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Repeal of the Teacher's Act as Impairment of the Obligation of Contract

RECENT CASE NOTES

REPEAL OF THE TEACHERS' ACT AS IMPAIRMENT OF THE OBLIGATION OF CONTRACT.—By this action it is sought to mandate appellee, a township trustee, to continue relatrix in the employ of the township as a school teacher. Relatrix had become a permanent teacher under the Teachers' Tenure Act of 1927, which provides that a person who has served under contract as a teacher in any school corporation for five or more successive years, and shall thereafter enter into a contract for further service, shall become a permanent teacher of such school corporation. The act was amended in 1933 and made to apply to city and town school corporations only. Thus, the former act was repealed in so far as township schools are concerned. Held, there is no vested right in a permanent teacher's contract; therefore, the repeal of the Teachers' Tenure Act, in so far as it affects townships and township schools, removes the so-called tenure rights of teachers acquired prior to its repeal.[1]

This case presents an interesting problem as to whether or not a permanent tenure teacher has a contract right which the Federal[2] and the State[3] Constitutions protect from impairment by subsequent legislation. Naturally, the first question that arises is this: Does the teacher have a valid contract with the State? The law seems to be pretty well settled that the relation between the State and a teacher in the public schools is that of employer and employee, created by contract.[4] It is not a public office[5] and therefore is not subject

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1 State, ex rel. Anderson v. Brand (Ind. 1937), 5 N. E. (2d) 531, dissenting opinion by Judge Treanor, 5 N. E. (2d) 913.

2 Constitution of the United States, Art. 1, Sec. 10, "No State shall . . . pass any . . . law impairing the obligation of contracts . . ."

3 Constitution of Indiana, Art. 1, Sec. 24, "No ex post facto law, or law impairing the obligation of contracts, shall ever be passed."

4 Willis, Constitutional Law, pp. 604, 635, 56 C. J. 382, sec. 303, Elwood v. State, ex rel. Griffin (1932), 203 Ind. 626, 180 N. E. 471; Kostanzer v. State, ex rel. Ramsey (1933), 205 Ind. 536, 546, 187 N. E. 337; Arburn v. Hunt

to be terminated by the Legislature at any time. The relation remains contractual after the person has become a permanent teacher under the provisions of a tenure law;[6] but the terms and conditions of the contract are thereafter governed primarily by the statute.[7] The court in the instant case seems to believe that, because the statute makes the contract "indefinite," no binding, enforceable agreement is made, but that the tenure teacher is merely given preferential rights over other teachers. The answer to this seems to be that definite duration is not an essential element of a contract and that a provision for modification of the manner and time of performance does not make it unenforceable. Tenure contracts are no more indefinite now than they were before the repealing act was passed, and the cases prior thereto are unanimous in holding that such contracts were binding until terminated by a method set out in the Act.[8]

The next question involved is whether the fact that this contract was made with the State, rather than another individual, makes it less effective. On this score the law is settled that the obligation of contracts clause protects public or state contracts as well as those between private individuals.[9] However, a state cannot contract away its police power.[10] While one might maintain that the abrogation of tenure contracts is a proper exercise of the State's police power, such a contention seems untenable here, because both the Legislature, by retaining the policy of the Teachers' Tenure Act as to city and town school corporations, and the Court, by its recent decisions

(1934), 207 Ind. 61, 191 N. E. 148, Martin v. Fisher (1930), 108 Cal. App. 34, 291 P 276, State, ex rel. O'Neil v. Blied (1925), 188 Wis. 442. 206 N. W. 213, State, ex rel. Nyberg v. Milwaukee Board (1926), 190 Wis. 570, 209 N. W. 683, Mootz v. Belyea (1931), 60 N. D. 741, 236 N. W 358.

[5] 56 C. J. 382, sec. 303, Kostanzer v. State, ex rel. Ramsey (1933), 205 Ind. 536, 546, 187 N. E. 337, Elwood v. State, ex rel. Griffin (1932), 203 Ind. 626, 180 N. E. 471.

[6] The Teachers' Tenure Act (Acts 1927, c. 97, p. 259) expressly provides for a contract, which shall be known as an indefinite contract, remaining in force until succeeded by a new contract or properly cancelled. State, ex rel. Black v. Board of School Commissioners (1933), 205 Ind. 582, 187 N. E. 392; Arburn v. Hunt (1934), 207 Ind. 61, 191 N. E. 148, Martin v. Fisher (1930), 108 Cal. App. 34, 291 P 276. Brumfield v. State, ex rel. Wallace (1934), 205 Ind. 647, 190 N. E. 863, uses language to the effect that the contractual relations "are merely evidentiary in character affecting relatrix' status relative to the school corporation." But it is submitted that there can be a contractual relation even though there is a status; and this case doesn't seem to deny such a proposition.

[7] Elwood v. State, ex rel. Griffin (1932), 203 Ind. 626, 634, 180 N. E. 471.

[8] Kostanzer v. State, ex rel. Ramsey (1933), 205 Ind. 536, 187 N. E. 337; State, ex rel. Black v. Board of School Commissioners (1933), 205 Ind. 582, 187 N. E. 392; Elwood v. State, ex rel. Griffin (1932), 203 Ind. 626, 180 N. E. 471.

[9] 12 C. J. 996, sec. 608, Hall v. Wisconsin (1880), 103 U. S. 5, 26 L. Ed. 302; Fletcher v. Peck (1810), 6 Cranch 87, 3 L. Ed. 162; Providence Bank v. Billings (1830), 4 Pet. 514, 7 L. Ed. 939; Carr v. State, ex rel. Coetlosquet (1890), 127 Ind. 204, 26 N. E. 778, 11 L. R. A. 370.

[10] Willis, Constitutional Law, p. 618; 12 C. J. 912, sec. 423, Stone v. Mississippi (1879), 101 U. S. 814, 25 L. Ed. 1079; Butchers etc. Co. v. Crescent City etc. Co. (1884), 111 U. S. 746, 28 L. Ed. 585, Cincinnati, etc. R. Co. v. Connersville (1907), 170 Ind. 316, 83 N. E. 503, Cleveland, etc. R. Co. v. Harrington (1891), 131 Ind. 426, 30 N. E. 37

upholding the policy of the Act,[11] have indicated that there is a social interest in favor of permanent teachers' contracts. One can hardly say that permanent tenure is desirable for city and town schools because it prevents the removal of capable and experienced teachers at the political or personal whim of changing officeholders, and at the same time maintain that it is so undesirable for township schools that the Legislature was justified in abrogating all permanent contracts of teachers in such schools.

The court seems to place a great deal of weight on the proposition that the contract cannot exist without the license and that, since the Legislature could have revoked the license, it could do the lesser thing and revoke the tenure contracts. If this reasoning be good, the Legislature could revoke all contracts of non-tenure teachers without revoking their licenses—a surprising idea, to say the least. While it may be true that the Legislature has the power to revoke a license,[12] there is no authority to the effect that it can abrogate contracts at its pleasure.[13] Even though the license could have been revoked, the fact remains that it was not and that the teacher is still capable of performing her part of the agreement. Therefore, one has difficulty in contending that there was not a valid contract here.

The cases of other states factually similar to the principal case appear to be contra to it. In a case almost identical with this one, the California Court held that permanent tenure, automatically attained before repeal of the statute providing therefor, was not lost by virtue of failure on the part of the Legislature to adopt a saving clause as a part of the repealing act.[14] The decision was based on the ground that the teacher had a vested right to such tenure. That Court did not say the vested right was acquired from the contract, made permanent by the statute; but another California case holds that the statute merely extended the term of the contract and did not change the contractual relation of employer and employee.[15] Wisconsin[16] and New Jersey[17] have held that a teacher who has accepted and complied with a statute providing for a teachers' retirement fund stands in a contractual relation with the State and his contract cannot be impaired by subsequent legislation. Another case holds that the status or contract right of one permanently employed as a teacher under a permanent tenure system and with rights so fixed cannot

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[11] State, ex rel. Clark v. Stout, Trustee (1933), 206 Ind. 58, 64, 187 N. E. 267; Whitlatch v. School Township of Milan (Ind. 1935), 198 N. E. 85, 87.

[12] 12 C. J. 997, sec. 610; Doyle v. Continental Ins. Co. (1876), 94 U. S. 535, 540, 24 L. Ed. 148; Stone, Supt., v. Fritts (1907), 169 Ind. 361, 364, 365, 82 N. E. 792, 794.

[13] The language quoted by the Court indicates this distinction. The Court quotes from Stone, Supt., v. Fritts (1907), 169 Ind. 361, 365, 82 N. E. 792, 794, this statement: "A license has none of the elements of a contract, and does not confer an absolute right, but only a personal privilege to be exercised under existing restrictions and such as thereafter may be reasonably imposed."

[14] Gastineau v. Meyer (1933), 131 Cal. App. 611, 22 P (2d) 31. See also Chambers v. Davis (1933), 131 Cal. App. 500, 22 P (2d) 27 and Klein v. Board of Education (1934), 1 Cal. (2d) 706, 37 P (2d) 74.

[15] Martin v. Fisher (1930), 108 Cal. App. 34, 291 P 276.

[16] State, ex rel. O'Neil v. Blied (1925), 188 Wis. 442, 206 N. W 213.

[17] Ball v. Board of Trustees of Teachers' Retirement Fund (1904), 71 N. J. 64, 58 A. 111.

be impaired by subsequent legislation.[18] The United States Supreme Court has held that a contract between a State and a party, whereby he is to perform certain duties for a specific period[19] at a stipulated compensation, is within the protection of the Constitution and that it is not affected by the repeal of the statute pursuant to which it was made.[20] On the other hand, there is little or no authority favoring the proposition that a state can invalidate its teachers' contracts by subsequent legislation.

On the whole, the holding of this case seems to be a departure from practically all the authorities. It seems to go as far as to hold that the Legislature is free to annul any contract entered into by the State under the authorization of a prior legislative enactment. In other words, it puts such a contract on a parity with a mere license in so far as revocation is concerned. On the other hand, the well-reasoned dissenting opinion of Judge Treanor[21] is supported by both logic and authorities and the constitutional problems which he points out might be made the basis of an appeal to the Supreme Court of the United States. W. I. M.

WILLS—REVOCATION.—Testator wrote "void" on the margin of his will and across the envelope containing it, and drew intersecting diagonal lines across the writing of the will. These lines started just below the title and extended through the body of the will, through testator's signature, through the attestation clause, and stopped just above the signatures of the witnesses. It was conceded that the testator intended thereby to revoke the will. The only question in the case was whether or not testator's acts were sufficient, under the Indiana statute, to effect a revocation. Held, the will had not been revoked.[1]

The English Statute of Frauds provided that a will could be revoked only by burning, canceling, tearing, or obliterating, or by another writing.[2] This statute served as a model for the statutes in most of our states, in that those statutes generally specify several methods of revocation.[3] Neither the Statute of Frauds nor the statutes of any of the states attempted to define the specific acts that a testator must perform in order to revoke his will by one of the methods prescribed. Consequently, in the development of the law on the subject there was much litigation, and a proportionate amount of confusion of thought in the early cases. The Statute of Victoria, which repealed parts

[18] State, ex rel. Nyberg v. Milwaukee Board (1926), 190 Wis. 570, 209 N. W 683.

[19] There seems to be no valid objection to the tenure contracts on the ground that they are for an indefinite duration, because the contracts were to continue in force until terminated by a method provided in the statute. The Court did not have any trouble in granting the teacher the remedy of mandamus before the Act of 1933. See State, ex rel. Black v. Board of School Commissioners (1933), 205 Ind. 582, 187 N. E. 392; Kostanzer v. State, ex rel. Ramsey (1933), 205 Ind. 536, 187 N. E. 337; Elwood v. State, ex rel. Griffin (1932), 203 Ind. 626, 180 N. E. 471.

[20] Hall v. Wisconsin (1880), 103 U. S. 5, 26 L. Ed. 302. See, also, Carondelet Canal & Nav. Co. v. Louisiana (1913), 233 U. S. 362, 34 S. Ct. 627.

[21] State, ex rel. Anderson v. Brand (Ind. 1937), 5 N. E. (2d) 913. See, also, Opinions of the Attorney General of Indiana (1933), pp. 100, 139.

[1] Tinsley v. Carwile (Ind. App., 1937), 5 N. E. (2d) 982.

[2] 29 Car. II, Ch. 3.

[3] 14 Iowa L. R. 283.