

REPORT ON LEGISLATION OF INTEREST TO SCHOOLMEN

OF CUMBERLAND COUNTY

OCTOBER 9, 1974

COMMITTEE ON STATE GOVERNMENT

HOUSE OF REPRESENTATIVES

HONORABLE GUY A. KISTLER, CHAIRMAN

REPORT ON LEGISLATION
OF INTEREST TO SCHOOLMEN
OF CUMBERLAND COUNTY

The Cumberland County Schoolmen's Association, consisting of administrators, supervisors, college and guidance personnel expressed interest in several interlocking subjects to be explored at an executive planning meeting to be used as a basis for discussion at subsequent meetings.

Specific interest was shown in new legislation, proposed legislation and interpretation of existing laws and their effect on school districts and school personnel.

Within this framework, Nelson F. Gish, Director of the Association, suggested such subjects as the "Sunshine Law" (Act 175), The Pennsylvania Public Employee Relations Act (Act 195), School Employees' Retirement Bill (House Bill No. 2522), and "Teacher Tenure," as being within the sphere of the House State Government Committee.

Chairman Guy A. Kistler's opinion was sought on these and allied subjects at Shippensburg State College, October 9, 1974:

7. PUBLIC NOTICE SHALL BE GIVEN BY PUBLISHING THE NOTICE ONCE IN A GENERAL CIRCULATION NEWSPAPER CIRCULATED IN THE POLITICAL SUBDIVISION OF THE MEETING, OR A GENERAL CIRCULATION NEWSPAPER HAVING A PAID CIRCULATION EQUAL TO OR GREATER THAN ANY NEWSPAPER IN THE SAME POLITICAL SUBDIVISION; AND BY POSTING A NOTICE PROMINENTLY AT THE PRINCIPAL OFFICE OF THE AGENCY OR AT THE PLACE IN WHICH THE MEETING IS TO BE HELD.

PUBLIC NOTICE MUST BE GIVEN AT LEAST 3 DAYS PRIOR TO THE FIRST REGULARLY SCHEDULED MEETING AND AT LEAST 24 HOURS BEFORE THE SPECIAL OR RE-SCHEDULED MEETING OR HEARING.
8. PUBLICATION IN THE COUNTY LEGAL PERIODICAL IS NOT REQUIRED. HOWEVER, UPON REQUEST, THE AGENCY HOLDING THE MEETING MUST SUPPLY COPIES OF THE PUBLIC NOTICE TO ANY GENERAL CIRCULATION NEWSPAPER IN THE MUNICIPALITY OF THE MEETING PLACE AND TO RADIO AND TELEVISION STATIONS REGULARLY BROADCASTING THERE.
9. PUBLIC NOTICE INCLUDES MAILING THE TIME, PLACE AND DATE OF MEETING TO ANYONE SUPPLYING A STAMPED, SELF-ADDRESSED ENVELOPE PRIOR TO THE MEETING.
10. ANY AGENCY MAY ADOPT RULES AND REGULATIONS TO DEAL WITH DISTURBANCES WHEN ORDER CANNOT BE RESTORED, AND AUTHORIZE THE PRESIDING OFFICER, BY MAJORITY VOTE, TO ENFORCE THEM WHEN NECESSARY.

SUCH RULES AND REGULATIONS MUST NOT VIOLATE THE INTENT OF THIS ACT.
11. ANY AGENCY MEMBER PARTICIPATING, KNOWINGLY, IN A MEETING HELD OR CONDUCTED TO PREVENT AN INTERESTED PARTY'S ATTENDANCE OR WITH THE INTENT AND PURPOSE TO VIOLATE THIS ACT IS GUILTY OF A SUMMARY OFFENSE AND, UPON CONVICTION, SHALL PAY A FINE NOT TO EXCEED \$100 PLUS PROSECUTION COSTS.

7. PUBLIC NOTICE SHALL BE GIVEN BY PUBLISHING THE NOTICE ONCE IN A GENERAL CIRCULATION NEWSPAPER CIRCULATED IN THE POLITICAL SUBDIVISION OF THE MEETING, OR A GENERAL CIRCULATION NEWSPAPER HAVING A PAID CIRCULATION EQUAL TO OR GREATER THAN ANY NEWSPAPER IN THE SAME POLITICAL SUBDIVISION; AND BY POSTING A NOTICE PROMINENTLY AT THE PRINCIPAL OFFICE OF THE AGENCY OR AT THE PLACE IN WHICH THE MEETING IS TO BE HELD.

PUBLIC NOTICE MUST BE GIVEN AT LEAST 3 DAYS PRIOR TO THE FIRST REGULARLY SCHEDULED MEETING AND AT LEAST 24 HOURS BEFORE THE SPECIAL OR RE-SCHEDULED MEETING OR HEARING.
8. PUBLICATION IN THE COUNTY LEGAL PERIODICAL IS NOT REQUIRED. HOWEVER, UPON REQUEST, THE AGENCY HOLDING THE MEETING MUST SUPPLY COPIES OF THE PUBLIC NOTICE TO ANY GENERAL CIRCULATION NEWSPAPER IN THE MUNICIPALITY OF THE MEETING PLACE AND TO RADIO AND TELEVISION STATIONS REGULARLY BROADCASTING THERE.
9. PUBLIC NOTICE INCLUDES MAILING THE TIME, PLACE AND DATE OF MEETING TO ANYONE SUPPLYING A STAMPED, SELF-ADDRESSED ENVELOPE PRIOR TO THE MEETING.
10. ANY AGENCY MAY ADOPT RULES AND REGULATIONS TO DEAL WITH DISTURBANCES WHEN ORDER CANNOT BE RESTORED, AND AUTHORIZE THE PRESIDING OFFICER, BY MAJORITY VOTE, TO ENFORCE THEM WHEN NECESSARY.

SUCH RULES AND REGULATIONS MUST NOT VIOLATE THE INTENT OF THIS ACT.
11. ANY AGENCY MEMBER PARTICIPATING, KNOWINGLY, IN A MEETING HELD OR CONDUCTED TO PREVENT AN INTERESTED PARTY'S ATTENDANCE OR WITH THE INTENT AND PURPOSE TO VIOLATE THIS ACT IS GUILTY OF A SUMMARY OFFENSE AND, UPON CONVICTION, SHALL PAY A FINE NOT TO EXCEED \$100 PLUS PROSECUTION COSTS.

12. THE COMMONWEALTH COURT SHALL HAVE ORIGINAL JURISDICTION OVER STATE AGENCY ACTIONS, AND COURTS OF COMMON PLEAS SHALL HAVE ORIGINAL JURISDICTION OVER OTHER AGENCIES' ACTIONS IN RENDERING DECLARATORY JUDGMENTS OR TO ENFORCE THIS ACT BY INJUNCTION OR OTHER APPROPRIATE REMEDY. ACTION MAY BE BROUGHT BY ANY PERSON IN THE JUDICIAL DISTRICT OF HIS RESIDENCE OR PRINCIPAL PLACE OF BUSINESS, WHERE THE AGENCY IS LOCATED, OR WHERE THE COMPLAINT OCCURRED.
13. ALL INCONSISTENT ACTS AND PARTS OF ACTS ARE REPEALED EXCEPT THOSE STATUTES SPECIFICALLY PROVIDING FOR CONFIDENTIALITY OF INFORMATION.
14. EFFECTIVE WITHIN SIXTY DAYS OF JULY 19, 1974.

SCHOOL EMPLOYES' RETIREMENT BILL

HOUSE BILL NO. 2522

PRINTER'S NO. 3794

REP. ZEARFOSS, ET AL

REFERRED TO EDUCATION COMMITTEE IN HOUSE JULY 8, 1974
REPORTED, AS AMENDED, SEPTEMBER 10, 1974
FIRST CONSIDERATION SEPTEMBER 23, 1974
RECOMMITTED TO APPROPRIATIONS, SEPTEMBER 23, 1974
RE-REPORTED, AS COMMITTED, SEPTEMBER 24, 1974
SECOND CONSIDERATION SEPTEMBER 25, 1974
THIRD CONSIDERATION WITH AMENDMENTS SEPTEMBER 30, 1974
PASSED HOUSE OCTOBER 1, 1974 (BY VOTE OF 171 - 2)
REFERRED TO RULES AND EXECUTIVE NOMINATIONS COMMITTEE IN SENATE
PASSED SENATE OCTOBER 20, 1974 (BY VOTE OF 47-0). IN HANDS OF GOVERNOR.

HOUSE BILL NO. 2522 PROVIDES THE FOLLOWING CHANGES IN THE PUBLIC SCHOOL EMPLOYES' RETIREMENT CODE (PUBLIC SCHOOL EMPLOYES' RETIREMENT SYSTEM):

1. THE INTEREST RATE USED IN VALUATION OF ESTIMATES IS INCREASED FROM 5% TO 5½%.
2. INCORPORATES THE BASIS OF FINAL AVERAGE SALARY AS REDUCED FROM 5 TO 3 YEARS (ACT 119 OF 1974).
3. PART-TIME SALARIED SCHOOL EMPLOYES AND FUTURE SCHOOL EMPLOYES WORKING UNDER FEDERALLY-FUNDED PROJECTS ARE REQUIRED TO BECOME MEMBERS OF THE SYSTEM.
4. CERTAIN SCHOOL EMPLOYES MAY RETAIN MEMBERSHIP IN AN ALTERNATIVE RETIREMENT PROGRAM RATHER THAN BECOME MEMBERS OF THE SYSTEM, AND EMPLOYES WHO JOIN THE SYSTEM MUST MAKE CONTRIBUTIONS FOR ALL SCHOOL SERVICE FROM THE ORIGINAL DATE OF ELIGIBILITY UNTIL TERMINATION OF SUCH SERVICE.

5. MULTIPLE SERVICE MEMBERS WHO BELONG TO THE STATE EMPLOYEES' RETIREMENT SYSTEM MAY PURCHASE CREDIT FOR PAST CREDITABLE SERVICE, AND PREVIOUS SERVICE AS AN EMPLOYEE OF A COUNTY BOARD OF SCHOOL DIRECTORS MAY BE PURCHASED BY MEMBERS WHO WERE TRANSFERRED TO THE SCHOOL SYSTEM.
6. THE NUMBER OF YEARS OF CREDITED SERVICE REQUIRED TO BECOME ELIGIBLE FOR AN ANNUITY IS REDUCED FROM 25 TO 10 YEARS, FOR A DISABILITY ANNUITY FROM 10 TO 5 YEARS AND FOR A FULL DEATH BENEFIT FROM 25 TO 10 YEARS.
7. FORMER SCHOOL EMPLOYEES WHO RETIRED ON OR PRIOR TO JULY 1, 1973 SHALL RECEIVE, IN ADDITION TO THEIR RETIREMENT ANNUITY, A COST-OF-LIVING SUPPLEMENT BASED ON A PERCENTAGE, TO BE DETERMINED BY THE DATE OF RETIREMENT.
8. ALL COSTS ARE APPORTIONED EQUALLY BETWEEN THE COMMONWEALTH AND EMPLOYER, AND THE EMPLOYER IS REQUIRED TO PAY HIS CONTRIBUTION DIRECTLY TO THE FUND EACH MONTH AT THE SAME TIME HE PAYS THE MEMBER'S CONTRIBUTION, AND THE COMMONWEALTH IS REQUIRED TO PAY TO THE FUND EACH QUARTER, THE AMOUNT DUE WITHIN 30 DAYS OF RECEIPT OF CERTIFICATION OF SUCH AN AMOUNT TO THE STATE TREASURER.
9. THE NUMBER OF DAYS AN ANNUITANT MAY RETURN TO SCHOOL SERVICE WITHOUT FOREGOING ANNUITY PAYMENTS IS DECREASED FROM 70 TO 60 DAYS, AND AN ANNUITANT WHO RETURNS TO SCHOOL SERVICE FOR MORE THAN 80 DAYS FOREFEITS HIS ANNUITY.
10. THE RETIREMENT BOARD IS TO BE INDEPENDENT AND IS INCREASED BY TWO MEMBERS, ONE REPRESENTING NON-PROFESSIONAL SCHOOL EMPLOYEES AND THE OTHER REPRESENTING SCHOOL BOARDS.
11. AN APPOINTMENT OF A BOARD MEMBER BY THE GOVERNOR REPLACES THE ELECTION OF A MEMBER BY THE BOARD, AND 3-YEAR TERMS ARE ESTABLISHED FOR APPOINTED MEMBERS.

12. THE LIMITATION ON INVESTMENT IN COMMON STOCK IS INCREASED FROM 10% TO 25% OF THE TOTAL ASSETS OF THE RETIREMENT FUND, AND THE PERCENT OF TOTAL ASSETS OF THE FUND PERMITTED TO BE INVESTED IN COMMON STOCK IN ANY ONE YEAR IS INCREASED FROM 2% TO 5%.

AMENDED ON THE HOUSE FLOOR TO DELETE FROM THE BILL A PROPOSAL TO INCLUDE OVERTIME AND SERVERANCE PAY IN COMPUTING AN EMPLOYEE'S RETIREMENT BENEFITS.

ADDITIONALLY, "SERVERANCE PAY" WOULD BE DEFINED, IN ADDITION TO UNUSED VACATION OR SICK LEAVE PAY, AS COMPENSATION CONTINGENT UPON RETIREMENT INCLUDING PAYMENTS IN EXCESS OF CUSTOMARY SALARY PAID TO MEMBERS WITH THE SAME EXPERIENCE WITHIN THE SAME GOVERNMENTAL ENTITY.

COMMENT:

THIS BILL PROVIDES \$44 MILLION IN PENSION INCREASES FOR RETIRED SCHOOL TEACHERS. IT PROVIDES THE COST-OF-LIVING PROVISION FOR APPROXIMATELY 44,000 RETIRED SCHOOL EMPLOYEES.

THE BILL AFFECTS 170,000 ACTIVE PENSION PLAN MEMBERS AND 30,000 PART-TIME EMPLOYEES.

THE CODIFICATION, IF IT BECOMES LAW, WOULD COST A MINIMUM AMOUNT OF \$144 MILLION ANNUALLY.

AUDITOR GENERAL ROBERT CASEY FEELS THE BILL IS TOO "LIBERAL AND COSTLY." HIS FIGURES STATE THAT SCHOOL DISTRICTS PAYING HALF THE COST ARE ALREADY IN ARREARS TO \$35.9 MILLION AND THE STATE HAS FAILED TO MEET OBLIGATIONS TO THE FUND TO AN ESTIMATED \$185 MILLION.

EXPLORATION OF "TEACHER TENURE"

Teacher tenure which has existed in Pennsylvania since 1939, has many purposes, purporting to safeguard academic freedom, prevent influence and pressure, and eliminate favoritism and retribution in teacher hiring and dismissals. It is a procedure to assure due process for tenured teachers in the event charges are brought against them.

Teachers of basic education earn tenure after a minimum of two years of satisfactory teaching. Tenure is invested by school administrators, superintendents and school boards who rate and validate teacher performance.

State law cites immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement, subversive activity and persistent violation of school laws as valid causes for terminating a "professional employee's" contract before retirement age. Currently, HB 632 and SB 280, still in their respective committees, were introduced to add insubordination and refusal to obey a lawful injunction to the list.

School employees with tenure, including supervisors, principals, counselors, librarians and nurses, as well as certified teachers, are "professional employees."

The law is specific in provisions relating to tenure for elementary and secondary school employees stipulating its legal basis, probationary period length, categories of eligibility, awarding procedures, appeal procedures and dismissal procedures.

Tenure for teachers of higher education is a general statement of principle according to individual college or university policies.

Nothing in state law guarantees tenure for faculty members, although an estimated 94% of all faculty members in American colleges and universities serve in institutions granting tenure.

The Association of American Colleges and the American Association of University Professors developed a standard tenure plan in 1940 to provide general principles for probationary periods for faculty members and adequate cause for dismissal; further providing that all terms of appointments be in writing.

Since this is a statement of principle, one cannot refer to a "tenure system" in higher education, although the same purpose is served in both basic and higher education.

Those opposing tenure for public school employees argue that it tends to "lock" in incompetent teachers and prevent the movement of staff so that competent ones may be hired. Additionally, the advent of collective bargaining for public employees under Act 195, as well as the use of due process under the U.S. Constitution has caused critics to say that tenure is no longer necessary. The "Report of the Citizens Commission of Basic Education," states that abolition of tenure could be counterproductive to the betterment of education. The Pennsylvania School Boards Association believes that with collective bargaining rights for teachers a reality, tenure is no longer necessary. Secretary of Education Pittenger feels that within five years, security provisions of contracts may make tenure obsolete.

Those supporting tenure for public school employees argue that tenure doesn't benefit incompetent teachers more than laws and court proceedings benefit law breakers, and tenure assures teachers due process and hearing rights before dismissal, as do court proceedings guarantee due process for citizens before conviction of an illegal act. The American Federation of Teachers and the Pennsylvania State Education Association believe that one should be entitled to job security and collective bargaining at the same time and the Association opposes collective bargaining as a replacement for tenure.

The question of inherent managerial or supervisory employees has been raised by many. Whereas supervisory personnel are protected under tenure, they are not covered under Act 195 and therefore, tenure is essential for them.

Many think that it would be counterproductive to give such managerial or supervisory personnel collective bargaining powers under Act 195 because of their unique position between employer (school board) and employee (school teacher), in the negotiation process.

School administrators are affected by teacher raises, because the wage ceiling and benefit levels are increased.

The Commonwealth Court ruled that school administrators have the right to maintain membership in PSEA or other teacher organizations after promotion to administrative rank, even while noting that such membership is "inconsistent and incompatible with being a supervisor." However, the law permits this and the Court must rule in favor of the employee under the present language of Act 195.

The School Board Association feels that any public employer, including school districts, must have a sufficient body of 'excluded' employees to carry out the employer's mission and to represent general public interests as opposed to private interests of employee unions - namely, supervisors at all levels.

SB 1756, PN 2519, Nolan - introduced this session would allow collective bargaining rights for supervisory and administrative employees, but such employees must be represented by a different union than that of the teaching employees. This bill would amend the School Code with reference to Act 195. The bill was re-referred to Senate Appropriations September 23, 1974.

HB 2000, PN 2671, Fox - is similar to the Senate Bill and hearings will be held by the Education Committee on it, Thursday, October 10, 1974.

Stressing the fact that this is a perplexing issue and that education has particular problems with collective bargaining under Act 195.

1. There have been numerous school strikes under the Act (From 1970 to May, 1974, there have been 164 school strikes out of a total of 220 Public Sector Strikes).
2. There is a high degree of employee organization inherent within the Educational Sector (PSEA and Federation of Teachers).
3. Teachers and school boards are understandably inexpert in the procedures of collective bargaining negotiations.
4. The school calendar allows "make up days" to extend the calendar to make up strike time, for nine months, whereas public employees have approximately 200 days with staggered vacations.
5. Since school boards are in a position to lose state subsidies for any of the 181 days lost, they are at a bargaining disadvantage. (Prior to

an administrative order by Dr. Pittenger this year, there was a double penalty for lost days, for the years' subsidy was set at the prior years record of attendance).

HB 112, PN 132, Williams and Rappaport - Amends Act 195 to remove the public school system employees limited right to strike and permits only binding arbitration.

Dorothy K. Tully, Legislative Analyst
House Committee on State Government