position for a one year term, he signed a standard professional employee contract that had no set termination date, he worked for two years more than the term he was appointed, and he denied that the terms of his employment were anything other than those in his standard contract. Id. at 898. Here, the Secretary noted that Dr. Findley: *voluntarily* resigned his position as Superintendent and asked to be transferred to the principal position; did *not* sign an open-ended professional employee contract; through counsel, negotiated the terms

and conditions of his voluntary resignation and transfer to the principal position; and was aware that, at no point had those terms and conditions included an extension of his employment, as Superintendent or principal, beyond June 30, 2009. Moreover, the Secretary agreed with the District that the 2006 Agreement could be reasonably characterized as a settlement agreement for the above reasons. (Secretary's Op. at 12 n.6.) Accordingly, the Secretary concluded that this was not a situation where Dr. Findley was forced to waive his tenure rights because he was represented by counsel throughout the process and knew that, under the terms he negotiated and accepted, his employment would end on June 30, 2009, unless both he and the District agreed to an extension. The Secretary noted that, had Dr. Findley believed that he was entitled to continued employment as a tenured professional employee after June 30, 2009, there would have been no need for him to advise the District of his desire to remain for another school year, and that such a request reflected that Dr. Findley did not have a reasonable expectation that his employment would extend beyond June 30, 2009. Finally, the Secretary held that upholding the District's determination in this matter would not "emasculate" the tenure system, as the facts here were unique and specific to Dr. Findley. (Secretary's Op. at 14.) Dr. Findley now petitions this Court for review.[4]

Dr. Findley argues that the Secretary erroneously relied on the end date set forth in the 2006 Agreement because his tenure rights to the principal position continued since the 2006 Agreement did not contain a provision through which he agreed to resign his position and terminate his tenure as required by Section 1121

[4] Our review of the Secretary's adjudication is limited to determining whether the findings of fact are supported by substantial evidence, whether errors of law were committed, or whether constitutional rights were violated. McFerren v. Farrell Area School District, 993 A.2d 344, 353 n.6 (Pa. Cmwlth. 2010).

of the School Code.[5] According to Dr. Findley, the 2006 Agreement clearly provides that his employment was subject to the School Code and, as such, he could not be made a temporary professional employee,[6] and the District had to follow the School Code's dismissal procedures[7] before terminating his employment

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[5] Section 1121 of the School Code provides, in relevant part:

> (a) In all school districts, all contracts with professional employees shall be in writing, in duplicate, and shall be executed on behalf of the board of school directors by the president and secretary and signed by the professional employe.
>
> . . . .
>
> (c) Contracts under subsection (b) [(stating how and when an employee obtains tenure and becomes a professional employee)] shall contain only the following:
>
> . . . .
>
> "This contract is subject to the provisions of the [School Code] and the amendments thereto.["]
>
> "AND IT IS FURTHER AGREED by the parties hereto that *none of the provisions of th[e School Code] may be waived orally or in writing*, and that *this contract shall continue in force year after year*, with the right of the board of school directors . . . to increase the compensation over the compensation herein stated . . . without invalidating any other provision of this contract, *unless terminated by the professional employe by written resignation presented sixty (60) days before [the] resignation becomes effective, or by the board of school directors . . . by official written notice presented to the professional employe: Provided, That the said notice shall designate the cause for termination and shall state that an opportunity to be heard shall be granted if the said professional employe, within ten (10) days after receipt of the termination notice, presents a written request for such hearing.*"

24 P.S. § 11-1121 (emphasis added).

[6] Section 1108(b)(3) states, in pertinent part, "[n]o professional employe who has attained tenure status in any school district of this Commonwealth shall thereafter be required to serve as a temporary professional employe before being tendered such a contract when employed by any other part of the public school system of the Commonwealth." 24 P.S. § 11-1108(b)(3).

[7] Section 1122 sets forth the valid causes for a school district's termination of a professional employee's contract. 24 P.S. § 11-1122. Sections 1126 through 1132 establish the *(Continued…)*

as principal. Dr. Findley claims that the Secretary's reliance on the 2006 Agreement to conclude that he implicitly waived or gave up his tenure rights is contrary to Section 1121 of the School Code, which provides that the School Code's provisions cannot be waived orally or in writing. Mifflinburg Area Education Association v. Mifflinburg Area School District, 555 Pa. 326, 330, 724 A.2d 339, 342 (1999); Pennsylvania Labor Relations Board v. State College Area School District, 461 Pa. 494, 509, 337 A.2d 262, 269 (1975). Dr. Findley asserts that the fact that he resigned from the Superintendent position and transferred to the principal position is of no moment because those positions are separate and distinct, the terms of which were negotiated at different times with different results. Moreover, the Secretary misapplied Sakal and, in holding that the 2006 Agreement controlled his employment as principal, the Secretary's determination will allow school districts to engage in an end run around the School Code's tenure provisions by requiring their professional employees to sign term contracts, a result rejected by Sakal.

In response, the District maintains that Dr. Findley's employment was governed by the executed 2006 Agreement, which Dr. Findley voluntarily negotiated with assistance of counsel, not the School Code. The District asserts that Dr. Findley's actions support the conclusion that he was aware that he was bound by the terms of the 2006 Agreement, including that his employment would end on June 30, 2009, because he: attempted to bargain for an additional year of employment in his June 13, 2006, letter, which was rejected by the District; and

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dismissal procedures that a school district must provide to a professional employee before discharging the employee, as well as the appeal rights of the employee, if dismissed. 24 P.S. §§ 11-1126—11-1132.

requested that he be permitted to continue as principal for the 2009-2010 school year in his December 2008 and May 2009 letters to the District. The District maintains that, contrary to Dr. Findley's assertions that there are only two ways to end a tenured employee's employment, resignation and dismissal, there is a third: abandonment and mutual rescission. West Shore School District v. Bowman, 409 A.2d 474, 478 (Pa. Cmwlth. 1979). Moreover, the District argues that Sakal is distinguishable and, therefore, the Secretary did not err in concluding that this matter was not governed by that case.

We begin our analysis by recognizing the importance of the issue presently before us: whether a tenured employee's employment as a professional employee can be subject to a fixed term contract without violating the School Code and "emasculat[ing]" the tenure system. Sakal, 339 A.2d at 898. As stated in Brumbaugh v. Board of School Directors of Tussey Mountain School District, 422 A.2d 1236, 1238 (Pa. Cmwlth. 1980), "[t]he purpose of the tenure provision [is] to foster an atmosphere of job security of teachers, free from political and personal interference, while at the same time balancing the school district's need for autonomy over administrative policy."

In Sakal, the school district (Sto-Rox) discharged the employee (Mr. Sakal) from his position as an elementary school principal without providing him the procedures set forth by the School Code. Sakal, 339 A.2d at 896. Mr. Sakal acquired tenure in one school district and, when that district merged with a second district, he became the superintendent of the combined district, Sto-Rox, which was a non-tenured position. Id. at 896-97. After performing that position for a period of time, he was not reelected to superintendent; however, the school board,

through a resolution, elected him to serve as an assistant principal for a period of one year. Id. at 897 & n.1. Notwithstanding the resolution, Sto-Rox presented, and Mr. Sakal signed, a standard professional employee contract set forth in Section 1121 that indicated that he was being designated as an elementary school principal on a year-to-year basis. Id. at 897. Although the resolution designated him as an assistant principal, Mr. Sakal performed the duties of a principal. Id. Mr. Sakal continued to perform these duties for Sto-Rox after the one-year term had expired and even received a raise. Id. Thereafter, by resolution, Sto-Rox dismissed Mr. Sakal on the basis that "he was hired at the will of the [b]oard" on a one-year contract which became a month-to-month contract after the expiration of that year. Id. Mr. Sakal denied that he had any knowledge that the terms of his employment were anything other than those included in the standard contract he executed. Id. at 898. The trial court affirmed Sakal's dismissal. On appeal to this Court, we cited Sto-Rox's argument before the trial court:

> "It is [Sto-Rox's] position that Mr. Sakal came out of a non[-]tenure position, which was superintendent of schools, requested one additional year with [Sto-Rox]; that pursuant to that a resolution was passed authorizing the appropriate officers to enter into a one-year contract only. That is [Sto-Rox's] position, that this resolution is governing since no matter what contract was signed the resolution must govern the authority of any officer who signs the contract, and the contract must be limited by the authority of this July resolution. Therefore, it is [Sto-Rox's] position that the only contract that could have been signed was a one-year contract with Mr. Sakal; and, therefore, [Mr. Sakal's] position that he is a tenured employee and must be dismissed only pursuant to the . . . School Code is not applicable in this situation since the [School] Code in our estimation is not given the right to contract, and to contract less than a tenure contract is free to do so." (sic)

Id. at 897-98 (quoting Sto-Rox's counsel's opening remarks to the trial court). This Court disagreed with Sto-Rox's position, stating "[i]f that statement represented the law, all that every school board needs to do to emasculate tenure is to pass a resolution hiring a professional employee for only one year and then execute the standard form of contract." Id. at 898. For support, we cited Mullen v. Dubois Area School District, 436 Pa. 211, 259 A.2d 877 (1969), for the proposition that a "board action inconsistent with the mandate of the [School Code] could not be used by the board to deny an employee his proper rights in accordance with his contract." Sakal, 339 A.2d at 898. We concluded by stating, "[the district's] position could be interpreted as stating that an employee entitled to tenure could 'waive' his rights in exchange for a one-year contract. Again, were this the law, a board could require all prospective employees to waive the tenure provisions. Such cannot be the law." Id.

However, in Brumbaugh, this Court held that a term contract may, in some circumstances, not violate the School Code, distinguishing Sakal. Brumbaugh, 422 A.2d at 1238-39. In Brumbaugh we held that, under limited circumstances, a one-year contract for a tenured teacher will not violate the School Code. Id. Specifically, the teacher in Brumbaugh had tenure in one school district, obtained a leave of absence in that school district, and signed a one-year contract with a second school district. Id. at 1237. After the expiration of the year, she sought to remain in her position with the second school district, notwithstanding her tenured position in the other school district. Id. at 1237-38. Under these circumstances, we held that the one-year contract would not violate the public policy behind tenure because the School Code "was not intended to allow a teacher to secure reinstatement, seniority, and salary benefits in two school districts at the same

time," id. at 1238, or to encourage "tenure shopping." Id. at 1239. Thus, under Brumbaugh, there are rare circumstances when a term contract between a professional employee and a school district will be upheld as not violating the School Code.

After reviewing the School Code, the case law, the Secretary's findings, and the parties' arguments, we conclude that Sakal is distinguishable and that this is one of the rare situations where a term contract does not violate the tenure provisions of the School Code. First, Sakal is distinguishable for several reasons. Unlike Mr. Sakal, Dr. Findley requested the District to allow him to voluntarily and irrevocably resign from his position as Superintendent and to allow him to serve as a principal. Dr. Findley did not sign, as Mr. Sakal did, a standard, open-ended professional employee contract, which the District then attempted to limit by Board action; rather, Dr. Findley voluntarily negotiated, with counsel, the specific terms of the 2006 Agreement, which mirrored the terms of the existing 2005 Agreement. Thus, unlike Sto-Rox in Sakal, the District was not acting contrary to the contract entered into with its professional employee or without that employee's knowledge. Dr. Findley was aware of the terms of the 2006 Agreement, having negotiated those terms, and was aware, as evidenced by his repeated requests to continue his employment beyond the end date provided for in the 2006 Agreement, that his employment would end on June 30, 2009. Such conduct, as the District points out, is not consistent with one who believes that he or she is employed in a tenured position.

Second, we agree with the Secretary that the 2006 Agreement can be characterized as a settlement agreement, not merely a term employment contract.

The 2006 Agreement resolved the conflict between Dr. Findley's desire not to fulfill the terms of the 2005 Agreement and his contractual obligation to the District without violating that agreement or having to resign from the District entirely. The District, in responding to *Dr. Findley's* request to, essentially, terminate or abandon the 2005 Agreement for services, agreed to allow Dr. Findley to transfer to his preferred position, at the Superintendent's salary, for the *remainder* of the term of the 2005 Agreement. In other words, in exchange for being let out of his the 2005 Agreement for a position he no longer wanted to perform and being allowed to transfer to a more desirable position and to keep his higher salary, Dr. Findley agreed that the employment term associated with the 2005 Agreement remained in effect. We conclude that this did not make Dr. Findley a "temporary professional employee" in violation of Section 1108(b)(3) of the School Code; rather, the 2006 Agreement reflected the bargained-for agreement between the District and Dr. Findley. This is not the dire situation presented by Dr. Findley in his brief, where a professional employee was forced to sign a term contract in order to obtain employment as a professional employee rather than the standard, open-ended contract.

Third, as we did in Brumbaugh, we conclude that it would not violate the public policy behind the tenure provisions of the School Code to sanction the use of a term contract in these unique circumstances. In this case, Dr. Findley wants to pick and choose the employment terms of the 2006 Agreement and the employment terms that would have been available to him had he signed the standard professional employee contract that best suits his needs, without accepting the bargain that he struck with the District. As mentioned above and found by the Secretary, Dr. Findley agreed to the terms of the 2006 Agreement, including that

he could leave a position he no longer wanted, transfer to a position he did want, and keep the salary of the Superintendent (an amount that he would not have received as a principal). He accepted the benefits of the 2006 Agreement, and now seeks to reject the remainder of the 2006 Agreement. Such conduct is akin to the concept of seeking better benefits by "tenure shopping," which this Court, in Brumbaugh, wanted to discourage.

Finally, this Court is persuaded by the District's argument that the doctrine of mutual rescission is applicable here. The District is correct that there are three ways to end a tenured employee's employment: (1) voluntary resignation; (2) dismissal pursuant to the terms of the School Code; and (3) mutual rescission. Jacobs v. School District of Wilkes-Barre Township, 355 Pa. 449, 453, 50 A.2d 354, 356 (1947); Bruckner v. Lancaster County Area Vocational-Technical Joint School Operating Committee, 467 A.2d 432, 435 n.2 (Pa. Cmwlth. 1983); and West Shore, 409 A.2d at 478-79. In Jacobs, our Supreme Court held that:

> The legislature has not restrained or prevented mutual recognition of the termination of the contract. "It is always competent for the parties to a written contract to show that it was subsequently abandoned in whole or in part, modified, changed, or a new one substituted. And this may be shown by parol, by showing either an express agreement or actions necessarily involving alterations." Achenbach v. Stoddard, 253 Pa. 338, 343, 98 A. 604, 605 [(1916)]; Mazer v. Kann, 343 Pa. 376, 379, 22 A.2d 707, 708 [(1941)]. [The employee's] contention, therefore, that the words "And It Is Further Agreed by the parties hereto that none of the provisions of this Act may be waived either orally or in writing," required to be incorporated in the contract, prevented termination by mutual agreement, is without merit.

Jacobs, 355 Pa. at 453, 50 A.2d at 356. The Supreme Court, in Jacobs, held that the professional employee's conduct in failing to report to her position for two consecutive years, not using the known maternity leave program, and not notifying the school district of her intentions regarding her contract after the school district had contacted her, "necessarily [led] to the conclusion that she [had] expressed, through her actions, a definite intention to abandon the contract. The action of the . . . school board in employing a permanent teacher to replace her, only after a reasonable time had elapsed after they had contacted [the] appellant[,] was an act of, or acquiescence in, the abandonment." Id. at 454, 50 A.2d at 356. These actions, when combined, constituted a mutual rescission of the contract. Id. The Supreme Court noted that the fact that the parties abandoned the contract by acts, rather than by words or in writing, was of no consequence. Id. In West Shore and Bruckner this Court held that there was no mutual rescission because the teachers in those cases, although absent for extended periods of time, had remained in contact with their employers and, therefore, did not show an intent to abandon their contracts. Bruckner, 467 A.2d at 435-36; West Shore, 409 A.2d at 479.

Here, Dr. Findley's tenure status, including his right to ongoing employment, would have been renewed when he transferred to the principal position. However, notwithstanding this factor, Dr. Findley requested, negotiated, and signed a contract that was for a set term of employment, actions inconsistent with someone seeking to maintain his or her tenure rights. Indeed, the terms of the 2006 Agreement specifically addressed the availability of the principal position after June 30, 2006, stating that Dr. Findley's continuation in that position could be arranged by mutual agreement. Dr. Findley's agreement to this term, likewise, is inconsistent with someone seeking to maintain his or her tenure rights. Although

this doctrine has been used where the professional employee had been absent for a long period of time, we conclude that Dr. Findley's actions similarly represent conduct that is inconsistent with tenured employment. As recognized by the Supreme Court in Jacobs, mutual rescission can occur by acts, words, or in writing. Jacobs, 355 Pa. at 454, 50 A.2d at 356. In negotiating and signing the 2006 Agreement for a position that would otherwise be governed by the tenure provisions of the School Code, we conclude that Dr. Findley demonstrated his intent to abandon the tenure contract available to him under the School Code. The District then acquiesced to this abandonment by also signing the 2006 Agreement.

We acknowledge that Sections 1108 and 1121 provide the terms for employment for professional employees under the School Code; however, this Court has, in very rare circumstances, deviated from those provisions where the public policy of the tenure of the School Code would not be harmed. Jacobs, 355 Pa. at 453-455, 50 A.2d at 356-57; Bruckner, 467 A.2d at 435-36; Brumbaugh, 422 A.2d at 1239. This is not a situation where the professional employee was forced to sign a term agreement or where he was subject to the pressure of outside forces; rather, this was a situation where he *voluntarily* rescinded an existing contract, resigned from his existing position, and negotiated a contract that allowed him to transfer to a new position while maintaining the better benefits of the prior position. Now, when it appears that the terms he negotiated are not to his liking, Dr. Findley asserts that he was entitled to more. Dr. Findley wants the best of both bargains, the one that he made and the one that he did not, so that he could continue his employment for one more year in order to take advantage of an enhanced retirement benefit. This is one of the very rare circumstances where a term contract does not violate the School Code, which, we conclude, was not

intended to allow a professional employee to, essentially, "benefits shop" by entering into a term contract for better benefits than what otherwise would have been available while, at the same time, asserting that the benefits available under a standard, professional employee contract likewise applied to his situation.[8]

Accordingly, we affirm the Secretary's Order.[9]

RENÉE COHN JUBELIRER, Judge

[8] In reaching this conclusion, we caution that our decision is not meant to open the doors for school districts to forgo the contractual provisions set forth in the School Code for their professional employees. This holding is based on the unique factors in this case. As such, we believe that the tenure system remains intact and is not emasculated by the outcome of this decision.

[9] Because we conclude that, under these circumstances, Dr. Findley's employment as principal was governed by the 2006 Agreement, it is not necessary to address Dr. Findley's argument that he is entitled to damages.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joseph W. Findley, Jr.,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 114 C.D. 2011
	:	
Montour School District,	:	
	:	
Respondent	:	

O R D E R

NOW, December 29, 2011, the Order of the Secretary of Education in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge