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Teachers' Tenure Law-Constitutionality-Power to Dismiss Permanent Teachers

TEACHERS' TENURE LAW—CONSTITUTIONALITY—POWER TO DISMISS PERMANENT TEACHERS—The plaintiff, a school teacher, had been employed by the defendant school city for more than five years prior to May 5, 1930. On that date he entered into a new contract, under which he served until July 24, 1931, at which time he was discharged as a result of a hearing held by the defendant in which it was found that he had been guilty of insubordination in refusing to obey a reasonable regulation of the defendant—that is, that all teachers should retire when they attained the age of seventy. The

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[8] *Stanley v. Colt* (1867), 5 Wall. 119, 18 L. Ed. 502.

[9] *Summer v. Darnell* (1870), 128 Ind. 38, 27 N. E. 162; *Sherman v. Town of Jefferson* (1916), 274 Ill. 294, 113 N. E. 624; *Sellers Chapel M. E. Church's Petition* (1891), 139 Pa. 61, 21 Atl. 145.

[10] *Sheets v. Vandalia Ry. Co.* (1920), 74 Ind. App. 597, 127 N. E. 609; *Van Horn v. Mercer* (1902), 29 Ind. App. 277, 64 N. E. 531.

[11] *Stanley v. Colt* (1867), 5 Wall. 119, 18 L. Ed. 502; *Schier v. Trinity Church* (1871), 109 Mass. 1; *Downer v. Rayburn* (1905), (Ill.), 73 N. E. 364; *First Presby. Church v. Bailey* (1916), 97 Atl. 583; 11 L. R. A. (N. S.) 509, note.

[12] *Bailey v. Wells* (1891), 82 Iowa 131, 47 N. W. 988; *Strong v. Doty* (1873), 32 Wis. 381; *Packard v. Ames* (1860), 16 Gray (Mass.) 327.

[13] *Mills v. Davison* (1896), 54 N. J. Eq. 659, 35 L. R. A. 113, 35 Atl. 1072; *Watterson v. Ury* (1894), 5 Ohio C. C. 347, Affirm. 52 Ohio St. 637, 44 N. E. 1149; *Schipper v. St. Palais* (1871), 37 Ind. 505.

[14] *Strong v. Doty* (1873), 32 Wis. 381; *Baldwin v. Atwood* (1854), 23 Conn. 367; *Rawson v. Uxbridge* (1863), 7 Allen 125, 83 Am. Dec. 670.

[15] *Hutchinson v. Ulrigh* (1893), 145 Ill. 336, 34 N. E. 556; *Farnham v. Thompson* (1885), 34 Minn. 330, 26 N. W. 9; *Rawson v. Uxbridge* (1863), 32 Wis. 381; *Solier v. Trinity Church* (1871), 109 Mass. 1; *Neely v. Hockins* (1892), 84 Me. 386, 24 Atl. 882; *Episcopal City Mission v. Appelton* (1875), 117 Mass. 326; *Adams v. First Baptist Church* (1907), 148 Mich. 140, 111 N. W. 757.

plaintiff had reached that age in April, 1930. An Indiana statute[1] makes all teachers, who enter into a new contract after they have served for a school corporation for five or more successive years, permanent teachers. Such a contract is deemed to continue in effect for an indefinite period, and will remain in force until succeeded by a new one or until cancelled by the corporation for incompetency, insubordination (which is defined as a wilful refusal to obey the school laws of the state or the reasonable rules prescribed for the government of the schools of such corporation), neglect of duty, immorality, justifiable decrease in the number of teaching positions, or other "good and just cause." The statute further provides that the decision of the school board shall be final. The plaintiff brought this action to have the resolution of the board vacated and to recover salary he alleged is due him for the first month of the school year beginning in September, 1931. From an order of the court overruling a demurrer to the complaint for insufficient facts, the defendant appeals. *Held*, affirmed.[2]

The first question which logically presents itself is whether or not this statute is unconstitutional in that it forces the local school organizations to enter into a particular type of contract. An analysis of the problem will immediately show, however, that this must be answered in the negative. A local school organization is only an instrumentality or agent of the state,[3] and so it cannot have any immunities from the power of the state to force it into any contractual relationship.

A more difficult question concerns the jurisdiction of the court, in the light of the express provision that the decision of the school board shall be final. It will be seen that the question of whether the plaintiff was guilty of insubordination depends upon whether the rule he disobeyed was a reasonable one. The question of whether a rule laid down by school authorities is reasonable is one of law.[4] Due process of law requires that questions of law shall be decided by a judicial tribunal. Therefore, if the statute were construed to make the decision of the school board unreviewable, it would contravene the Fourteenth Amendment to the Constitution of the United States. The result reached by the court upon this point is, then, undoubtedly correct.

In deciding the principal case the court held that there was no insubordination as defined by the statute, because the rule which the plaintiff disobeyed was not a reasonable one. The correctness of this result might well be doubted. There is unquestionably an age limit beyond which the teaching efficiency of the average person would be reduced. It might well be argued that that age limit is not beyond seventy.

The opinion does not disclose whether the rule in question was established before or after the plaintiff's contract became effective. If it was established before the contract was entered into, the court was obviously correct in making the result turn upon the reasonableness of the rule which the plaintiff disobeyed. But, if the rule was made subsequently to

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[1] Sec. 6967, Burns' Ann. St. Supp. 1929.

[2] *School City of Evansville v. Culver*, Appellate Court of Indiana, July 27, 1932, 182 N. E. 270.

[3] *Ager v. Pagin* (1906), 39 Ind. App. 567, 79 N. E. 379; *Ehle v. State* (1921), 191 Ind. 502, 133 N. E. 748; *School Town of Windfall v. Somerville* (1914), 181 Ind. 463, 104 N. E. 859.

[4] *Fertich v. Michener* (1887), 111 Ind. 472, 11 N. E. 605, 14 N. E. 68.

the formation of the contract, would the provision in the United States Constitution prohibiting the impairment of the obligation of contracts apply, and prevent the discharge of the plaintiff for the failure to obey the rule, even though it was reasonable? In dealing with this question it is convenient to first consider the power of the state. Could it pass a regulation of the nature of the one under consideration, so that it would affect contracts already in existence? It is not disputed that there was a valid contract between the plaintiff and the school city. By its terms, it was to continue in effect until superceded by a new one or until discharged as provided by the statute. Section 10, Article I of the United States Constitution forbids any state to pass a law impairing the obligation of contracts. Under this provision such legislation would be unconstitutional as impairing the obligation of contracts, unless it was within the scope of the police power.[5] The extent of the police power depends upon the balance of social interests. The legislature has the power to enact laws, even though they would otherwise impair the obligation of contracts, where the social interests in favor of such legislation outweigh those against it. Obviously the legislature would not have the power to abolish these contracts as a purely arbitrary measure with no good reason. But, would it have the power to enact a rule that they should be terminated upon the arrival of a teacher at the age of seventy? Just how do the social interests balance? Upon the one side we have the social interests in the freedom of contract and in the individual life. Upon the other there are the social interests in the schools themselves and in the general welfare of the people. If the rule under discussion is one reasonably necessary for the advancement of the schools, it could scarcely be contended that the last named social interests would not outweigh the others. In that case the rule would clearly be within the scope of the police power. In other words, if it is a fact that people over seventy are, as a general thing, too old to teach well, the rule that they must retire at that age would be within the scope of the legislature's police power, and could affect previously formed contracts without violating the Constitution. In the principal case the court held, however, that such a regulation is unreasonable. This is conclusive as to the question of police power, unless the Supreme Court were to decide otherwise as to the reasonableness of the rule.

But could the defendant school city exercise the police power so that the plaintiff could be discharged for refusing to obey one of its rules established after the formation of his contract? In general, the acts of administrative boards or officers are not "laws" within the meaning of the Constitution.[6] However, they may be "laws" if they are of a legislative character and are an exercise of delegated power.[7] Local school organizations have, of course, the power to make all regulations necessary to the proper conduct of their schools, where such regulations are not inconsistent with the school law.

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[5] *New Orleans Gas Company v. Louisiana Light Co.* (1885), 115 U. S. 650, 6 Sup. Ct. 252; *New Orleans Gas Light Co. v. New Orleans Drainage Comm.* (1904), 197 U. S. 453, 25 Sup. Ct. 471; *Manigault v. Springs* (1905), 199 U. S. 473, 26 Sup. Ct. 127.

[6] *New Orleans Water-Works Co. v. Louisiana Sugar Co.* (1887), 125 U. S. 18, 8 Sup. Ct. 741.

[7] *Grand Trunk R. R. v. Indiana R. R. Comm.* (1910), 221 U. S. 400, 31 Sup. Ct. 537.

The statute under consideration itself, by implication, delegates this power. It will be seen, then, that such a rule laid down by a school corporation is a "law" within the meaning of the Constitution, for it is legislative in character and is an exercise of delegated power. Therefore, it would be unconstitutional as to existing contracts, as an impairment upon the obligation of contracts, unless the corporation had the power to exercise police power. The legislature has the power to delegate police power to administrative boards and units.[8] The statute under consideration itself, by implication, delegates the power to prescribe reasonable rules for the regulation of school affairs. Since this is in no way limited, it ought to be construed as giving to the school corporation the power to make all reasonable rules that the state itself could make. So construed, there is such a delegation of the police power that the school corporation could pass a rule within the scope of such power, even though it would otherwise impair the obligation of contracts. Under the statute the school authorities could, of course, discharge any teacher who wilfully refused to obey such a rule.

Of course the result reached in the principal case is correct, assuming that the court was not in error in holding that the rule involved was not a reasonable one. The defendant could not possibly base its right to dismiss the plaintiff upon any other cause than "insubordination." Where power to dismiss for definite causes is expressly delegated to a school corporation, it cannot dismiss for any other cause.[9] It was not contended that the plaintiff was incompetent, immoral, that he neglected his duties, or that there was a decrease in the number of teaching positions. It is true that the defendant relied to some extent upon the application of the "or for other good and just cause" provision. But, applying the doctrine of construction known as *ejusdem generis*,[10] this really added nothing to the powers to dismiss expressly given by the statute. W. H. H.

WORKMEN'S COMPENSATION ACT—OCCUPATIONAL DISEASE—The dependents of one, Buenker, were denied compensation, under the Workmen's Compensation Act, where the evidence showed that the decedent had worked as foreman of the employer's finishing room, where paint was used, and that he died from metal poisoning as a result of an internal overdose of the paint. Decedent had not been ill before and no wilfulness, nor expectation of the poisoning, on the part of the decedent, was proven. *Held*, that the death was the result of an "occupational disease" and not an "accident", since no unusual occurrence on the day of the illness was proven.[1]

This decision brings into question the proper construction of our Act on that phrase of the subject. The part of the Act applicable to this discussion reads:[2] "Every employer and employee, except as herein stated, shall be presumed to have accepted the provisions of this act respectively to pay

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[8] *Woodruff v. R. R. Co.* (1890), 59 Conn. 63, 20 Atl. 17; *Relief Electric Light Company's Petition* (1916), 63 Pa. Super. 1; *Atlantic Coast Line R. R. v. N. C. Corp. Comm.* (1906), 206 U. S. 1, 27 Su. Ct. 585.

[9] *School City of Elwood v. The State ex rel. Griffin* (Ind., 1932), 180 N.E. 471; *Kennedy v. San Francisco Bd. of Ed.* (1890), 82 Cal. 483, 22 Pac. 1042.

[10] *Yarlott v. Brown* (1921), 192 Ind. 648, 138 N. E. 17.

[1] *Buenker v. Union Furniture Co.*, Appellate Court of Indiana, June 2, 1932, 181 N. E. 294.

[2] Burns' Ann. St. Supp. of 1929, Sec. 9447.